

## *ARTICLE 31*

### *NON-CONFORMING USES*

#### **22-31.01 NON-CONFORMING USES WHICH MAY BE CONTINUED:**

1. The following lawful non-conforming uses of land may be continued:
  - A. A use of land which existed prior to the effective date of this Zoning Ordinance.
  - B. A use of land existing at the time of the annexation.
  - C. A use of land existing at the time an amendment is made to the Zoning Ordinance which changes such land to a more restricted district or extends the jurisdiction of the Zoning Ordinance to the land use.
2. The lawful use of a building located upon any land, except as provided in SECTION 2 below, may be continued although such use does not conform with the provisions of this Zoning Ordinance, and such use may be continued throughout the building if no structural alterations are made therein, except those required by law or ordinance. If no structural alterations are made in such building, a non-conforming use of the building may be changed to another non-conforming use of the same or more restricted use classification. The foregoing provisions shall also apply to any uses of buildings which may be made non-conforming by any subsequent amendment or change of this Zoning Ordinance.
3. Normal maintenance and incidental repair, or replacement, installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a non-conforming use.
4. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety who declares such structure to be unsafe and orders its restoration to a safe condition.

#### **22-31.02 NON-CONFORMING USES WHICH MAY NOT BE CONTINUED:**

1. When a non-conforming use is discontinued or abandoned, for a period of twelve consecutive months, such use shall not thereafter be re-established or resumed, and any subsequent use or occupancy of such land shall comply with the regulations of the zoning district in which such land is located.
2. No use which is accessory to a principal non-conforming use shall continue after such principal use shall cease or terminate.
3. No non-conforming structure shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.
4. Whenever a non-conforming use of building has been changed to a more conforming use, such use shall not thereafter be changed to a less conforming use.

5. A non-conforming building which has been damaged to the extent of more than fifty (50) percent of its fair market value by fire, explosion, act of God, or the public enemy shall not be restored, except in accordance with all zoning regulations of the zoning district. In the event a question may arise on the fair market value of such a building, the same shall be determined by three (3) appraisers: one (1) shall be selected by the Governing Body, one (1) shall be selected by the owner of the building, and the third appraiser shall be selected by the two selected appraisers. If the first two appraisers selected cannot agree on the selection of the third such appraiser, the Judge of the appropriate court shall be requested to appoint the third appraiser. The decision of the appraisers, or a majority of them, shall be final and conclusive and shall be binding upon all concerned to the purpose of determining whether the damaged property may be restored. The cost of such appraisal shall be paid by the property owner.
  
6. Where land is used for business signs, bulletin boards or billboards, at the time of passage of the zoning regulations, and are not in conformance with the zoning regulations, the use of such land for said business signs, bulletin boards or billboards shall be discontinued and the sign removed within five years after the effective date of the zoning ordinance. Land, as used in this paragraph, shall mean signs on supports on vacant land, as well as signs on buildings.

## **ARTICLE 32**

### **ZONING CLASSIFICATIONS OF LESSER CHANGE**

**22-32.01 ZONING CLASSIFICATIONS OF LESS CHANGE:** In accordance with the provisions of KSA 12-757, the Planning Commission may recommend and the Governing Body may approve a lesser change in zoning districts without re-publication of a notice or re-distribution of notices to property owners when such change is more restrictive than the district which is applied for as shown on the table below; *provided, however, that such recommendation and approval shall not be for a lesser classification than the existing zoning district.* If the applicant at the meeting, at which a zoning amendment is being considered, desires to amend the application for a change, then such a proposed change may be recommended by the Planning Commission for reconsideration by the Governing Body without further publication or notice.

For the purposes of this section, zoning classifications of lesser change shall be as shown below, based on descending order of use restriction:

1. Most restrictive to least restrictive in terms of allowable uses of land.

- “A – L” Agriculture District
- “R – S” Suburban Family Dwelling District
- “R” Single-Family Dwelling District
- “R – 1” Single-Family Dwelling District
- “R – 2” Two-Family Dwelling District
- “R – 3” Multiple-Family Dwelling District
- “C – S” Highway Service District
- “C – 2” Neighborhood Shopping District
- “C – 3” General Business District
- “I – 1” Light Industrial District
- “I – 2” Heavy Industrial District

2. Zones Not Included.

- A. Because of the highly specialized purposes of the “F – P” Floodplain, “PUD” Planned Unit Development, “M – H” Manufactured Home, “M – P” Manufactured Home Park, “C – 1” Retail Business, and “I – P” Industrial Park Districts, they are not included in the table of lesser zoning changes, and are excluded from designation through the lesser change provisions.

