

**PLANNING COMMISSION REPORT**  
**Regular Agenda -- Public Hearing Item**

PC Staff Report  
05/20/2009

**ITEM NO. 8C: TEXT AMENDMENT TO CHAPTER 20 DEVELOPMENT CODE (SMS)**

**TA-5-6-09:** Consider amendments to various sections of Chapter 20 of the City of Lawrence Land Development Code to address implementation issues regarding Plan Approvals/Extensions. Initiated by the Lawrence City Commission on April 7, 2009.

**ITEM NO. 8D: TEXT AMENDMENT TO CHAPTER 20 DEVELOPMENT CODE (SMS)**

**TA-5-7-09:** Consider amendments to various sections of Chapter 20 of the City of Lawrence Land Development Code to address implementation issues regarding Site Plan Notice provisions. Initiated by the Lawrence City Commission on April 7, 2009.

**RECOMMENDATION:** Staff recommends that the Planning Commission forward a recommendation for approval of the proposed amendments [TA-5-6-09] to Sections 1304, 1305, 1306, 1307 and 1309 of Chapter 20, Land Development Code to the City Commission.

**RECOMMENDATION:** Staff recommends that the Planning Commission forward a recommendation for approval of the proposed amendments [TA-5-7-09] to Section 1305 of Chapter 20, Land Development Code to the City Commission.

**Reason for Request:** The City Commission initiated this amendment on April 7, 2009 along with other amendments aimed at making development standards more reasonable for property owners while maintaining the stated purposes established in the code.

**RELEVANT GOLDEN FACTOR:**

- Conformance with the Comprehensive Land Use Plan is the relevant factor that applies to this request. Adoption of new regulatory tools, one of which is the zoning regulations, is an implementation step in Chapter 13 of *Horizon 2020*, the City/County Comprehensive Land Use Plan.

**PUBLIC COMMENT RECEIVED PRIOR TO PRINTING**

- None to date.

**KEY POINTS**

- Staff has identified that the Development Code lacks consistency in approval time periods for various applications and that time frames appear to be too restrictive given the time required to complete development projects [TA-5-6-09].
- Staff has also identified inconsistencies in the Development Code regarding the process for application approval extensions. Amendments to the code are needed to improve administration and provide clarity and predictability in the review process [TA-5-6-09].

- Site plan notice is only required to be provided to owners of adjoining property. Staff has heard concerns from property owners within a wider area that would have appreciated advance notice of proposed development. The majority of items submitted for review include notice to property owners within 200 feet in the City. A consistent notice area improves and streamlines the administration of the code [TA-5-7-09].
- Staff has identified issues with the text prescribed in the Code for site plan notice letters which often leads to confusion or frustration on the part of the recipients. During the adoption of the Smart Code amendments, staff suggested alternate language and proposes that revision in this amendment [TA-5-7-09].

## **OVERVIEW OF PROPOSED AMENDMENT**

TA-5-06-09 provides a standard 24 month approval period for Preliminary Development Plans, Final Development Plans, Site Plans, Special Use Permits and Board of Zoning Appeals Variances. The code currently allows 18 months + a 6 month extension for most applications. Additional engineering and architectural work is required after planning approvals have been obtained and it appears that complex development projects often require more time prior to start of construction.

The proposed revisions also provide a consistent extension period, process and approval authority that requires action by the City Commission [or BZA for variances] after written notice is provided to all property owners within 200 feet of the proposed development activity. Extensions of 24 months may be granted. The requirement for written notice prior to the City Commission or BZA meeting provides new owners in the notice area an opportunity to become informed and comment on the proposed development.

The proposed revisions also establish a 24 month time period for filing of an Institutional Development Plan at the Register of Deeds office and clarify the validity of an approved IDP.

The proposed revisions also identifies 'failure to obtain a building permit' as the consistent trigger for expiration of most approvals. The trigger for Preliminary Development Plans remains submittal of a Final Development Plan.

No changes are proposed at this time to the provisions in Section 20-1308 regarding Floodplain Development Permits. Staff recognizes that the time period for these permits will remain at 18 months + 6 month administrative extension. Changes to these regulations would also involve changes to Article 12 Floodplain Management Regulations and would require additional review by the Division of Water Resources.

TA-5-07-09 provides revised text for notice letters for site plan applications and provides consistency with text approved with the recent Smart Code amendments. The amendment also revises the notice area for site plan applications from adjoining property owners to all owners within 200 feet of the development site.

## **CONFORMANCE WITH *HORIZON 2020***

These amendments suggest the adoption of consistent time periods and processes within the review process to streamline the development process while providing a transparent approval mechanism that provides predictability to the applicant, public and staff. Streamlining procedures is identified as a key action in the Implementation Chapter of *Horizon 2020*.

## CRITERIA FOR REVIEW & DECISION-MAKING

Section 20-1302(f) provides review and decision-making criteria on proposed text amendments. It states that review bodies shall consider at least the following factors:

- 1) **Whether the proposed text amendment corrects an error or inconsistency in the Development Code or meets the challenge of a changing condition; and**

**Staff Response:** The proposed amendments in TA-5-6-09 address staff's observation that current time limits are problematic to the development community and that the Code is inconsistent in how approval extensions should be handled and who has approval authority. Staff has recently processed several extension requests due, in part, to the slowing economy. If a project does not change over the approval period, it is costly and inefficient [to both the developer and staff] to require complete resubmission of the same project. Providing consistent time periods and approval processes for extensions improves the usefulness of the Code for all users [developers, public and staff].

The proposed amendments in TA-5-7-09 include consistent notice language for site plan letters as recently adopted and establishes a notice area consistent with other types of development applications. Such changes will streamline the administration of the code and reduce the opportunities to provide inaccurate information regarding process.

- 2) **Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of this Development Code (Sec. 20-104).**

**Staff Response:** As discussed above, the comprehensive plan recognizes the need to adopt implementation tools that provide a consistent and predictable process to address development proposals that are determined to be consistent with the plan. This amendment supports and implements this directive.

## PROPOSED LANGUAGE:

Revisions that are proposed as part of Item 8C, TA-5-6-09, to Sections 20-1304, 20-1305, 20-1306, 20-1307 and 20-1309 are shown in Attachment A – Revised Article 13 with deletions shown as ~~struck through~~ and new text shown in ***red bold italic underline***. The entire Article is provided for context. The specific revisions are located on pages 24-25, 28-29, 42, 45, 49-50, and 53.

Revisions that are proposed as part of Item 8D, TA-5-7-09, are also shown in Attachment A with deletions shown as ~~struck through~~ and new text identified in ***green font***. The specific revisions are located on pages 39-40.

**Attachment A – Revised Article 13**

**ARTICLE 13 DEVELOPMENT REVIEW PROCEDURES**

- 20-1301 General**
- 20-1302 Text Amendments**
- 20-1303 Zoning Map Amendments (Rezoning)**
- 20-1304 Planned Developments**
- 20-1305 Site Plan Review**
- 20-1306 Special Uses**
- 20-1307 Institutional Development Plan**
- 20-1308 Floodplain Development Permit**
- 20-1309 Zoning Variances**
- 20-1310 Written Interpretations**
- 20-1311 Appeals of Administrative Decisions**

**20-1301 GENERAL**

**(a) Summary of Procedures**

The following table provides a summary of the procedures in this Article. In the event of conflict between this summary table and the detailed procedures in this Development Code, the detailed procedures govern.

Procedure	Review and Decision-Making Bodies				Notice
	Staff	PC	BZA	CC	[2]
Text Amendments (§0)	R	<R>		DM	N
Zoning Map Amendments (§0) [3]	R	<R>		DM	N/P/M
<b>Planned Developments</b> (§ 20-1303(l)(2)(v))					
Preliminary Development Plan	R	<R>		DM	N/P/M
Final Development Plan	DM			<A>	M
Site Plan Review (§0)	DM			<A> [4]	P/M
Special Uses (§Article 12. 20-1305(o)(3))	R	<R>		DM	N/P/M
Zoning Variances (§0)	R		<DM>		N/M
Written Interpretations (§0)	DM		<A> [5]		
Appeals of Administrative Decisions (§0)			<DM>		N/M

PC = [Planning Commission](#) BZA = Board of Zoning Appeals CC = City Commission <=>= Public Hearing Required

[1] R = Review Body (Responsible for Review and Recommendation); DM = Decision-Making Body (Responsible for Final Decision to Approve or Deny); A = Authority to hear and decide appeals of Decision-Making Body's action.  
 [2] Notices: N = Newspaper (published); P = Posted (signs); M = Mailed (See sub-section (p)(3) of this section)  
 [3] See Section 20-308(d) for special procedures applicable to UC, Urban Conservation District zoning map amendments.  
 [4] City Commission is authorized to hear and decide appeals of [Planning Director](#)'s decision on Site Plans.  
 [5] Appeals processed as "Appeals of Administrative Decisions."

**(b) Authority to File Applications**

Unless otherwise expressly stated, applications for review and approval under this article may be initiated by (1) all the [Owner](#) of the property that is the subject of the application; (2) the [Landowners'](#) authorized [Agent](#); or (3) any review or decision-making body.

**(c) Form of Application**

Applications required under this Development Code shall be submitted in a form and in such

numbers as required by the official responsible for accepting the application. Officials responsible for accepting applications shall develop checklists of submittal requirements and make those checklists available to the public. Application forms and checklists of required submittal information are available in the office of the [Planning Director](#).

**(d) Pre-application Meetings**

- (1) All applicants for matters that require a public hearing are required to attend a pre-application meeting with staff. Pre-application meetings are also required whenever the provisions of this Article expressly state that they are required. Pre-application meetings shall be scheduled by the applicant to allow adequate time to review and respond to issues raised at the pre-application meeting. The meeting shall occur at least 7 [Working Days](#) before submitting an application.
- (2) All other applicants are encouraged to arrange a pre-application meeting with City staff. The [Planning Director](#) will provide assistance to applicants and ensure that appropriate City staff members are involved in pre-application meetings.

**(e) Application Processing Cycles**

The [Planning Director](#) may, after consulting with review and decision-making bodies, promulgate processing cycles for applications. Processing cycles may establish:

- (1) deadlines for receipt of complete applications;
- (2) dates of regular meetings;
- (3) the scheduling of staff reviews and staff reports on complete applications; and
- (4) any required time-frames for action by review and decision-making bodies.

**(f) Application Filing Fees**

Applications shall be accompanied by the fee amount that has been established by the City Commission. Fees are not required with applications initiated by review or decision-making bodies. Application fees are nonrefundable.

**(g) Application Completeness, Accuracy and Sufficiency**

- (1) An application will be considered complete and ready for processing only if it is submitted in the required number and form, includes all required information and is accompanied by the required filing fee.
- (2) Within 5 [Working Days](#) of application filing, the [Planning Director](#) shall determine whether the application includes all information required for processing (See Section 20-1301(c)). If an application does not include all of the required information it will be deemed incomplete. If an application includes all of the required information it will be deemed complete. If the application is deemed incomplete, written notice shall be provided to the applicant and the applicant's [Agent](#). The notice shall include an explanation of the application's deficiencies.
- (3) No further processing of incomplete applications will occur and incomplete applications will be pulled from the processing cycle. When the deficiencies are corrected, the application will be placed in the next processing cycle. If the deficiencies are not corrected by the applicant within 60 days, the application will

be considered withdrawn. If an application is deemed withdrawn because of failure to correct application deficiencies, notice shall be sent to the applicant and the applicant's [Agent](#).

- (4) Applications deemed complete will be considered to be in the processing cycle and will be reviewed by staff and other review and decision-making bodies in accordance with the procedures of this Article and the processing cycles established under Section 20-1301(d)(2).
- (5) The [Planning Director](#) may require that applications or plans be revised before being placed on the agenda of the [Planning Commission](#) or City Commission if the [Planning Director](#) determines that:
  - (i) the application or plan contains one or more significant inaccuracies or omissions that hinder timely or competent evaluation of the plan's/application's compliance with Development Code standards;
  - (ii) the application contains multiple minor inaccuracies or omissions that hinder timely or competent evaluation of the plan's/application's compliance with Development Code standards;
  - (iii) the application or plan cannot be approved without a variance or some other change or modification that the decision-making body for that application or plan does not have the authority to make.
- (6) Applications that contain the aforementioned types of inaccuracies or that substantially fail to comply with Development Code standards shall be revised before they will be placed on agenda of the [Planning Commission](#) or City Commission.
- (7) Action or inaction by the [Planning Director](#) under this section may be appealed to the Board of Zoning Appeals.

**(h) Continuation of Public Hearings**

- (1) A public hearing for which proper notice was given may be continued by the Board of Zoning Appeals or [Planning Commission](#) to a later date without providing additional notice as long as the continuance is set for specified date and time and that date and time is announced at the time of the continuance.
- (2) If a public hearing is tabled or deferred by the Board of Zoning Appeals or [Planning Commission](#) for an indefinite period of time or postponed more than three (3) months from the date of the originally scheduled public hearing, new public notice shall be given, in accordance with the notice requirements of the respective procedure, before the rescheduled public hearing.
- (3) The applicant or [Landowner](#) who requests the postponement is responsible for paying the cost of re-notification per the adopted schedule of fees for publication, and payment of re-notification costs shall be made before the item is placed on the agenda.