**22-32.02. PROTEST:** If a protest against such amendment is filed in the office of the City Clerk within fourteen (14) days after the date of the conclusion of the public hearing pursuant to said publication notice, said protest being duly signed and acknowledged by the owners of twenty (20) percent or more of any real property proposed to be rezoned or by the owners of twenty (20) percent of the area, excepting public streets and ways located within the zoning jurisdiction of the City and located within two hundred (200) feet of the boundaries of the property proposed to be rezoned, or within one thousand (1,000) feet in the unincorporated area if the property to be rezoned is located adjacent to or outside the City’s limits, such amendment shall not be passed except by at least three-fourths (3/4) vote of the members of the Governing Body.

## **ARTICLE 33**

### **BOARD OF ZONING APPEALS**

**22-33.01 BOARD OF ZONING APPEALS ESTABLISHED:** A Board of Zoning Appeals is hereby established. Such Board shall consist of not less than three (3) nor more than seven (7) members who shall be appointed by the Mayor, by and with the consent of the City Governing Body. All members of the Board so appointed shall be residents of the City; provided, however, that if the City shall administer zoning regulations outside the City limits, one member of the board shall be a resident of the zoning jurisdiction outside the city limits. The members first appointed shall serve respectively for terms of one (1), two (2), and three (3) years, divided equally or as nearly equal as possible, among the members. Thereafter, members shall be appointed for terms of three (3) years each. Vacancies shall be filled by appointment for the unexpired term. All members of said Board shall serve without compensation. One member may be a member of the Planning Commission.

**22-33.02. ELECTION OF OFFICERS:** The Board shall annually elect one (1) of its members as chairman and shall appoint a secretary who may be an officer or an employee of the City.

**22-33.03. RULES OF PROCEDURE:** The Board shall adopt bylaws and rules of procedure for the conduct of business.

**22-33.04. MEETINGS:** Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine.

**22-33.05 RECORDS:** The Board shall keep minutes of its proceedings showing evidence presented, findings of fact by the Board, decisions of the Board, and voting upon each question. Records of all official actions of the Board shall be filed in its office and shall be a public record.

**22-33.06 FILING FEE:** For the purpose of wholly or partially defraying the cost of the proceedings prescribed herein, including publication costs, the applicant, upon filing an appeal, shall pay to the City Clerk a fee in the amount of Fifty(50) dollars. Promptly upon filing the appeal and required filing fee, the City Clerk shall refer said appeal to the secretary of the Board of Zoning Appeals.

**22-33.07 PUBLIC HEARING AND NOTICE:** The Board of Zoning Appeals shall fix a reasonable time for hearing of an appeal or other matter referred to it. Notice of the time, place, and subject of such hearing shall be published once in the official newspaper at least twenty (20) days prior to the date fixed for hearing. A copy of said notice shall be mailed to each party to the appeal and to the Planning Commission.

**22-33.08 POWERS AND JURISDICTIONS:** The Board of Zoning Appeals shall administer the details of appeals or other matters referred to it regarding the application of the Zoning Ordinance. The Board shall have the following specific powers:

1. To hear and decide on appeals where it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the Zoning Ordinance.
2. To interpret the provisions of the Zoning Ordinance in such a way as to carry out the intent and purposes of the adopted comprehensive plan, and to correct the several districts accompanying and made a part of this Ordinance where the actual street layout varies from the street layout, as shown on the zoning district map.

3. 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.
4. The Board must find that the granting of such variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable or unusual hardship or difficulty.
5. To grant exceptions to the provisions of the zoning regulations in those instances where the board is specifically authorized to grant such exceptions and only under the terms of the zoning regulations. In no event shall exceptions to the provisions of the zoning regulation be granted where the use or exception contemplated is not specifically listed as an exception in the zoning regulations. 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 regulations by the Governing Body, are not found to be present.