**(i) Action by Review Bodies**

- (1) Review bodies may take any action that is consistent with:
  - (i) the regulations of this Article;
  - (ii) the City's adopted Development Policy;
  - (iii) any by-laws that may apply to the review body; and
  - (iv) the notice that was given.
- (2) The review body's action may include recommending approval of the application, recommending approval with modifications or conditions, or recommending disapproval of the application.
- (3) The review body may recommend conditions, modifications or amendments if the effect of the condition, modification or amendment is to allow a less intensive use or [Zoning District](#) than indicated in the application, reduce the impact of the development, or reduce the amount of land area included in the application.
- (4) The review body may recommend that the application be approved conditionally upon the execution of a development agreement acceptable to the Director of Legal Services and/or compliance with the [Access Management](#) Standards and Commercial Design Policies and Standards adopted by the City Commission from time to time.
- (5) Review bodies may not recommend a greater [Density](#) of development; a more intensive use or a more intensive [Zoning District](#) than was indicated in the public notice.
- (6) Review bodies are not required to recommend approval of the maximum [Density](#) or intensity of use allowed.

**(j) Action by Decision-Making Bodies**

- (1) Decision-making bodies may take any action that is consistent with:
  - (i) the regulations of this Article;
  - (ii) the City's adopted development policy;
  - (iii) any by-laws that may apply to the decision-making body; and
  - (iv) the notice that was given.
- (2) The decision-making body's action may include approving the application, approving the application with modifications or conditions, or denying the application. A denial of application may be accompanied with a remand to the review body, if any, for further consideration.
- (3) The decision-making body may impose conditions on the application or allow modifications or amendments if the effect of the condition, modification or

amendment is to allow a less intensive use or [Zoning District](#) than indicated in the application or to reduce the impact of the development or to reduce the amount of land area included in the application.

- (4) The decision-making body may approve the application upon the condition that the applicant executes a development agreement acceptable to the Director of Legal Services and/or compliance with the [Access Management](#) Standards and Commercial Design Policies and Standards adopted by the City Commission from time to time.
- (5) Decision-making bodies may not approve a greater [Density](#) of development; a more intensive use or a more intensive [Zoning District](#) than was specified in the public notice.
- (6) Decision-making bodies are not required to approve the maximum [Density](#) or intensity of use allowed.

**(k) Lesser Change Table**

Pursuant to K.S.A. 12-757, the [Planning Commission](#) may adopt a “Lesser Change Table.” The Lesser Change Table is for the use of the [Planning Commission](#) in determining the hierarchy of [Zoning Districts](#) and for determining when public notification or re-notification is required. Such a table lists zoning classifications, by category, in ascending order from the least intense to the most intense. The [Planning Commission’s](#) Lesser Change Table shall identify only the hierarchy of [Zoning Districts](#) within each of the three categories of [Base Districts](#)—Residential, Commercial and Industrial. It is not intended to identify hierarchical arrangements among Districts in different categories. For example, the Lesser Change Table may classify the RS40 District as less intense than the RS20 District, but it may not classify (R) Residential Districts as less intense than (C) Commercial Districts, or vice-versa. The Lesser Change Table shall be filed with the [Planning Director](#).

**(l) Burden of Proof or Persuasion**

In all cases, the burden is on the applicant to show that an application complies with applicable review or approval criteria.

**(m) Conditions of Approval**

When the procedures of this Article allow review bodies to recommend or decision-making bodies to approve applications with conditions, the conditions shall relate to a situation created or aggravated by the proposed use or development. When conditions are imposed, an application will not be deemed approved until the applicant has complied with all of the conditions.

**(n) Deferred Items**

Once on a published and distributed agenda, [Planning Commission](#) action is required to defer an item. If an application is requested for deferral from the next [Planning Commission](#) agenda prior to publication of the agenda, the applicant may defer an item by submitting a written request to the [Planning Director](#). For [Deferred Items](#), the [Landowner](#) or applicant shall provide an updated property Ownership list from the County Clerk’s office for items that have been deferred from an agenda for 3 or more months. If deferred at the applicant or [Landowner’s](#) request, the cost of republication of legal notice in the newspaper shall be paid by the applicant or [Landowner](#). If an item is deferred by the [Planning Commission](#), no republication fee will be charged.

**(o) Inactive Files**

For **Inactive Files**, the **Planning Director** may notify the applicant and applicant's **Agent** in writing that a file has been closed when the file has been inactive for a period of time equal to or exceeding 12 months. Requests for action after a file has been declared inactive and the applicant has been notified require resubmittal as a new application. Review fees and cost of publication are required to be paid as part of the resubmittal.

**(p) Inaction by Review/Decision-Making Bodies**

- (1) When a review or decision-making body fails to take action on an application within any time limit that is specified in or under this Article (as with an application processing cycle), that inaction will be interpreted as a recommendation of approval or a decision to approve, respectively. The **Effective Date** of such a "non-action" approval or recommendation of approval will be the date that action was required to have occurred under the required time limit.
- (2) Time limits for action may be extended if the applicant gives written consent to the extension or the applicant submits a written request for a deferral and agrees in writing to an extension of the time for action.
- (3) When a review body fails to take action on an application within any time limit that is specified in this Article, the decision-making body is free to proceed with its own action on the matter without awaiting a recommendation.

**(q) Notices**

The notice provisions of this section apply except as otherwise expressly stated.

**(1) Content**

**(i) Newspaper and Mailed Notice**

All Newspaper and Mailed Notices shall:

- a. indicate the date, time and place of the public hearing or date of action that is the subject of the notice;
- b. describe the property involved in the application by Street address or by general description;
- c. describe the nature, scope and purpose of the application or proposal; and
- d. indicate where additional information on the matter can be obtained.

**(ii) Posted Notice**

All Posted Notices shall:

- a. indicate the date, time and place of the public hearing or date of action that is the subject of the notice;
- b. state the language "**Development Activity Proposed**", and
- c. indicate where additional information on the matter can be obtained.

**(2) Newspaper Notice**

When the provisions of this Development Code require that “Newspaper Notice” be provided, the City is responsible for ensuring that notice is published in the official newspaper of the City of Lawrence. The notice shall appear in the newspaper at least 20 days before the date of the public hearing.

**(3) Mailed Notice**

When the provisions of this Development Code require that “Mailed Notice” be provided:

**(i) Owner Notice; Radius**

The official responsible for accepting the application shall mail notice to the record **Owner** of the subject property and all Owners of property located within 200 feet of the subject property. If the subject property abuts the City limits, the area of notification shall be extended to at least 1,000 feet into the unincorporated area.

**(ii) Notice to Registered Neighborhood Associations**

The official responsible for accepting the application shall mail notice to any **Registered Neighborhood Associations** whose boundaries include or are contiguous to the subject property.

**(iii) Ownership Information**

The applicant is responsible for providing certified ownership information. Current ownership information shall be obtained from the Douglas County Clerk. Ownership information will be considered current if, at the time of submission, it is no more than 30 days old.

**(iv) Timing of Notice**

Required notices shall be deposited in the U.S. mail at least 20 days before the public hearing, meeting, or date of action that is the subject of the notice. When required notices have been properly addressed and deposited in the mail, failure of a party to receive such notice will not be grounds to invalidate any action taken.

**(4) Posted Notice**

**(i)** When the provisions of this Development Code require that “Posted Notice” be provided, the applicant shall ensure that notice is posted on the subject property.

**(ii)** Posted notice shall be in the form of official signs provided by the City.

**(iii)** Posted notice shall be clearly visible to neighboring residents and passers-by from each **Public Street** bordering the subject property. At least one sign shall be posted on each Street **Frontage**. The **Planning Director** is authorized to require the posting of additional signs when deemed necessary for effective public notice, but not more than one sign per 300 feet of Street **Frontage** may be required.

**(iv)** Posted notice shall remain in place for at least 20 days before the public

- hearing, meeting, or date of action that is the subject of the notice.
- (v) During the required notice period, the applicant shall periodically check the condition of the sign and shall replace it if it is no longer legible for any reason, whether through Act of God, vandalism, defect in installation or vegetative growth.
  - (vi) For any application requiring posted notice, the applicant shall supplement the application with an affidavit of posting and notice no sooner than the date the sign is posted but no later than seven (7) days prior to the scheduled public hearing, meeting, or date of action that is the subject of the notice. Failure to make timely delivery of such affidavit to the [Planning Director](#) shall render the application incomplete and subject it to removal from the agenda on the hearing date, at the discretion of the [Planning Commission](#).
  - (vii) The applicant shall remove notice signs required by this section within 10 days of the date that the decision-making body takes action or the date that the application is withdrawn. Failure to properly post or maintain such signs is grounds for deferral or denial of the application.
  - (viii) For applications that do not about [Public Streets](#), the [Planning Director](#) is authorized to approve an alternative form of posted notice that will be visible to passers-by.
  - (ix) The public may submit written statements regarding a specific development proposal that, when the written statement is submitted by the published deadline for receiving public comment, will become a part of the official record in the planning department.
  - (x) Parties affected by the actions of a decision making body have the right to appeal the action taken in accordance with the procedures set out in Article 13 of this Chapter.

**(r) Written Findings**

Unless otherwise specifically provided in this ordinance, written findings are not required for a final decision on any application. Provided, however, that 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. Provided further, that where an appeal of any quasi-judicial decision has been filed in the District Court of Douglas County pursuant to K.S.A. 12-760 or K.S.A. 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.

**(s) Where Ordinance Required**

Adoption of an ordinance is required in the case of a zoning text amendment, rezoning and special use permit. In such instances, the decision approving the application shall not be deemed to be final until the ordinance has been published in an official City newspaper.

## 20-1302 TEXT AMENDMENTS

### (a) Initiation

An amendment to the text of the zoning ordinance may be initiated by the City Commission, the [Planning Commission](#), or, as to provisions affecting Urban Conservation Districts, by the [Historic Resources Commission](#); and adopted in accordance with the rules of that body. Applications for zoning map amendments initiated by private parties shall be filed with the [Planning Director](#). Any proposed amendment shall follow the process set forth in this section after initiation.

### (b) Public Hearing Notice

Newspaper notice of the [Planning Commission](#)'s public hearing shall be provided in accordance with Section 20-1301(q).

### (c) Staff Review/Report

The [Planning Director](#) will review each proposed text amendment in accordance with the review and decision-making criteria of subsection (e)(3) of this Section and, if deemed necessary, distribute the proposed amendment to other agencies and reviewers. Based on the results of those reviews, the [Planning Director](#) will provide a report on the proposed amendment to the [Planning Commission](#) and City Commission.

### (d) [Planning Commission](#)'s Review/Recommendation

The [Planning Commission](#) shall hold a public hearing on the proposed text amendment, review the proposed text amendment in accordance with the review and decision-making criteria of subsection (e)(3) of this Section and recommend in writing that the City Commission approve, approve with modifications or deny the proposed amendment. The [Planning Commission](#) is also authorized to forward the proposed amendment to the City Commission with no recommendation.

### (e) City Commission Decision

After receiving the [Planning Commission](#)'s recommendation, the City Commission shall take one of the following actions on the proposed text amendment:

- (1) approve, approve with modifications, or deny; or
- (2) return the application to the [Planning Commission](#) for further consideration, together with a written explanation of the reasons for the City Commission's failure to approve or disapprove.
  - (i) The [Planning Commission](#), after considering the explanation by the City Commission, may resubmit its original recommendations with its reasons for doing so or submit a new or amended recommendation.
  - (ii) Upon the receipt of such recommendation, the City Commission may, by a simple majority vote, approve the proposed text amendment, approve it with modifications, or deny it.
  - (iii) If the [Planning Commission](#) fails to deliver its recommendations to the City Commission following the [Planning Commission](#)'s next regular meeting after receipt of the City Commission's report, the City Commission will consider such course of inaction on the part of the [Planning Commission](#) as a resubmission of the original recommendations and proceed accordingly.

- (3) The City Commission may act by a simple majority vote, except for action pursuant to Section 20-1302(e)(1) that is contrary to the [Planning Commission's](#) recommendations, in which case the action shall be by a 2/3 majority vote of the full membership of the City Commission.

**(f) Review and Decision-Making Criteria**

In reviewing and making decisions on proposed zoning text amendments, review bodies shall consider at least the following factors:

- (1) whether the proposed text amendment corrects an error or inconsistency in the Development Code or meets the challenge of a changing condition; and
- (2) whether the proposed text amendment is consistent with the [Comprehensive Plan](#) and the stated purpose of this Development Code (See Section 20-104).

**(g) Date of Effect**

The Development Code text amendment will become effective upon publication of the adopting ordinance.

**20-1303 ZONING MAP AMENDMENTS (REZONINGS)**

**(a) Initiation**

An amendment to the zoning map may be initiated by the City Commission, the [Planning Commission](#), or, as to Urban Conservation district, by the Historic Resource Commission; and adopted in accordance with the rules of that body. Applications for zoning map amendments initiated by the [Landowner](#) shall be filed with the [Planning Director](#). Any proposed amendment shall follow the process set forth in this section after initiation.

**(b) Application Contents**

- (1) An application for amendment shall be accompanied by a conceptual plan and data necessary to demonstrate that the proposed amendment is in general conformance with the [Comprehensive Plan](#) and that the public necessity and convenience; and general welfare require the adoption of the proposed amendment.
- (2) The application shall include a General Location Map, which shall show the location of the property in relation to at least one intersection of two streets shown as [Collector](#) or [Arterial Streets](#) on the City's Major Thoroughfares Map of the [Comprehensive Plan](#).
- (3) Each application for an amendment to the [Zoning Districts](#) map shall be accompanied by a certified list of all property [Owner](#) within the notification area. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the property shall be designated by legal description or a general description sufficient to identify the property under consideration. In addition to a published notice, written notice of such proposed amendment shall be mailed at least 20 days before the hearing to all [Owner](#) of record of lands located within at least 200 feet of the area proposed to be altered for regulations of the city. If the city proposes a zoning amendment to property adjacent to the city's limits, the area of notification of the city's action shall be extended to at least 1,000 feet in the unincorporated area. All notices shall

include a statement that a complete legal description is available for public inspection and shall indicate where such information is available.

**(c) Public Hearing Notice**

Newspaper, posted and mailed notice of the [Planning Commission's](#) public hearing shall be provided in accordance with Section 20-1301(p)(3). For purposes of K.S.A. §12-757, any [Zoning District](#) listed in the right-hand column of the Lesser Change Table that follows shall be considered a “lesser change” than a change to the [Zoning District](#) listed in the left-hand column of the same row of the table; in accordance with the cited section, a recommendation or action to amend the zoning map to assign the “lesser change” [Zoning District](#) to the land, rather than the [Zoning District](#) advertised in the notice, shall not require further notice. A recommendation or action to amend the Zoning Map to assign any [Zoning District](#) other than the one advertised in the notice or one included in the corresponding right-hand column of the Lesser Change Table will be inconsistent with the advertised hearing and shall require re-advertising and the holding of a new hearing, after proper notice. Such recommendation or action by the [Planning Commission](#) or the City Commission shall be construed as an instruction to the [Planning Director](#) to set a new hearing and to give notice of the proposed hearing, including the new [Zoning District](#) in the notice.

Table of Lesser Changes	
Advertised/Proposed <a href="#">Zoning District</a>	Districts to be Considered a “Lesser Change”
RS40	None
RS20	RS40
RS10	RS20 or RS40
RS7	RS10, RS-20 or RS40
RS5	Any other RS except RS3 or RSO
RS3	Any other RS except RSO
RSO	Any other RS except RS-3
RM12, RM12D	Any RS except RSO
RM15	RM12 or any RS except RSO
RM24	RM15, RM12 or any RS except RSO
RM32	Any RM or any RS
RMG	Any RM or any RS
RMO	RM15, RM12 or any RS
CN1	None
CN2	CN1, RSO or RMO
CD	CN1, CN2 or CC200
CC200	CN1 or CN2
CC400	CC200 or CN2
CR	CC400 or CC200
CS	CN1, CN2 or CO
IBP	None
IL	IBP or CN2
IG	IL, IBP, or CN2
Other <a href="#">Zoning Districts</a>	Not Applicable

**(d) Staff Review/Report**

The **Planning Director** will review each proposed zoning map amendment in accordance with the review and decision-making criteria of Subsection (g) of this Section and, if deemed necessary, distribute the proposed amendment to other agencies and reviewers. Based on the results of those reviews, the **Planning Director** will provide a report on the proposed amendment to the **Planning Commission** and City Commission. The report will include documentation proof of posting and other required notice.

**(e) Planning Commission's Review/Recommendation**

The **Planning Commission** shall hold a public hearing on the proposed zoning map amendment, review the proposed amendment in accordance with the review and decision-making criteria of Subsection (g) of this Section and recommend that the City Commission approve, approve with modifications or deny the proposed amendment. The **Planning Commission** is also authorized to forward the proposed amendment to the City Commission with no recommendation.

**(f) City Commission Decision**

After receiving the **Planning Commission's** recommendation, the City Commission shall take one of the following actions on the proposed zoning map amendment:

- (1) approve, approve with conditions or modifications, or deny; or
- (2) return the application to the **Planning Commission** for further consideration, together with a written explanation of the reasons for the City Commission's failure to approve or disapprove.
  - (i) The **Planning Commission**, after considering the explanation by the City Commission, may resubmit its original recommendations with its reasons for doing so or submit a new or amended recommendation.
  - (ii) Upon the receipt of such recommendation, the City Commission may, by a simple majority vote, approve the proposed zoning map amendment, approve it with modifications, or deny it.
  - (iii) If the **Planning Commission** fails to deliver its recommendations to the City Commission following the **Planning Commission's** next regular meeting after receipt of the City Commission's report, the City Commission will consider such course of inaction on the part of the **Planning Commission** as a resubmission of the original recommendations and proceed accordingly.
- (3) The City Commission may act by a simple majority vote, except for the following cases:
  - (i) action that is contrary to the **Planning Commission's** recommendations, in which case the decision shall be by a 2/3 majority vote of the full membership of the City Commission; or
  - (ii) approval, or approval with modifications, when a valid protest petition has been submitted in accordance with subsection (g)(9) of this Section, in which case a decision approving the application shall be effective only if supported by the votes of at least 3/4 of the members of the entire City Commission.

- (4) The City Commission shall:
  - (i) State the reasons for its decision on the minutes or official record; and
  - (ii) notify the applicant, and all other parties who have made a written request for notification, in writing of its decision and the reasons for its decision.

**(g) Review and Decision-Making Criteria**

In reviewing and making decisions on proposed zoning map amendments, review and decision-making bodies shall consider at least the following factors:

- (1) conformance with the [Comprehensive Plan](#);
- (2) zoning and use of nearby property, including any overlay zoning;
- (3) character of the neighborhood;
- (4) plans for the area or neighborhood, as reflected in adopted area and/or sector plans including the property or adjoining property;
- (5) suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations;
- (6) length of time the subject property has remained vacant as zoned;
- (7) the extent to which approving the rezoning will detrimentally affect nearby properties;
- (8) 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; and
- (9) the recommendation of the City's professional staff.

**(h) Protest Petitions**

A valid protest petition opposing a zoning map amendment may be submitted to the City Clerk within 14 days of the conclusion of the [Planning Commission](#)'s public hearing.

- (1) A protest petition will be considered "valid" if it is signed by the [Owner](#) of 20% or more of:
  - (i) any real property included in the proposed amendment; or
  - (ii) the total real property within the area required to be notified of the proposed rezoning, excluding streets and public ways.
- (2) In the case of joint Ownership, all [Owner](#) shall sign the petition.
- (3) For the purpose of determining the sufficiency of a protest petition, if the proposed rezoning was requested by the [Owner](#) of the specific property subject to the rezoning, or the [Owner](#) of the specific property subject to the rezoning does not oppose in writing such rezoning, such property shall be excluded when calculating the total real property within the area required to be notified.

**(i) Date of Effect**

The zoning map amendment will become effective upon publication of the adopting ordinance.

**(j) Limitation on Successive Applications**

- (1) Withdrawal of an original application after it has been advertised for public hearing shall constitute denial of the application as if the public hearing had been held and concluded;
- (2) A successive application shall not be accepted for a period of twelve (12) months from the date of City Commission denial of the original application unless a successive application is substantially different from the original application that was denied;
- (3) A successive application shall not be accepted until 120 days after the date of the City Commission denial and then will only be accepted if substantially different from the original application. The threshold for measuring substantially different shall be based on meeting one or more of the following criteria:
  - a. A different [Zoning District](#) category has been applied for;
  - b. The same [Zoning District](#) category has been applied for and the [Density](#) of use is at least 25% greater or less than original petition;
  - c. The same [Zoning District](#) category has been applied for and the intensity of use is at least 25% greater or less than the original petition;  
or
  - d. Specific responses to the reasons for denial set forth in the findings of fact by the City Commission are, in the opinion of the [Planning Director](#), addressed in the resubmission.
- (4) A new rezoning application may be submitted after at least twelve (12) months from the date of City Commission denial.

**(k) Appeals**

Within 30 days of the City Commission's decision on the zoning map amendment, any person aggrieved by such decision may maintain an action in District Court to determine the reasonableness of the final decision.

**(l) Plans**

- (1) A plan shall be prepared and adopted prior to review of a petition for map amendment when:
  - (i) No water or sanitary sewer mains exist or are planned to serve the proposed site;
  - (ii) The request is not consistent with adopted plans; or,
  - (iii) In-fill development is proposed and, at the discretion of the [Planning](#)

[Commission](#), additional information is needed specific to unanswered questions or concerns related to transportation, compatibility of land use(s), or adequacy of transitions between established and proposed land uses.

- (2) Depending on the size or type of request, the plans to be prepared include:
  - (i) Watershed or Sub-basin Plan. This Plan will encompass an entire watershed or sub-basin.
  - (ii) Sector Plan. This Plan includes approximately one square mile.
  - (iii) Neighborhood Plan. This Plan encompasses a specific neighborhood.
  - (iv) Special Area Plan. This includes a Nodal Plan which plans for an area immediately surrounding an intersection. A Corridor Plan is a type of linear area plan that generally encompasses a roadway or specific feature.
  - (v) Specific Issue/District Plan. Deals with a specific issue or project that does not fall into any of the above listed categories.

## 20-1304 **PLANNED DEVELOPMENTS**

### (a) **Description**

PD, [Planned Development Overlay Districts](#) are established through the approval of zoning map amendments, in accordance with the hearing and notice requirements of Section 20-1303. PD zoning map amendments shall only be processed concurrently with a Preliminary Development Plan application. Final Development Plan approval is required after approval of the zoning map amendment and Preliminary Development Plan. This section sets forth the required review and approval procedures for PD Preliminary and Final Development Plans.

### (b) **Concurrent Processing**

Concurrent submission and processing of Preliminary and Final Development Plans is allowed for a single-use [Structure](#) as long as individual plans are submitted that meet the Preliminary and Final Development Plan standards and criteria. All other developments (those that involve multiple [Structures](#) or multiple uses) require review and approval of a Preliminary Development Plan before submittal of a Final Development Plan.

### (c) **Prerequisite to Building Permit**

Approval of PD Preliminary and Final Development Plans, and recording with the Register of Deeds, shall occur before any [Building Permit](#) is issued and before any [Development Activity](#) takes place in a PD [Overlay District](#).

### (d) **Preliminary Development Plans**

#### (1) **Application Filing**

Preliminary Development Plan applications shall be filed with the [Planning Director](#) at the same time as a PD zoning map amendment application. The application shall be accompanied by required fees.

#### (2) **Neighborhood Input**

- (i) During the design process for the Preliminary Development Plan, the

applicant shall make a reasonable effort to meet with individuals, required to be mailed notice under Section 20-1301(q)(3), to present their project in conceptual fashion and to solicit input on the proposed design.

- (ii) A statement describing the reasonable effort(s) made to meet with and receive input from individuals required to receive notice shall be submitted with the Preliminary Development Plan application when it is filed for review at the Planning Department.

**(3) Application Contents**

- (i) The application shall include a General Location Map, which shall show the location of the property in relation to at least one intersection of two streets shown as **Collector** or **Arterial Streets** on the City's Major Thoroughfares Map of the **Comprehensive Plan**.
- (ii) The application shall include a statement by the **Landowner** setting forth the reasons why, in his or her opinion, a **Planned Development** would be in the public interest and would be consistent with the Developer's Statement of Intent for **Planned Development**.
- (iii) The Preliminary Development Plan submitted by the **Landowner** as part of his or her application for tentative approval shall be prepared at a scale no smaller than one inch to 50 feet and shall include all of the area proposed to comprise the **Planned Development**. The plan and supporting documents shall include the following information:
  - a. A legal description of the site;
  - b. The dimensions of all property boundaries;
  - c. The **Owner** of record and any other parties having an interest in the proposed development;
  - d. A topographical survey of the site at an interval of not more than two feet or a more detailed plan if requested by the Public Works Department;
  - e. The location of all existing **Structures**, **Easements**, utilities, proposed utilities, and public dedication either through, adjacent to or on the site;
  - f. The existing public and **Private Street** system, platted or unplatted ownership, type and location of **Structures**, curb cuts on adjacent properties and along the opposite side of the **Street** and topography extending 100 feet beyond the outside boundaries of the proposed development;
  - g. The width, **Grade**, location and ownership of all proposed public and **Private Streets** and sidewalks in the area to be developed;
  - h. The use, **Height**, **Floor Area**, and approximate location of all proposed **Buildings** and other **Structures**;