**22-33.09 PROCEDURE:**

1. Appeals to the Board of Zoning Appeals may be taken by any person aggrieved, or by any officer of the City or County, or any governmental agency or body affected by any decision of the official administering the provisions of this Zoning Ordinance.
2. Appeals 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 payment of the required filing fee.
3. Appeals and requests to the Board for variances and exceptions to this Zoning Ordinance shall be prepared and submitted on forms approved by the Board.
4. After filing the required appeal or request and payment of the required fee, the Board of Zoning Appeals shall advertise and hold a public hearing as provided in SECTION 7 above.
5. Notice of the decision of the Board of Zoning Appeals shall be in writing and transmitted to the appellant. A copy of such decision shall also be transmitted to the City Building Inspector for filing and action, if action is required.
6. Any person, official or governing agency dissatisfied with any order or determination of said Board may, within 30 days, bring an action in the District Court of the County, to determine the reasonableness of any such order or determination.

**22-33.10 VARIANCES TO THIS ZONING ORDINANCE:**

1. The Board may authorize, in specific cases, a variance from the specific terms of this Zoning Ordinance which will not be contrary to the public interest and where, because of special conditions, a literal enforcement of the provisions of the Zoning Ordinance will, in an individual case, result in unnecessary hardship, providing that the spirit of the Zoning Ordinance is observed, public safety and welfare are secured, and substantial justice is done. Such variance shall not permit any use not permitted by this Zoning Ordinance.

The following requirements must be met before the Board may grant a variance:

- A. The applicant must show that his property was acquired in good faith.

- B. The request for a variance must arise from a condition which is unique to the property in question, is not ordinarily found in the same zone or district, and is not created by an action or actions of the property owner or applicant.
  - C. The granting of a variance shall not adversely affect the rights of adjacent property owners or residents.
  - D. The strict application of this Zoning Ordinance will cause unnecessary hardship upon the property owner represented in the application.
  - E. The granting of a variance shall not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.
  - F. The granting of a variance will not violate the spirit and intent of this Zoning Ordinance.
2. Variances from yard regulations may not be more than one-half (1/2) the required yard and shall not encroach upon the required setback for adjacent buildings.
  3. In exercising the above powers, the Board may reverse or affirm wholly or partly, or may modify, the order, requirement, decision, or determination appealed from the City Building Inspector. The Board may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the same powers as the City Building Inspector from whom the appeal is taken. If the Board approves the variance, they shall notify the City Building Inspector of their decision and shall instruct him to issue a permit. A time limit may be specified as a condition for granting the appeal.
  4. Every variation granted or denied by the Board shall be accompanied by the written finding of fact, based on testimony and evidence, and specifying the reason for granting or denying the variance, a copy of which shall be filed in the office of the City Clerk to be available for public inspection.

**22-33.11. EXCEPTIONS TO THIS ZONING ORDINANCE:**

1. Exceptions to this Zoning Ordinance, as authorized by the district regulations, shall be made by special use permit after the request has been duly advertised and a public hearing held as required by law. All special use permits shall be subject to the following requirements.
2. Prior to review of the request of an exception by the Board of Zoning Appeals, the applicant shall:
  - A. File an application on forms provided.
  - B. File with the application a statement certifying that the applicant is the lawful owner of the real estate upon which the excepted use is proposed or that he has the lawful right to receive a conveyance thereof if the application is granted.
  - C. File a form of declaration of restrictions indicating use which is to be made by the legal owner if the application is granted. Said restrictions must show that use of the land will be solely that which was applied for as an excepted use. The restriction must provide that, if such use is abandoned or is proposed to be changed, the subsequent use shall be in conformity with the zoning restrictions in effect as to the land prior to authorization of the exception, unless a new application for an excepted use is made and granted.