- i. The number of **Dwelling Units** to be contained in each **Building** proposed for residential use;
- j. The location, dimension and capacity of all proposed off-Street **Parking Areas** in the area to be developed;
- k. The location, dimension, acreage, and Ownership of all proposed public and private recreation areas, Open Space and **Non-encroachable Areas**;
- l. Dimensions and notes as deemed necessary to show compliance with the development standards of this Article;
- m. A schedule showing the proposed time and sequence within which the applications for final approval of all portions of the **Planned Development** are intended to be filed. The **Planning Commission** may either approve or modify the submitted development time schedule. The development phases as shown on the time schedule shall also be indicated on the plan;
- n. As part of the development time schedule each phase shall have a summary of the number of units of each type of use, the number of **Dwelling Units**, the acreage devoted to residential, non-residential, commercial, recreation, Open Space, **Non-encroachable Area**, streets (both public and private), off-street parking, and other major land uses, **Density**, public lands (existing and proposed), and the total number of acres contained in each development phase;
- o. A summary of the total number of units of each type of use, number of **Dwelling Units**, the acreage devoted to all major land uses, the acreage of public lands and areas proposed for public Ownership, the acreage of the total area proposed to be developed, and the overall **Net Density** of the development;
- p. A statement as to the feasibility of proposals for the disposition of sanitary waste and storm water, and how all utilities are to be provided including sewerage, water, storm drainage, gas and electricity, and how completion of all improvements is to be guaranteed;
- q. A statement as to the form of Ownership proposed to own and maintain the **Common Open Space**, recreation facilities, **Non-encroachable Area** and any other area within the area proposed to be developed that is to be retained primarily for the exclusive use and benefit of the residents, lessee and **Owner** of the **Planned Development**;
- r. A statement as to the substance of the covenants, grants of **Easements** or other restrictions to be imposed upon the use of the land; **Buildings** and **Structures**, including proposed **Easements** or grants for public utilities;
- s. The **Landowner** shall also submit a tentative dedication clause including dedication of public utility and drainage **Easements**, street

rights-of-way and the following statement: "We hereby dedicate to the City of Lawrence the right to regulate any construction over the area designated as [Common Open Space](#), open air recreation area, and [Non-encroachable Area](#) and to prohibit any construction within said areas and spaces inconsistent with the approved use or enjoyment of residents, lessees and [Owner](#) of the [Planned Development](#);"

- t. A statement specifying those variances, modifications, reductions and waivers being requested as part of the plan approval and setting forth reasons why, in the opinion of the [Landowner](#), such should be allowed;
  - u. At least one north-south and one east-west elevation across the site to show typical site layout, [Grade](#), etc.; and
  - v. Submission of a landscape plan in conformance with Section 20-1001(d).
- (iv) The plan shall be submitted so as to conform with the requirements for the submission of a Preliminary Plat in the Subdivision Regulations, except where such requirements conflict with the requirements of this Article.
- (v) Approval of the Preliminary Development Plan shall constitute approval of a Preliminary Plat. A preliminary plat review fee shall not be required.
- (vi) Provide the supplemental stormwater information required by [City Regulations](#), and provide on the development plan a site summary table which indicates: the area (in sq. ft.) and percentage of the site proposed for development as a [Building\(s\)](#); development as a paved surface; undeveloped and planted with grass, [Ground Cover](#), or similar vegetative surface. When a development is proposed to be phased, the entire detention basin shall be provided during phase one of the project unless otherwise approved.

#### **(4) Phased Development Schedule**

If the applicant proposes to develop a PD in phases, the application shall contain a proposed phasing schedule. In a phased development, Open Space and site amenities shall be apportioned among the phases in proportion to the amount of development occurring in each phase, so that, for example, when the development is 40% complete, 40% of the Open Space and amenities will be complete, transferred to the association or other permanent [Owner](#), and properly restricted as required by this Code.

#### **(5) Public Hearing Notice**

Newspaper, posted and mailed notice of the [Planning Commission](#)'s public hearing shall be provided in accordance with Section 20-1301(q).

#### **(6) Staff Review/Report**

The [Planning Director](#) shall review each proposed PD zoning map amendment and Preliminary Development Plan in accordance with the review and decision-making criteria of Section (9) and distribute the proposed plan to other agencies and reviewers. Based on the results of those reviews, the [Planning Director](#) will provide a report on the proposed amendment/plan to the [Planning Commission](#) and City Commission.

**(7) Planning Commission's Review/Recommendation**

- (i) The **Planning Commission** shall hold a public hearing on the proposed amendment/plan, review the proposed amendment/plan in accordance with the review and decision-making criteria of Section (9) and recommend that the City Commission approve, approve with conditions or deny the proposed amendment/plan. The **Planning Commission** is also authorized to forward the proposed amendment/plan to the City Commission with no recommendation.
- (ii) The recommendation on the Preliminary Development Plan shall include findings of fact and set forth reasons for the recommendation, including but not limited to findings of fact on the review and approval criteria of Section (9).
- (iii) The **Planning Director** shall give written notice of the **Planning Commission's** recommendation to the applicant and the applicant's **Agent**.

**(8) City Commission Decision**

After receiving the **Planning Commission's** recommendation, the City Commission shall take one of the following actions on the proposed amendment/plan:

- (i) approve, approve with conditions or modifications, or deny; or
- (ii) return the application to the **Planning Commission** for further consideration, together with a written explanation of the reasons for the City Commission's failure to approve or disapprove.
  - a. The **Planning Commission**, after considering the explanation of the City Commission, may resubmit its original recommendations with its reasons for doing so or submit a new and amended recommendation.
  - b. Upon the receipt of such recommendation, the City Commission may, by a simple majority vote, approve the proposed amendment/plan, approve it with conditions or modifications, or deny it.
  - c. If the **Planning Commission** fails to deliver its recommendations to the City Commission following the **Planning Commission's** next regular meeting after receipt of the City Commission's report, the City Commission will consider such course of inaction on the part of the **Planning Commission** as a resubmission of the original recommendations and proceed accordingly.
- (iii) The City Commission may act by a simple majority vote, except for the following cases:
  - a. action that is contrary to the **Planning Commission's** recommendations, in which case the decision shall be by a 2/3 majority vote of the full membership of the City Commission; or
  - b. approval, or approval with conditions or modifications, when a valid protest petition has been submitted in accordance with Section 20-1306(g), in which case the decision shall be by a 3/4 majority vote of

the full membership of the City Commission.

(iv) The City Commission shall:

- a. State the reasons for its decision in writing; and
- b. notify the applicant, and all other parties who have made a written request for notification, in writing of its decision and the reasons for its decision.

**(9) Review and Decision-Making Criteria**

In reviewing and making decisions on proposed Preliminary Development Plans, review and decision-making bodies shall consider at least the following factors:

- (i) the Preliminary Development Plan's consistency with the [Comprehensive Plan](#);
- (ii) the Preliminary Development Plan's consistency with the PD standards of Section 20-701 including the statement of purpose;
- (iii) the nature and extent of [Common Open Space](#) in the PD;
- (iv) the reliability of the proposals for maintenance and conservation of [Common Open Space](#);
- (v) the adequacy or inadequacy of the amount and function of [Common Open Space](#) in terms of the densities and [Dwelling](#) types proposed in the plan;
- (vi) whether the Preliminary Development Plan makes adequate provisions for public services, provides adequate control over vehicular traffic, and furthers the amenities of light and air, recreation and visual enjoyment;
- (vii) whether the Preliminary Development Plan will measurably and adversely impact development or conservation of the neighborhood area by:
  - a. doubling or more the traffic generated by the neighborhood;
  - b. proposing housing types, [Building Heights](#) or [Building Massing](#)(s) that are incompatible with the established neighborhood pattern; or
  - c. increasing the residential [Density](#) 34% or more above the [Density](#) of adjacent residential properties.
- (viii) whether potential adverse impacts have been mitigated to the maximum practical extent; and,
- (ix) the sufficiency of the terms and conditions proposed to protect the interest of the public and the residents of the PD in the case of a plan that proposes development over a period of years.

**(10) Effect of Preliminary Development Plan Approval**

Approval of the Preliminary Development Plan constitutes approval of a preliminary plat. A preliminary plat review fee is not required.

**(11) Status of Preliminary Development Plan after Approval**

- (i) The applicant and the applicant's **Agent** shall be given written notice of the action of the City Commission.
- (ii) Approval of a Preliminary Development Plan does not qualify as a plat of the **Planned Development** for **Building** and permitting purposes.
- (iii) An unexpired approved Preliminary Development Plan, including one that has been approved subject to conditions provided that the **Landowner** has not defaulted on or violated any of the conditions, may not be modified or revoked by the City without the consent of the **Landowner**.
- (iv) If a **Landowner** chooses to abandon a plan that has been given preliminary approval, he or she may do so prior to Final Development Plan approval, provided that he or she notifies the **Planning Commission** in writing.
- (v) Major Changes in the **Planned Development** (see Section 20-1304(e)(2)(iv)) may be made only after rehearing and reapproval of the entire Preliminary Development Plan under the terms and procedures specified in this section. All **Landowners** within the entire Preliminary Development Plan boundary shall be notified in writing of any proposed Major Change at the time of submittal of the revised Preliminary Development Plan to the **Planning Director**.
- (vi) An approved Preliminary Development Plan with multiple **Parcel** and multiple **Landowners** may only be altered or modified if all **Landowners** of **Parcel** within the Preliminary Development Plan consent to the proposed alterations or modifications.
- (vii) A Preliminary Development Plan may be explicitly conditioned with a provision on the face of the Preliminary Development Plan that all **Landowners** of all properties waive their right to approve or disapprove any alterations or modifications to the Preliminary Development Plan.
- (viii) In the absence of the explicit condition contained in subsection (8)(iv)b, the provision of subsection (v) will govern Preliminary Development Plan alterations or modifications.

**(12) Expiration of Approval**

In the event the **Landowner** fails to file an application for Final Development Plan approval within ~~48~~ **24** months after final approval of the Preliminary Development Plan has been granted or within 6 months after the date shown on an approved development schedule, in accordance with Section 20-1304(d)(4), then such approval shall expire in accordance with the following provisions:

- (i) For good cause shown, the expiration date may be extended by the City Commission for a period not to exceed ~~6~~ **24** months, or the proposed phasing schedule may be modified to extend all dates by a period not to exceed one-half the original period allowed for development of that phase. The application for extension ~~or modification~~ may be made by letter to the **Planning Director** and will be considered only if received before the

expiration date of the approval. The **Planning Director** shall forward such request, with any recommendation of the **Planning Director**, to the City Clerk for scheduling on the agenda of the City Commission. The **Planning Director** shall notify the applicant by first class mail of the date of the proposed consideration by the City Commission. **Mailed Notice of the extension request shall also be provided by the Planning Office in accordance with Section 20-1301(g)(3).** On that date, the City Commission shall hear from the applicant and the **Planning Director** and may hear from other interested parties. ~~Only one such extension may be granted.~~

- (ii) If the approval of the Preliminary Development Plan for a phased development expires after the completion of one or more phases, the Preliminary Development Plan will remain in full effect as to those portions of the development that are subject to Final Development Plans in which the developer has acquired vested rights, in accordance with Section 20-1304(e)(2)(vii), but the remaining portions of the Preliminary Development Plan shall expire.
- (iii) No action by the City shall be necessary to cause the approval to expire. Its expiration shall be considered a condition of the original approval. After the expiration date, or extended expiration date, any further application for Final Development Plan or for other **Development Activity** on the site shall be considered as though the Preliminary Development Plan had not been granted.
- (iv) After expiration of a Preliminary Development Plan, or any portion thereof, the PD Overlay zoning shall remain in effect for the affected property, but further development on the property shall require the approval of a new Preliminary Development Plan, in accordance with the procedures and standards in effect at the time of the new application. If a Preliminary Development Plan has expired for any part of a phased development, consistency with the developed parts of the Preliminary Development Plan shall be an additional criterion for consideration of a new proposed Preliminary Development Plan.
- (v) Approval of a Preliminary Development Plan does not, in itself, vest any rights under K.S.A. Sect. 12-764.

**(e) Final Development Plan**

**(1) Application Filing**

Final Development Plan applications shall be filed with the **Planning Director** after approval of and before the expiration of a Preliminary Development Plan. A Final Development Plan may be submitted for a portion of the area in the approved Preliminary Development Plan.

**(2) Application Contents**

- (i) Final Development Plan, in its entirety or in phases, drawn at a scale of one inch to 40 feet and supportive documents shall show or contain at least the following:

- a. all information required of the Preliminary Development Plan;
  - b. the placement of all principal and [Accessory Structures](#);
  - c. the entrances to all [Structures](#);
  - d. the location and dimensions of all existing and proposed curb cuts, [Driveways](#) and aisles, public and [Private Streets](#), off-street parking and loading space areas, sidewalks and pedestrianways, sanitary sewers, storm sewers and drainageways, power lines, gas lines, and fire hydrants;
  - e. the location, height and material of [Screening](#) walls and fences;
  - f. the type of surfacing and base course proposed for all [Private Streets](#), [Driveways](#), off-street parking and loading space areas, and sidewalks and pedestrianways;
  - g. the location of all utilities in and adjacent to the property. (No overhead lines, with the exception of high voltage power lines, shall be permitted in [Planned Developments](#));
  - h. a location map of one inch equals 200 feet or less showing the site of the proposed development in relationship with major [Thoroughfares](#) in the city;
  - i. a landscape plan in accordance with Section 20-1001(d);
  - j. the proposed topography or grading of the area at a contour interval of not more than two feet;
  - k. the location of each outdoor trash storage facility;
  - l. proof of the establishment of an agency or entity to own, manage and maintain the [Common Open Space](#), open air recreation areas, recreation facilities, [Non-encroachable Areas](#), [Private Streets](#) and any other area within the development that is to be retained for the exclusive use and benefit of the residents, lessees and [Owner](#);
  - m. copies of all restrictions or covenants that are to be applied to the development area;
  - n. proof that no [Lot](#), [Parcel](#), [Tract](#) or other portion of the development area has been conveyed or leased prior to the recording of any restrictive covenants, Final Development Plan, or final plat; and
  - o. such other drawings, specifications, covenants, [Easements](#), conditions, and performance bonds as set forth in the granting of preliminary approval.
- (ii) A plan submitted for final approval shall be in substantial compliance with the plan previously given preliminary approval. Modification by the [Landowner](#) of the plan as preliminarily approved may not:

- a. Increase the proposed gross residential **Density** or intensity of use by more than five percent (5%) or involve a reduction in the area set aside for **Common Open Space**, open air recreation area or **Non-encroachable Area**, nor the substantial relocation of such areas; nor,
- b. Increase by more than 10 percent (10%) the total **Floor Area** proposed for non-residential or commercial uses; nor,
- c. Increase by more than 5 percent (5%) the total ground area covered by **Buildings** nor involve a substantial change in the **Height** of **Buildings**.