3. A site plan shall be filed with the application showing:
  - A. Legal dimension of the tract to be used.
  - B. Location of all proposed improvements including curb-cut access, off-street parking, and other such facilities as the applicant proposes to install.
  - C. Grade elevations.
  - D. Building setback from all property lines.
  - E. Front, side, and rear elevations of all improvements to be erected.
  - F. Perspective drawings of the proposed improvements, in such detail as will clearly show the finished appearance of the improvements proposed.
  - G. Location and type of planting, screening, or walls.
  - H. Such other items as the Board shall deem necessary to process the application properly.
4. In considering any application for an exception hereunder, the Board of Zoning Appeals shall give consideration to the comprehensive plan, and the health, safety, morals, comfort, and general welfare of the public, including, but not limited to, the following factors:
  - A. The stability and integrity of the various zoning districts.
  - B. Conservation of property values.
  - C. Protection against fire and casualties.
  - D. Observation of general police regulations.
  - E. Prevention of traffic congestion.
  - F. Promotion of traffic safety and the orderly parking of motor vehicles.
  - G. Promotion of the safety of individuals and property.
  - H. Provision for adequate light and air.
  - I. Prevention of overcrowding and excessive intensity of land uses.
  - J. Provision for public utilities and schools.
  - K. Invasion by inappropriate uses.
  - L. Value, type, and character of existing or authorized improvements and land uses.
  - M. Encouragement of improvements and land uses in keeping with overall planning.
  - N. Provision for orderly and proper urban renewal, development, and growth.

**22-33.12. PERFORMANCE:**

1. In making any decision varying or modifying any provisions of this Zoning Ordinance or in granting an exception to the district regulations, the Board of Zoning Appeals shall impose such restrictions, terms, time limitations, landscaping, improvement of off-street parking lots, and other appropriate safeguards as required to protect adjoining property.
2. In lieu of actual construction of an approved off-street parking lot, the Board of Appeals may accept, in the name of the City, a corporate surety bond, cashier's check, escrow account, or other like security in an amount to be fixed by the City and conditioned upon actual completion of such improvement within a specified time, and the Governing Body may enforce such bond by all equitable means. Bonds or other security shall be filed with the City Clerk.



## *ARTICLE 34*

### *AMENDMENTS*

**22-34.01 AMENDMENTS:** The Governing Body may, from time-to-time, amend, supplement, or change the district boundaries or regulations contained in this Zoning Ordinance. A proposal for an amendment or a change in zoning may be initiated by the Governing Body or by the Planning Commission or upon application of the owner of the property affected. All such proposed changes shall first be submitted to the Planning Commission for Public Hearing, recommendation and report. The Planning Commission shall hold a public hearing thereon and shall cause an accurate, written summary to be made of the proceedings.

**22-34.02. APPLICATIONS:**

1. Any party desiring any change in zoning district boundaries or regulations contained in this Zoning Ordinance, as to any lot, tract, or area of land, shall file with the City Clerk an application upon forms provided, and such application shall be accompanied by such data and information as may be prescribed by the Planning Commission. At the time of filing said application with the City Clerk, the applicant shall provide the City Clerk with the names and addresses of all owners of any land within the City's boundary located within two hundred (200) feet of the outer limits of said area to which the applicant desires change of zoning.

Where the proposed zoning amendment will include property located adjacent to or outside the City's limits, the applicant shall provide the City Clerk with the names and addresses of all owners of any land located within one thousand (1,000) feet in the unincorporated area.

2. An applicant for a change in zone to "PUD" Planned Unit Development, "M – P" Manufactured Home Park District, or "I – P" Industrial Park District must satisfy the Planning Commission that he has the ability to carry out the proposed plan and shall prepare and submit a schedule for construction. The proposed construction shall begin within a period of eighteen (18) months following approval by the Governing Body, and forty (40) percent of the total planned construction shall be completed within a period of three (3) years following such approval.

Such applicant shall also prepare and submit a preliminary development plan for review and approval by the Planning Commission and Governing Body. Applicants for the "PUD," "M – P" or "I-P" zones shall submit a plan prepared in accordance with the requirements of the individual district regulations.

Upon approval of the zoning application and preliminary development plan by the Planning Commission, the applicant shall prepare and submit a final development plan which shall incorporate any changes or alterations requested. The final development plan and the Planning Commission recommendation shall be forwarded to the Governing Body for their review and final action.