**(iii) Consistency with Preliminary Development Plan; Major Changes**

A Final Development Plan will not be considered complete and ready for processing if all approved conditions have not been met or if the Final Development Plan constitutes a Major Change from the approved Preliminary Development Plan. Major Changes may be made only after rehearing and reapproval of the Preliminary Development Plan, and the **Planning Director** shall notify the applicant of the provisions of this section.

**(iv) Major Changes**

A Major Change is one that:

- a. increases the proposed gross residential **Density** or intensity of use by more than five percent (5%)
- b. involves a reduction in the area set aside for **Common Open Space** in general, or **Recreational Open Space** or **Natural Open Space** in particular, or the substantial relocation of such areas;
- c. increases by more than 10 percent (10%) the total **Floor Area** proposed for nonresidential uses;
- d. increases by more than 5 percent (5%) the total ground area covered by **Buildings**;
- e. changes a residential use or **Building Type**;
- f. increases the **Height** of **Buildings** by more than 5 feet; or
- g. represents a new change to the Preliminary Development Plan that creates a substantial adverse impact on surrounding **Landowners**.
- h. changes a residential **Building Type** or a non-residential **Structure** by more than 10% in size.

**(v) Review and Action by Planning Director; Appeals**

- a. Within 45 days of the filing of a complete Final Development Plan application, the **Planning Director** shall review and take action on the Final Development Plan. The **Planning Director** shall approve the Final Development Plan if it complies with the approved Preliminary

Development Plan, all conditions of Preliminary Development Plan approval and all applicable standards of this Development Code. If the submitted Final Development Plan does not so comply, the **Planning Director** shall disapprove the Final Development Plan and advise the **Landowner** in writing of the specific reasons for disapproval.

- b. In the event that the **Planning Director** does not approve the Final Development Plan, the **Landowner** may either: (1) resubmit the Final Development Plan to correct the plan's inconsistencies and deficiencies, or (2) within 45 days of the date of notice of refusal, appeal the decision of the **Planning Director** to the City Commission. In the event such an appeal is filed, a public hearing before the City Commission shall be scheduled with such notice as is required for the Preliminary Development Plan/Zoning Map Amendment.
- c. Notice shall be given of the **Planning Directors'** action to adjacent property **Owner** or Neighborhood Associations if such request for notice has been made in writing from the adjacent property **Owner** or Neighborhood Associations.

#### (vi) Effect of Approval

- a. A Final Development Plan or any part thereof that has received final approval shall be so certified by the **Planning Director**, and shall be filed by the **Planning Director** with the Register of Deeds immediately upon compliance with all conditions of approval. If the **Landowner** chooses to abandon a Final Development Plan or portion thereof after it has been given final approval, he or she shall notify the **Planning Director** in writing.
- b. The filing of a Final Development Plan for a **Planned Development** with the Register of Deeds does not constitute the effective dedication of **Easements**, rights-of-way or **Access** control, nor will the filed plan be the equivalent of, nor an acceptable alternative for, the final platting of land prior to the issuance of **Building** Permits in the **Planned Development**.
- c. The **Planning Director** shall file the final plats and all supportive documents concerning the **Planned Development** with the Register of Deeds. The **Landowner** is responsible for all costs incurred in filing such documents and the Final Development Plan.

#### (vii) Expiration of Approval

In the event the **Landowner** fails to ~~submit a final subdivision plat or begin actual~~ **obtain a building permit for** development shown on the Final Development Plan within ~~42~~ **24** months after final approval of the Final Development Plan has been granted, the approval shall expire in accordance with the following provisions:

- a. For good cause shown, the expiration date may be extended by the City Commission for a period not to exceed ~~6~~ **24** months. The application for extension may be made by letter to the **Planning Director** and will be considered only if received before the expiration

date of the approval. The **Planning Director** shall forward such request, with any recommendation of the **Planning Director**, to the City Clerk for scheduling on the agenda of the City Commission. The **Planning Director** shall notify the applicant by first class mail of the date of the proposed consideration by the City Commission. **Mailed Notice of the extension request shall also be provided by the Planning Office in accordance with Section 20-1301(g)(3).** On that date, the City Commission shall hear from the applicant and the **Planning Director** and may hear from other interested parties. ~~Only one such extension may be granted.~~

- b. No action by the City shall be necessary to cause the approval to expire. Its expiration shall be considered a condition of the original approval. After the expiration date, or extended expiration date, any further application for subdivision review, for a **Building Permit** or for other **Development Activity** on the site shall be considered as though the Final Development Plan had not been granted.
- c. After expiration of a Final Development Plan and related portions of the Preliminary Development Plan, the PD Overlay zoning shall remain in effect, but further development on the property shall require the approval of a new Preliminary Development Plan and Final Development Plan, in accordance with the procedures and standards in effect at the time of the new application.
- d. Rights to the development pattern shown in a Final Development Plan shall vest in accordance with K.S.A. Sect. 12-764 upon approval of a final subdivision plat. If such subdivision plat expires in accordance with K.S.A. Sect. 12-764(a), then the related portions of the Final Development Plan shall also expire at the same time.

**(f) Enforcement and Modifications of Final Development Plan**

**(1) Enforcement by the City**

The provisions of a Final Development Plan relating to: (1) the use of land and the use, bulk and location of **Buildings** and Structures; (2) the quality and location of **Common Open Space**; and, (3) the intensity of use or the **Density** of residential units, run in favor of the municipality and are enforceable in law or in equity by the City, without limitation on any powers or regulations otherwise granted the City by law.

**(2) Enforcement by Residents and Landowners**

All provisions of the Final Development Plan run in favor of the residents and **Landowners** of the **Planned Development**, but only to the extent expressly provided in, and in accordance with, the Final Development Plan. To that extent, the Final Development Plan provisions, whether recorded by plat, covenant, **Easement** or otherwise, may be enforced at law or equity by said residents and **Landowners**, acting individually, jointly, or through an organization designated in the Final Development Plan to act on their behalf. No provisions of the Final Development Plan will be implied to exist in favor of residents and **Landowners** of the **Planned Development** except those portions of the Final Development Plan that have been finally approved and have been recorded.

**(3) Modifications of the Final Development Plan by the City**

All those provisions of the Final Development Plan authorized to be enforced by the City may be modified, removed or released by the City (except grants or [Easements](#) relating to the service or equipment of a public utility unless expressly consented to by the public utility), subject to the following conditions:

- (i) no such modification, removal or release of the provisions of the Final Development Plan by the City may affect the rights of the residents and [Landowners](#) of the [Planned Development](#) to maintain and enforce provisions, at law or equity; and
- (ii) no modification, removal or release of the provisions of the Final Development Plan by the City may be permitted, except upon a finding by the City, following a public hearing, that the same is consistent with the efficient development and preservation of the entire [Planned Development](#), does not adversely affect either the enjoyment of land abutting upon or across a Street from the [Planned Development](#) or the public interest, and is not granted solely to confer a special benefit upon any person.

**(4) Modifications by the Residents**

Residents and [Landowners](#) of the [Planned Development](#) may, to the extent and in the manner expressly authorized by the provisions of the Final Development Plan, modify, remove or release their rights to enforce the provisions of the Final Development Plan, but no such action will affect the right of the City to enforce the provisions of the Final Development Plan.

**(5) Modification Procedures**

Modification of approved [Planned Development](#) plans may be initiated as follows:

- (i) By the [Landowners](#) or residents of the property within the [Planned Development](#), provided that the right to initiate modification has been expressly granted to or retained by the [Landowners](#) or residents under the provisions of the plan;
- (ii) By the City Commission upon its own motion, duly made and carried by a two-thirds majority vote of the City Commission, when modification appears strictly necessary to implement the purpose of this article and such modification would not impair the reasonable reliance interests of the [Landowners](#) and residents of the [Planned Development](#).
- (iii) Modifications of the provisions of the Final Development Plan that constitute Major Changes may be approved by an affirmative vote of a majority of all members of the City Commission upon a finding, after a public hearing, that the modification complies with Section 20-1304(f)(3). Newspaper, posted, and mailed notice of the City Commission's public hearing shall be provided in accordance with Section 20-1301(q).
- (iv) Modifications to the Final Development Plan that do not constitute Major Changes as defined in Section 20-1304(e)(2)(iv) may be approved by the [Planning Director](#).

**(6) Modifications to Final Development Plans Approved Prior to the Effective Date**

Final Development Plans, which were approved prior to the **Effective Date** of this Development Code, shall be modified only in accordance with this Development Code, as amended.

**(g) Interpretations**

**(1) Purpose**

Because the very specific nature of the Development Plans approved for **Planned Developments** may result in unforeseen circumstances, particularly through the passage of time, the purpose of this sub-section is to provide a formal method for interpreting Final Development Plans and related provisions of Preliminary Development Plans.

**(2) Applicability and Authority**

This sub-section shall apply to any application or request to interpret a Development Plan. The **Planning Commission** shall have the authority to make such interpretations, subject to appeal as set forth herein. This procedure shall apply only when the effect of the Development Plan is unclear because of the passage of time or as applied to particular circumstances. In most cases, this procedure will be initiated by referral from the **Planning Director**, when, upon receipt of an application for a permit or interpretation, such official determines that the Development Plan is unclear or otherwise requires interpretation.

**(3) Initiation**

The interpretation process may be initiated by:

- (i) Any **Owner** of real property included within the land area of the original Development Plan to be interpreted;
- (ii) The **Planning Director**, by referral, or upon the Director's initiative;
- (iii) The Director of Neighborhood Resources, by referral;
- (iv) The City Commission; or
- (v) The **Planning Commission**.

**(4) Procedure**

**(i) Public Hearing to be Scheduled**

At the next meeting following the initiation of the process for interpretation of a Development Plan (or, if initiated by the **Planning Commission**, at the same meeting), the **Planning Commission** shall schedule a public hearing on the matter, which hearing shall occur within 45 days of the date of the meeting at which the hearing date is set.

**(ii) Notice**

If there are 20 or fewer separately owned **Parcel** of property within the area affected by the Preliminary Development Plan (or comparable document) governing the **Planned Development**, the **Planning Director** shall cause written notice of the hearing to be given to the **Owner(s)** of each such **Parcel** and to

property **Owner** within 200 feet of the Preliminary Development Plan. If there are more than 20 separately owned **Parcel**, then the **Planning Director** shall cause notice of the hearing to be published in accordance with Section 20-1301(q)(1).

**(iii) Public Hearing**

At the scheduled time and place, the **Planning Commission** shall hold a public hearing on the interpretation of the Final Development Plan. The **Planning Commission** may at that time consider all evidence reasonably brought before it, including but not limited to:

- a. Copies of the original plans, as approved;
- b. Copies of documents recorded in the chain of title of the **Planned Development**;
- c. Minutes of the meeting(s) of the City Commission and **Planning Commission** at which the original plans were approved;
- d. Copies of pertinent sections of the zoning or development ordinance in effect at the time that the original plans were approved;
- e. The **Comprehensive Plan** in effect on the date of interpretation and, if different, relevant provisions of the **Comprehensive Plan** in effect at the time of approval of the original plans;
- f. Explanation of the applicant (if any), the **Planning Director** and others regarding the reasons why the Preliminary and/or Final Development Plan or comparable documents are unclear or inadequate to address the issue raised in the request for interpretation;
- g. Testimony of persons owning property within the area affected by the Preliminary Development Plan;
- h. Testimony of other interested persons;
- i. Recommendation of the **Planning Director**; and/or
- j. Such other evidences as the **Planning Commission** may find relevant to the interpretation of the Plan.

**(iv) Criteria for Decision**

The criteria for the decision of the **Planning Commission** in interpreting the Development Plan shall be, in priority order:

- a. Consistency with the literal provisions of the original approval of the Preliminary Development Plan, Final Development Plan and/or comparable official approval;
- b. Consistency with the stated purpose of the original approval of the Preliminary Development Plan, Final Development Plan and/or comparable official approval;
- c. Where the original plans referred to or depended upon provisions of

the Zoning Ordinance then in effect, consistency with those provisions;  
and

- d. Interpretation of the original plans as reflected in the development of the project and reliance on it by property **Owner** within it.

**(v) Decision**

At the same meeting at which the hearing is held, or at its next meeting, the **Planning Commission** shall render a decision. If it is unable to render an interpretation that resolves the issue placed before it, it shall recommend that the interested parties file an application to amend the Development Plan, in accordance with (f)(5) of this section.

**(5) Appeal**

An appeal of an interpretation by the **Planning Commission** under this sub-section shall be to the City Commission. The action, if any, by the City Commission shall be final. Any person aggrieved may file an application for a permit to undertake the proposed action and may follow the appeal process for any action on that, or any person aggrieved may file an application to modify the development plan, in accordance with (f)(5) of this section.

**20-1305 SITE PLAN REVIEW**

**(a) Purpose**

The purpose of requiring Site Plan Review and approval is to ensure compliance with the standards of this Development Code prior to the commencement of **Development Activity** and 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. Site Plans for commercial development shall comply with the Commercial Design Standards and Guidelines adopted by the City Commission on July 25, 2006 by Resolution No. 6669.

For the purposes of this section:

- (1)** A change to a less intensive use shall be defined as:
  - (i)** a change in use of a site or **Structure** in which the Development Code requires less parking for the proposed new or modified use; or
  - (ii)** that the operational characteristics of the proposed new or modified use are such that they generate less activity on the site, or result in a decrease in the number of days or hours of operation of the site.
  
- (2)** A change to a more intensive use shall be defined as:
  - (i)** change in use of a site or **Structure** in which the Development Code requires more parking for the proposed new or modified use; or
  - (ii)** that the operational characteristics are such that they generate more activity on the site, or result in an increase in the number of days or hours of operation of the site.

**(b) Applicability**

In any **Zoning District**, except as expressly exempted below in Section 20-1305(c), an administratively reviewed and approved site plan shall be required for:

**(1) Minor Development Projects**

Any development proposing the minor modification of a site which does not meet the criteria for a **Standard** or **Major Development Project**, or the proposed change in use to a less intensive use on a site which has an approved site plan on file with the Planning Office. Only sites which have an existing approved site plan on file which reflects existing site conditions are eligible for review as a **Minor Development Project**.

**(i) Requirements of Site Plan Review**

- a. Amendments to an approved site plan depicting the proposed modification or improvements; and
- b. Verification that the use is permitted by zoning; and
- c. Verification that adequate parking is available.

**(ii) Public Notice**

The public notice procedures of Section 21-1305(g) are not applicable.

**(iii) Compliance with City Codes**

- a. Only those improvements or modifications proposed and approved as a **Minor Development Project** review are required to be compliant with the standards of this Development Code and/or the Commercial Design Standards.
- b. Existing conditions of the site are not required to become compliant with all standards of this Development Code and/or the Commercial Design Standards other than those standards which are deemed necessary, by the **Planning Director**, to ensure the health, safety and welfare of the public and/or user of the site.

**(2) Standard Development Projects**

Any development proposing the modification of a site which does not have an approved site plan on file with the Planning Office, or a change in use on a site with an approved site plan on file with the Planning Office which meets the following criteria or proposes the following:

- a. Any change in use to a more intensive use; or
- b. A change in use to a less intensive use on a site without an approved site plan on file with the Planning Office; or
- c. A modification to a site which alters the **Parking Area**, drive aisles, or impacts on-site pedestrian and vehicular circulation and traffic patterns; or
- d. A development in commercial **Zoning Districts** including redevelopment

or modifications to the exterior style, design or material type of a **Structure** that is subject to the Commercial Design Standards; or

- e. An outdoor dining use in the CD and CN1 **Zoning Districts** and any outdoor dining use located in any other **Zoning District** that would result in an increase of the number of **Parking Spaces** required; or
- f. The construction of one or more new **Buildings** with a **Gross Floor Area** of 1,499 square feet or less; or
- g. The construction of additions with a **Gross Floor Area** of 1,499 square feet or less, or less than twenty percent (20%) of the existing **Building**; or
- h. The installation or addition of less than 1,499 square feet of **Impervious Surface** coverage; or
- i. Any modification to an approved site plan on file with the Planning Office which proposes an adjustment to the total land area of the site plan, if determined necessary by the **Planning Director**.

**(i) Requirements of Site Plan Review**

- a. For sites without an existing approved site plan a site plan meeting all the specifications of Section 20-1305(f) must be submitted for administrative review.
- b. For sites with an approved site plan on file at the Planning Office, the existing plan if determined appropriate by the **Planning Director**, may be amended.

**(ii) Public Notice**

The public notice procedures of Section 20-1305(g) are applicable.

**(iii) Compliance with City Codes**

- a. Those improvements or modifications proposed and approved by Standard Site Plan review are required to be compliant with the standards of this Development Code and/or the Commercial Design Standards.
- b. Other features of the site may be required to become compliant with all standards of this Development Code and/or the Commercial Design Standards as determined by the **Planning Director** in order to ensure the health, safety and welfare of the public and/or user of the site.

**(3) Major Development Projects**

Any development proposing the following:

- a. Any modification to a site that alters **Parking Areas**, drive aisles, or impacts on-site pedestrian and vehicular circulation and traffic patterns, that the **Planning Director** determines to be significant; or

- b. Any **Significant Development Project**; defined as:
1. The construction of one or more new **Buildings** with a **Gross Floor Area** of 1,500 square feet or more;
  2. The construction of additions with a **Gross Floor Area** of 1,500 square feet or more, or twenty percent (20%) or more, of the existing **Building**;
  3. Separate incremental additions below 1,500 square feet or 20% amount if the aggregate effect of such **Development Activity** over a period of 18 consecutive months would trigger the 1,500 square feet or 20% threshold;
  4. The alteration or intensification of any use that increases off-street parking requirements pursuant to Article 9; or
  5. The installation or addition of more than 1,500 square feet of impervious site cover.

**(i) Requirements of Site Plan Review**

Submitted site plans shall meet all the specifications of Section 20-1305(f).

**(ii) Public Notice**

The public notice procedures of Section 20-1305(g) are applicable.

**(iii) Compliance with City Codes**

Full compliance with all City Codes including this Development Code and the Commercial Design Standards is required, unless otherwise determined by the **Planning Director**.

**(c) Exemptions**

The following are expressly exempt from the Site Plan Review procedures of this section:

- (1) changes to **Detached Dwelling(s)** or **Duplex(es)**, as well as site improvements on **Lots** containing **Detached Dwelling(s)** and **Duplex(es)**. However, if such types of Dwellings are designed to form a complex having an area of common usage, such as a **Parking Area** or private recreational area, and such complex contains a combined total of four (4) **Dwelling Units** or more, Site Plan Review is required;
- (2) changes to developments for which plans have been reviewed and approved pursuant to the Special Use or **Planned Development** procedures of this Development Code. This provision is intended to clarify that Site Plan Review is not required for projects that have received equivalent review through other Development Code procedures;
- (3) changes expressly exempted from Site Plan Review process by the underlying **Zoning District**;
- (4) changes that could be considered ordinary maintenance, and which do not change the exterior style, design, or material type; or
- (5) changes otherwise exempted from Site Plan Review by state or federal law.

**(d) Pre-application Meetings**

A pre-application meeting with the [Planning Director](#) is required at least 7 [Working Days](#) prior to the formal submission of a Site Plan application. See Section 20-1301(d).

**(e) Initiation and Application Filing**

Site Plan Review applications shall be filed with the [Planning Director](#). At the time of submittal and payment of fees, the applicant shall submit the required number of legible and complete site plans requested at the pre-application meeting, not to exceed a total of 30 site plans.

**(f) Application Contents**

**(1) A site plan shall:**

- (i)** Be prepared by an architect, engineer, landscape architect, or other qualified professional and show the name, business address and licensing information for that professional in the information block on each sheet;
- (ii)** Be prepared at a scale of one inch equals 30 feet or larger for sites of five or fewer acres and be prepared at a scale of one inch equals 40 feet for sites over five acres;
- (iii)** Be arranged so that the top of the plan represents north or, if otherwise oriented, is clearly and distinctly marked;
- (iv)** Show boundaries and dimensions graphically, and contain a written legal description of the property; identification of a known vertical & horizontal reference mark approved by the city engineer; and, show a written and graphic scale;
- (v)** Show existing public and [Private Street](#) system, platted or unplatted Ownership, type and location of [Structures](#), curb cuts on adjacent properties and along the opposite side of the street.
- (vi)** Show topography extending 100 feet beyond the outside boundaries of the proposed site plan for sites that are not adjacent to existing development and show topography extending 50 feet beyond the outside boundaries of the proposed site plan for infill development sites;
- (vii)** Show the present and proposed topography of the site. Present and proposed topography (contour interval not greater than two feet) shall be consistent with City of Lawrence aerial topography. Where land disturbance, grading or development has occurred on a site or within 100 feet of the subject site since the date the City of Lawrence obtained aerial topography, an actual field survey shall be required;
- (viii)** Show the location of existing utilities and [Easements](#) on and adjacent to the site including power lines, telephone lines, & gas lines. Show the vertical elevation (if available) and horizontal location of existing sanitary sewers, water mains, storm sewers and culverts within and adjacent to the site. The location of ground mounted transformers and air conditioning units shall be shown on the site plan and such units shall be screened if visible from the

- Street or when adjacent to a **Structure** on an adjoining **Lot(s)**. In any instance, the location of such units shall occur behind the Front and **Side Setback** lines as set forth in Section 20-601 in the **Density** and Dimensional Standards Tables;
- (ix) Show, by use of directional arrow, the proposed flow of storm drainage from the site. Provide the supplemental stormwater information required by **City Regulations**, and provide on the site plan a site summary table which indicates: the area (in sq. ft.) and percentage of the site proposed for development as a **Building(s)**; development as a paved surface; undeveloped and planted with grass, **Ground Cover**, or similar vegetative surface.
  - (x) Show the location of existing and proposed **Structures** and indicate the number of stories, **Floor Area**, and entrances to all **Structures**;
  - (xi) Show the location and dimensions of existing and proposed curb cuts, **Access** aisles, off-street parking, loading zones and walkways;
  - (xii) Indicate location, height, and material for **Screening** walls and fences;
  - (xiii) List the type of surfacing and base course proposed for all parking, loading and walkway areas;
  - (xiv) Show the location and size, and provide a landscape schedule for all perimeter and interior **Landscaping** including grass, **Ground Cover**, trees and **Shrubs**;
  - (xv) Show both Gross and Net public areas for proposed offices and commercial establishments. The proposed use, the required number of off-street **Parking Spaces**, and the number of off-street **Parking Spaces** shown shall be listed on the site plan. If the exact use is not known at the time a site plan is submitted for review, the off-street parking requirements shall be calculated by the general use group using the greatest off-street parking requirement of that use;
  - (xvi) Show the proposed location, direction and amount of illumination of proposed lighting. Provide information on **Screening** proposed for the lighting and steps taken to prevent glare.
  - (xvii) Designate a trash storage site on each site plan or a note explaining how refuse removal will be handled. The size of the trash storage receptacle, its location and an elevation of the enclosure shall be approved by the Director of Public Works prior to approval of the site plan. If a modification to the location of the trash storage area is required during the construction phase, both the Planning and Public Works Directors must approve the modification before it occurs.
  - (xviii) For CN2, CC and CR Districts, be prepared for all of the contiguous area in that **Zoning District** under the same Ownership. If the entire site is not proposed for development in the immediate future, then the initial Site Plan application shall contain a proposed phasing schedule, showing which sections of the property shall be developed in which order and showing in

which phases the [Easements](#), [Driveways](#), [Parking Areas](#) and [Landscaping](#) will be included. The [Planning Director](#) may require adjustments in the provision of [Easements](#), [Driveways](#), [Parking Areas](#) and [Landscaping](#) among the various phases as a condition of approval;

(xix) Provide at least one north-south and one east-west elevation of the property from the Street right-of-way (property line) at a reasonable scale to illustrate [Building](#) shape, [Height](#), and [Screening](#) proposed and to determine compliance with the Commercial Design Standards and Guidelines.

- (2) A note shall be provided on the site plan for a public or governmental [Building\(s\)](#) and facility(ies) indicating that it has been designed to comply with the provisions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for [Buildings](#) and facilities, appendix A to 28 CFR Part 36.
- (3) If the site plan is for a multiple-[Dwelling](#) residential [Structure](#) containing at least four (4) [Dwelling Units](#), a note shall appear on the site plan indicating it has been designed to comply with the minimum provisions of the Final Fair Housing Accessibility Guidelines, 24 CFR, Chapter 1, Subchapter A, Appendix II, of the Fair Housing Act of 1968, as amended.
- (4) A photometric plan, pursuant to Section 20-1103(c) shall be required for site plan approvals. Light sources shall be shielded to prevent point source glare from adjacent properties or streets.