In the event that, within eighteen (18) months following approval by the Governing Body of an "PUD" or "M – P" District, the applicant does not proceed with construction substantially in accordance with the plan so approved, the Planning Commission shall initiate action to rezone the property. A public hearing, as required by law, shall be advertised and held, at which time the applicant shall be given an opportunity to show why construction has been delayed. Following the hearing, the Planning Commission shall make findings of fact and shall submit their recommendation to the Governing Body for official action.

**22-34.03 FILING FEE:** For the purpose of wholly or partially defraying the costs of the proceedings prescribed herein, including publication costs, the applicant, upon the filing of the application, shall pay to the City Clerk a fee in the amount of Fifty (50) dollars. Promptly upon the filing of any such application, the City Clerk shall refer the application to the Planning Commission for study and recommendation.

**22-34.04. PUBLIC HEARING AND NOTICE:** Before the Planning Commission shall, by proper action, formulate its recommendation to the Governing Body on any such proposed or requested change of zoning district boundary or regulation, whether initiated by the Governing Body or Planning Commission or by others, the Planning Commission shall hold a public hearing on such proposal. The secretary of the Planning Commission shall cause a notice of public hearing to be published once in the official newspaper and at least twenty (20) days shall elapse between the date of such publication and the date set for the hearing. Such notice shall fix the time and place for such hearing and shall contain a statement regarding the proposed changes in the regulations or restrictions or in the boundary of any district, and if such proposed amendment will affect specific property, the legal description and general street address shall be given; provided that, in addition to such publication notice, at least twenty (20) days before the hearing written notice of such proposed change shall be mailed to all the owners of land within the City's boundary located within two hundred (200) feet of the area proposed to be altered, except that where the change will include property located adjacent to or outside the City's limits, the written notice shall also be mailed to all owners of land outside the City's boundary located within one thousand (1,000) feet of the area proposed to be altered. Failure to receive such notice shall not invalidate any subsequent action taken when the notice has been properly addressed and deposited in the mail.

## **ARTICLE 35**

### **ENFORCEMENT, VIOLATION, AND PENALTY**

**22-35.01. ENFORCEMENT:** The City Building Official shall administer and enforce this Zoning Ordinance. Appeals from the decision of the City Building Inspector may be made to the Board of Zoning Appeals.

**22-35.02. CERTIFICATE OF OCCUPANCY:**

1. Subsequent to the effective date of this Zoning Ordinance, no change in the use or occupancy of land nor any change in the use or occupancy of an existing building shall be made, nor shall any new building be occupied, until a certificate of occupancy has been issued by the City Building Inspector. The certificate of occupancy shall state that the land and/or building complies with the provisions of this Zoning Ordinance.
2. No excavation, erection, or alteration of any building shall be permitted before an application has been made and approved for a building permit, and no building or premises shall be occupied until a certificate of occupancy is issued.
3. A record of all certificates of occupancy shall be kept on file in the office of the City Building Inspector and copies shall be furnished for two (2) dollars on request by any person having an interest in the land or building affected.

**22-35.03 PLANS:** Each application for a building permit shall be accompanied by a plan in duplicate, drawn to scale, showing the actual dimensions of the lot to be built upon, the size, shape, and location of the building to be erected, and such other information as may be necessary to provide for the enforcement of this Zoning Ordinance. A record of applications and plans shall be kept in the office of the City Building Inspector.

**22-35.04 VIOLATION AND PENALTY:**

1. The owner or agent of a building or premises in or upon which a violation of any provision of this Ordinance has been committed or shall exist; or the lessee or tenant of an entire building or entire premises in or upon which a violation has been committed or shall exist; or the agent, architect, building contractor, or any other person who commits, takes part or assists in any violation, or who maintains any building or premises in or upon which a violation has been committed or shall exist, shall be punished by a fine not to exceed five hundred (500) dollars, or by imprisonment for not more than six (6) months for each offense, or by both such fine and imprisonment. Each and every day that such violation continues shall constitute a separate offense.
2. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this Zoning Ordinance, the appropriate authorities of said area, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation or to prevent the occupancy of said building, structure, or land.

## ***ARTICLE 36***

### ***VALIDITY***

**22-36.01 VALIDITY:** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.