**(g) Public Notice**

- (1) Notice of the proposed site plan shall be posted on the property covered by the site plan, in accordance with Section 20-1301(q)(4). In addition, written notice of the proposed site plan shall be mailed to the [Owner](#) of record of all property ~~adjoining~~ **within 200 feet of** the subject property, and to all [Registered Neighborhood Associations](#) whose boundaries include the subject property or are adjacent to the neighborhood the subject property is located in. ~~For purposes of this provision, "adjoining property" includes all property that touches the subject property, including the right of way of the subject property.~~ The notice shall be sent by the applicant by regular mail, postage pre-paid. The applicant shall submit a Certificate of Mailing at the time of submission of the Site Plan application. An application for Site Plan Review will not be considered complete without an executed Certificate of Mailing. The notice shall provide:
  - (i) a brief description of the proposed [Development Activity](#);
  - (ii) the projected date for construction of the proposed use;
  - (iii) the person, with contact telephone number and address, designated by the applicant to respond to questions concerning the proposed site plan;
  - (iv) the date the site plan application will be submitted to the [Planning Director](#) for review; and a Statement with substantially the following information:

**Notice of Site Plan Review pending before the Lawrence Douglas County Planning Office**

*This letter is being sent to the **Owner** of property ~~adjoining~~, **within 200 feet of**, or a **Registered Neighborhood Association** encompassing, the proposed development described further in this letter. It is being sent for the purpose of informing the notified person and other interested parties about the proposed development. This letter ~~does not grant the recipient and/or Landowner any legal rights to challenge the proposed development~~, instead, it is being provided solely to advise ~~adjoining~~ **nearby Landowners** of the pending proposed development. **This letter does not grant the recipient and/or Landowners any additional rights to challenge this proposed development beyond those granted as part of the normal appeal process.** For further information, contact the applicant's designated representative at (xxx) xxx-xxxx or the Lawrence-Douglas County Planning Office at (785) 832-XXXX.*

- (2) The failure to receive notice of Site Plan Review by an adjoining **Landowner** or **Registered Neighborhood Association** will not affect the validity of Site Plan approval or review.

**(h) Staff Review/Action**

The **Planning Director** will review each Site Plan application and, within 30 days, the **Planning Director** shall take one of the following actions:

- (1) approve the Site Plan application;
- (2) identify those modifications that would allow approval of the Site Plan application;
- (3) approve the Site Plan application with conditions; or
- (4) disapprove the Site Plan application.

**(i) Notice of Decision**

Notice of the decision, including the **Planning Director's** findings and basis for decision in light of the criteria of Section 20-1305(j), shall be mailed to the applicant and all other parties who have made a written request for notification.

**(j) Approval Criteria**

In order to be approved, a Site Plan shall comply with all of the following criteria:

- (1) the site plan shall contain only platted land;
- (2) the site plan shall comply with all standards of the City Code, this Development Code and other adopted City policies and adopted neighborhood or area plans;
- (3) the proposed use shall be allowed in the District in which it is located or be an allowed nonconforming use;
- (4) vehicular ingress and egress to and from the site and circulation within the site shall provide for safe, efficient and convenient movement of traffic not only within the site but on adjacent roadways as well and shall also conform with adopted corridor or **Access Management** policies; and,

- (5) the site plan shall provide for the safe movement of pedestrians on the subject site.

**(k) Appeals**

Appeals of the [Planning Director](#)'s decision on a Site Plan application may be taken to the City Commission by filing a notice of appeal with the [Planning Director](#). Appeals shall be filed within 9 days of a decision to approve or disapprove a Site Plan application.

**(l) Right to Appeal**

The following persons and entities have standing to appeal the action of the [Planning Director](#) on applications for Site Plan approval:

- (1) the applicant;
- (2) the City Commission;
- (3) the neighborhood association for the neighborhood the site plan is located in or is adjacent to; or
- (4) record [Owner](#) of all adjoining property, as the term "adjoining property" is defined in Section 20-1305(g).

**(m) Action on Appeal**

- (1) The City Commission shall consider the appealed Site Plan decision as a new matter, inviting public comment before acting on the original application. Mailed notice of the City Commission's meeting shall be provided a minimum of 14 days prior to the Commission's meeting.
- (2) After considering the matter, the City Commission shall act on the original Site Plan application, applying the criteria of Section (j), taking action as provided in Section (h) and giving notice of its decision as provided in Section 20-1305(i).

**(n) Modifications to Approved Site Plans**

- (1) An applicant who wishes to alter or revise an approved Site Plan shall contact the [Planning Director](#).
- (2) The [Planning Director](#) is authorized to approve, without public notice, any modification that complies with the approval criteria of Section (j) as long as the [Planning Director](#) determines that the proposed modification does not represent a material change that would create a substantial adverse impact on surrounding [Landowners](#).
- (3) Any other modification may be approved only after re-notification in accordance with Section 20-1305(g). The action of the [Planning Director](#) on such an application shall be reported in a staff report at the next meeting of the City Commission and shall be appealable by any party aggrieved within 15 days of such meeting, in accordance with the appeal procedures of Section 20-1311.

**(o) Expiration; Vesting of Rights**

- (1) In the event the Landowner fails to ~~file an application for~~ **obtain a Building Permit** within ~~48~~ **24** months after final approval of the Site Plan has been granted, then such Site Plan shall expire in accordance with the following provisions:
  - (i) For good cause shown, the expiration date may be extended by the City Commission for a period not to exceed ~~6~~ **24** months. The application for extension or modification may be made by letter to the Planning Director and will be considered only if received before the expiration date of the Site Plan. The Planning Director shall place such request, with any recommendation of the Planning Director on the agenda of the City Commission.
  - (ii) The Planning Director shall notify the applicant by mail of the date of the proposed consideration by the City Commission. **Mailed Notice of the extension request shall also be provided by the Planning Office in accordance with Section 20-1301(g)(3).** On that date, the City Commission shall hear from the applicant and the Planning Director and may hear from other interested parties. ~~Only one such extension may be granted;~~
  - (iii) No action by the City shall be necessary to cause the Site Plan to expire. Its expiration shall be considered a condition of the original approval. After the expiration date, or extended expiration date, any further application for a Building Permit or for other Development Activity on the site shall be considered as though the Site Plan had not been granted.
- (2) Approval of a Site Plan does not, in itself, vest any rights under K.S.A. Sect. 12-764. Rights vest only after the related Building Permit is issued and substantial construction is begun in reliance on that permit.
- (3) Rights in an entire Site Plan shall vest under K.S.A. Sec. 12-764 upon timely issuance of an initial Building Permit and completion of construction in accordance with that Building Permit, or upon timely completion of substantial site improvements in reliance on the approved Site Plan.

**20-1306 SPECIAL USES**

**(a) Purpose**

The Special Use review and approval procedures provide a discretionary approval process for uses with unique or widely varying operating characteristics or unusual site development features. The procedure entails public review and evaluation of a use's operating characteristics and site development features and is intended to ensure that proposed Special Uses will not have a significant adverse impact on surrounding uses or on the community at-large.

**(b) Automatic Special Use Status**

If an existing use was allowed by-right at the time it was established, but is now regulated as a Special Use, the use will be considered an approved Special Use and will be allowed to continue without a public hearing. Any alterations or expansions of the use are subject to the Special Use amendment procedures of Section 20-1306.

**(c) Application and Site Plan Filing**

Special Use applications shall be filed with the [Planning Director](#). An application for a Special Use shall include the submittal of a site plan that meets the requirements of Section 20-1305(f).

**(d) Public Hearing Notice**

Newspaper, posted and mailed notice of the [Planning Commission's](#) public hearing shall be provided in accordance with Section 20-1301(q).

**(e) Staff Review/Report**

The [Planning Director](#) will review each proposed Special Use application in accordance with the review and decision-making criteria of Section (i), below. Based on the results of that review, the [Planning Director](#) will provide a report on the Special Use application to the [Planning Commission](#) and City Commission.

**(f) Planning Commission's Review/Recommendation**

The [Planning Commission](#) shall hold a public hearing on the proposed Special Use, review the proposed Special Use in accordance with the review and decision-making criteria of Section (i) and recommend that the City Commission approve, approve with conditions or deny the Special Use application.

**(g) Protest Petitions**

A valid protest petition opposing a Special Use may be submitted to the City Clerk within 14 days of the conclusion of the [Planning Commission's](#) public hearing.

- (1) A protest petition will be considered "valid" if it is signed by the [Owner](#) of 20% or more of:
  - (i) any real property included in the proposed plan; or
  - (ii) the total real property within the area required to be notified of the proposed Special Use excluding Streets and public ways.
- (2) In the case of joint Ownership, all [Owners](#) shall sign the petition.
- (3) For the purpose of determining the sufficiency of a protest petition, if the proposed Special Use was requested by the [Owner](#) of the specific property, that property shall be excluded when calculating the total real property within the area required to be notified.

**(h) City Commission Decision**

After receiving the [Planning Commission's](#) recommendation, the City Commission shall take one of the following actions on the proposed Special Use:

- (1) Approve, approve with conditions or modifications, or deny; or
- (2) return the application to the [Planning Commission](#) for further consideration, together with a written explanation of the reasons for the City Commission's failure to approve or disapprove.
  - (i) The [Planning Commission](#), after considering the explanation of the City Commission, may resubmit its original recommendations with its reasons for

- doing so or submit new and amended recommendations.
- (ii) Upon the receipt of such recommendations, the City Commission may, by a simple majority vote, approve the proposed Special Use, approve it with conditions or modifications, or deny it.
  - (iii) If the **Planning Commission** fails to deliver its recommendations to the City Commission following the **Planning Commission's** next regular meeting after receipt of the City Commission's report, the City Commission will consider such course of inaction on the part of the **Planning Commission** as a resubmission of the original recommendations and proceed accordingly.
- (3) The City Commission may act by a simple majority vote, except for the following cases:
- (i) action that is contrary to the **Planning Commission's** recommendations, in which case the decision shall be by a 2/3 majority vote of the full membership of the City Commission; or
  - (ii) approval, or approval with conditions or modifications, when a valid protest petition has been submitted in accordance with Section 20-1306(g), in which case the decision shall be by a 3/4 majority vote of the full membership of the City Commission.

**(i) Review and Decision-Making Criteria**

In reviewing and making decisions on proposed Special Uses, review and decision-making bodies shall consider at least the following factors:

- (1) whether the proposed use complies with all applicable provisions of this Development Code;
- (2) whether the proposed use is compatible with adjacent uses in terms of scale, site design, and operating characteristics, including hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts;
- (3) whether the proposed use will cause substantial diminution in value of other property in the neighborhood in which it is to be located;
- (4) whether public safety, transportation and utility facilities and services will be available to serve the subject property while maintaining sufficient levels of service for existing development;
- (5) whether adequate assurances of continuing maintenance have been provided; and
- (6) whether the use will cause significant adverse impacts on the natural environment; and
- (7) whether it is appropriate to place a time limit on the period of time the proposed use is to be allowed by special use permit and, if so, what that time period should be.

**(j) Date of Effect**

Decisions on Special Uses become effective on the date of the publication of the adopting ordinance; provided that, if findings and conclusions are prepared pursuant to Section 20-1301(r), the **Effective Date** shall be the date the City Commission adopts the findings and conclusions. No Certificate of Occupancy may be issued by Development Services until all conditions of approval have been met.

**(k) Expiration of Approval**

- (1) ~~¶~~ ***In the event*** the **Landowner** fails to obtain a **Building** Permit within ~~12~~ **24** months of the **Effective Date** the decision on Special Use became effective, the approval will be deemed to have expired and the Special Use approval will be deemed null and void.
  - (i) ~~The 12 month time period may be extended by the **Planning Director** up to 6 months if the applicant submits a written request for approval of an extension prior to expiration of approval.~~
  - (ii) ~~A Special Use approval will also expire upon expiration of a **Building Permit** if an occupancy permit has not been issued.~~
  - (i) **For good cause shown, the expiration date may be extended by the City Commission for a period not to exceed 24 months. The application for extension may be made by letter to the Planning Director and will be considered only if received before the expiration date of the Special Use Permit Site Plan. The Planning Director shall place such request, with any recommendation of the Planning Director on the agenda of the City Commission.**
  - (ii) **The Planning Director shall notify the applicant by mail of the date of the proposed consideration by the City Commission. Mailed Notice of the extension request shall also be provided by the Planning Office in accordance with Section 20-1301(q)(3). On that date, the City Commission shall hear from the applicant and the Planning Director and may hear from other interested parties.**
- (2) The Special Use approval shall expire at the conclusion of any specific period of time stated in the permit. A Special Use approval may be renewed upon application to the City, subject to the same procedures, standards and conditions as an original application.

**(l) Amendment, Suspension and Revocation**

The City Commission is authorized to amend, suspend or revoke an approved Special Use in accordance with this subsection.

- (1) Upon its own initiative, or upon the recommendation of City staff or the **Planning Commission**, the City Commission may establish a public hearing date to consider a proposed amendment, suspension or revocation of an approved Special Use. Newspaper, posted and mailed notice of the City Commission's public hearing shall be provided in accordance with Section 20-1301(q).
- (2) At the public hearing, the City Commission shall accept and consider all relevant information and evidence concerning the Special Use.

- (3) After the conclusion of the public hearing, the City Commission will consider all relevant evidence and information. The City Commission may amend, suspend or revoke the Special Use if it finds, based upon a preponderance of the information and evidence, that such action is supportable in fact.
- (4) Any motion for the amendment, suspension or revocation of a Special Use shall clearly State the grounds, which may include incorporation of findings presented by City staff. Any motion for the amendment of a Special Use shall clearly State the terms and conditions of suspension and at what time further review is appropriate. Any motion for the amendment of a Special Use shall clearly State the terms and conditions of the amendment to the Special Use.
- (5) The City Commission shall make one or more of the following findings if it seeks to amend, suspend, or revoke the Special Use:
  - (i) a condition of the Special Use has been violated;
  - (ii) violation of City Code provisions governing zoning regulations; [Building](#) (Chapter 5); [Housing](#) (Chapter 5); or the environmental code (Chapter 9); and/or
  - (iii) violation of any other applicable City Code provisions or any State or Federal law or regulation by the [Landowner](#) or Agents thereof, provided that such violations relate to the conduct or activity authorized by the Special Use or the qualifications of the [Landowner](#) or Agents thereof to engage in such conduct or activity.
- (6) As a complete alternative to the amendment procedures and requirements of this subsection and with the written consent of the [Landowner](#), the [Planning Director](#) may approve minor changes to an approved Special Use plan. Minor changes are those that (1) will not alter the basic relationship of the proposed development to surrounding properties; (2) will not violate any of the standards and requirements of this Development Code; and (3) will not circumvent any conditions placed on the original approval. The following are changes that will always be considered minor changes:
  - (i) replacement of a detached [Dwelling](#) destroyed by more than 60% when Setbacks and parking requirements are met;
  - (ii) a reduction in the area of any [Building](#);
  - (iii) an increase in the [Floor Area](#) of a [Building](#) by no more than 5 percent (5%) or 500 square feet, whichever is less;
  - (iv) replacement of plantings approved as part of the landscape plan by similar types of [Landscaping](#) on a one-to-one or greater basis;
  - (v) rearrangement of parking layout that does not affect the number of required [Parking Spaces](#) or alter [Access](#) locations or design; and
  - (vi) changes required by the City to address public safety concerns.

**(m) Limitation on Successive Applications**

- (1) Withdrawal of an original application after it has been advertised for public hearing shall constitute denial of the application as if the public hearing had been held and concluded;
- (2) A successive application shall not be accepted for a period of twelve (12) months from the date of City Commission denial of the original application unless a successive application is substantially different from the original application that was denied;
- (3) A successive application shall not be accepted until 120 days after the date of the City Commission denial and then will only be accepted if substantially different from the original application. The threshold for measuring substantially different shall be based on meeting one or more of the following criteria:
  - a. The same special use has been applied for and the **Density** of use is at least 25% greater or less than original application;
  - b. The same special use has been applied for and the intensity of use is at least 25% greater or less than the original application;
  - c. Specific responses to the reasons for denial set forth in the findings of fact by the City Commission are, in the opinion of the **Planning Director**, addressed in the resubmission; or
  - d. The special use operators or location has changed substantially from the original application. Substantial change shall be determined by the **Planning Director** using the findings adopted by the City Commission for denial of the original application as the gauge for measurement.
- (4) A new rezoning application may be submitted after at least twelve (12) months from the date of City Commission denial.

**(5) Appeals**

Within 30 days of the **Effective Date** of the Special Use decision, any person aggrieved by such decision may maintain an action in District Court to determine the reasonableness of the final decision.

**20-1307 INSTITUTIONAL DEVELOPMENT PLAN**

**(a) Purpose**

The purpose is to provide a community vision for the long-term use and development of public institutional space and lands so that they are designed to be compatible with surrounding land uses and contribute to the neighborhood and character of the area in which they are located. Providing this community vision for institutional **Buildings** and sites also allows adjacent and nearby property **Owner** to anticipate future non-residential development patterns and plan for the use and enjoyment of their property accordingly.

**(b) Phasing of Development**

For multiple uses or multiple **Building** developments, sites may be phased based on needs established through capital improvements programming. The phasing sequence shall be submitted with the site plan or special use permit development application.

**(c) Development Standards**

Standards for institutional site development are established to ensure long-term compatibility of use, consistency with the character of the area, and to minimize negative impacts from institutional development on surrounding neighborhoods.

- (1) Sites of ten (10) acres or smaller shall be required to submit a site plan application with supporting material for administrative review and approval. Criteria to be included on the site plan shall include:
  - (i) if traffic generation exceeds 100 vehicles per day, **Access** shall be taken from a **Residential Collector**, **Collector** or **Arterial Street**;
  - (ii) separate **Access** points shall be provided for pedestrians/bikes and vehicular traffic generated to and from the site;
  - (iii) development of the site shall occur in one phase; and
  - (iv) exterior lighting shall occur only where needed for safe **Access** to and from the **Parking Area** to a **Building** entrance.
  
- (2) Sites over ten (10) acres shall be required to submit an application for a Special Use Permit, which includes a site plan, and supporting material necessary to meet the following criteria:
  - (i) Landscape **Bufferyards** shall be required on all sides of the site based on the most intense use proposed.
    - a. For utility and large plant development sites a type 3 landscape **Bufferyard** shall be required.
    - b. For office and educational development sites a type 2 landscape **Bufferyard** shall be required.
    - c. For park and recreational development sites a type 1 landscape **Bufferyard** shall be required.
  - (ii) **Access** shall be planned for the entire site based on the traffic anticipated to be generated from the site. **Access** may be taken from **Collector** or **Arterial Streets** for utility and large plant development sites. At least two **Access** points shall be provided for office and educational development sites and park sites, one of which is from a **Residential Collector Street**.
  - (iii) Sidewalks shall be provided along all street frontages as part of the first phase of a multi-phase development project or, if the project is not phased, at the time of development of the site.
  - (iv) **Bicycle** lanes or recreational paths shall be planned and provided as part of the institutional master plan for sites that include public facilities such as schools, parks, recreation centers and public offices where customers are anticipated to come to the site. **Comprehensive Plans** for **Bicycle** and pedestrians shall be followed in providing and planning for these **Infrastructure** improvements.

- (v) Sports fields and other large traffic generation activities shall be located on the site furthest from RS zoned areas and designed to reduce noise or light pollution from creating negative impacts on the adjacent neighborhood(s).
- (vi) Exterior lighting, if provided, may be prohibited between the hours of 10 PM and 7AM.
- (vii) Parking facilities shall be designed to be shared between multiple users and, where environmentally sensitive lands are involved or may be impacted, alternatives to paving **Parking Areas** may be approved.
- (viii) Bus stops shall be included in the planning and development of the site.

**(d) Revisions to Phasing Sequence and Institutional Development Plan**

Revisions to the phasing sequence may be administratively approved by the **Planning Director** based on the review and approval of revisions to the Capital Improvements Programming for **Infrastructure** and site development by the governing body or administrative board responsible for funding institutional development of the site. Revisions to the Institutional Development Plan may be reviewed and approved administratively when revisions are consistent with the original development plan's approval and evidence has been submitted to the **Planning Director** that the revision will not increase traffic, noise or light pollution or runoff from the site.

**(e) Filing of Institutional Development Plan**

~~After~~ **Within 24 months of** approval and **after** completion of all conditions of approval **and prior to issuance of a building permit**, a Mylar copy of the Institutional Development Plan shall be recorded at the Register of Deeds office. Any supplemental covenants, restrictions, **Conservation Easements** or public **Access Easements** shall be on file at the time of recordation of the Institutional Development Plan.

**(f) Date of Effect**

Approval of an institutional development plan shall be valid from the date all conditions are met and the Institutional Development Plan is filed at the Register of Deeds office. Approved revisions to the institutional development plan shall also be filed at the Register of Deeds office. ~~An Institutional Development Plan shall be valid for ten years or until the first phase of development is completed, whichever occurs first.~~

**(g) Expiration of Approval**

**(1) In the event the Landowner fails to obtain a building permit for the development shown on the institutional development plan within 24 months after final approval of the Institutional Development Plan has been granted, the approval shall expire and the Landowner shall seek approval of the proposed development in accordance with the procedures and standards in effect at the time of the new application.**

- (i) For good cause shown, the expiration date may be extended by the City Commission for a period not to exceed 24 months. The application for extension may be made by letter to the Planning Director and will be considered only if received before the expiration date of the Institutional Development Plan. The Planning Director shall place such request, with any recommendation of the Planning Director on the agenda of the City Commission.**

- (ii) **The Planning Director shall notify the applicant by mail of the date of the proposed consideration by the City Commission. Mailed Notice of the extension request shall also be provided by the Planning Office in accordance with Section 20-1301(q)(3).**

## 20-1308 FLOODPLAIN DEVELOPMENT PERMIT

### (a) Initiation

A Floodplain development permit shall be initiated by any person, firm, corporation or unit of government proposing any construction, Substantial Improvement or other development in the Floodplain Overlay District by the filing of an application in writing on a form furnished for that purpose with the Floodplain Administrator.

### (b) Application Contents

An application for a Floodplain development permit shall be accompanied by and contain the information set forth in Section 20-1202.

### (c) Floodplain Administrator Review Action

The Floodplain Administrator shall review and take action on all Floodplain development permit applications and, where required, coordinate the review and approval of a Hydrologic and Hydraulic Study with the City Stormwater Engineer.

### (d) Approval Criteria

The Floodplain Administrator shall approve the application for a Floodplain development Permit if the application satisfies all the requirements of Article 12 and its spirit and intent are met.

### (e) Expiration of Permit

Floodplain development permits expire 18 months from the date of issuance if a certificate of elevation has not been received. If requested, and good cause is shown, the Floodplain Administrator may grant a 6-month extension.

## 20-1309 ZONING VARIANCES

### (a) Authority and Applicability

The zoning variance procedures of this section authorize the Board of Zoning Appeals to approve, in specific cases, variances from specific zoning standards of this Development Code that will not be contrary to public interest and where, owing to special conditions, a literal enforcement of zoning standards would result in Unnecessary Hardship.

### (b) Prohibited Zoning Variances

- (1) The Board of Zoning Appeals is not authorized to approve a variance that would allow a use that is not allowed in the Base District.
- (2) The Board of Zoning Appeals is not authorized to approve a variance from the standards of Article 7.

### (c) Application Filing

Zoning variance applications shall be filed with the Planning Director.

**(d) Public Hearing Notice**

Newspaper and mailed notice of the Board of Zoning Appeals' public hearing shall be provided in accordance with Section 20-1301(q).

**(e) Staff Review/Report**

The **Planning Director** will review each proposed variance application in accordance with the review and decision-making criteria of Section 20-1309(g) and, if deemed necessary, distribute the variance application to other agencies and reviewers. Based on the results of those reviews, the **Planning Director** will provide a report on the variance application to the Board of Zoning Appeals.

**(f) Board of Zoning Appeals' Hearing and Decision**

The Board of Zoning Appeals shall hold a public hearing on the proposed variance and review the application in accordance with the applicable review and decision-making criteria of Section (g). Following the public hearing, the Board of Zoning Appeals shall take one of the following actions:

- (1) approve the variance;
- (2) approve the variance with conditions;
- (3) deny the variance.

**(g) Review and Decision-Making Criteria**

**(1) Outside the Regulatory Floodway (Unnecessary Hardships)**

The Board of Zoning Appeals may approve a zoning variance, but not a variance from the **Floodplain** management regulations of Article 12 upon the finding of the Board that all of the following conditions have been met:

- (i) That the variance request arises from such conditions which are unique to the property in question and not ordinarily found in the same zoning or district and are not created by action(s) of the property **Owner** or applicant;
- (ii) That granting the variance would not adversely affect the rights of adjacent property **Owner** or residents;
- (iii) That strict application of the provisions of this chapter for which the variance is requested would constitute **Unnecessary Hardship** upon the property **Owner** represented in the application;
- (iv) That the variance desired would not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and
- (v) That granting the variance desired would not be opposed to the general spirit and intent of this chapter.

**(2) Flood Protection Regulations**

- (i) The Board of Zoning Appeals may approve a variance from the flood protection regulations of Article 12 only after finding that the requested variance meets all of the following criteria:

- a. a determination by the Board of Zoning Appeals that the variance is the minimum necessary, considering the flood hazard to afford relief;
  - b. a showing of good and sufficient cause;
  - c. a determination by the Board of Zoning Appeals that failure to grant the variance would result in an [Unnecessary Hardship](#) to the applicant, as that term is defined in Section 20-1309(g)(1); and
  - d. a determination by the Board of Zoning Appeals that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or in victimization of the public, or conflict with existing local laws or ordinances.
- (ii) The Board of Zoning Appeals may approve a zoning variance from the flood protection regulations of Article 12 only after considering all technical evaluations, relevant factors, and standards specified in Article 12 and meeting the terms of K.S.A. 12-734. In addition, the following factors shall be considered:
- a. the danger of injury from materials swept onto other lands;
  - b. the danger of life and property due to flooding or erosion damage;
  - c. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual [Owner](#) or occupant;
  - d. the importance of the services provided by the proposed facility to the community;
  - e. the necessity to the facility of a waterfront location, where applicable;
  - f. the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - g. the compatibility of the proposed use with existing and anticipated development;
  - h. the relationship of the proposed use to the [Comprehensive Plan](#) and [Floodplain](#) management program for that area;
  - i. the safety of [Access](#) to the property in times of flood for ordinary and emergency vehicles;
  - j. the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
  - k. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets

and bridges.

- (iii) Generally, variances from flood protection standards may be issued for a **Significant Development Project** to be erected on a **Lot** of one-half acre or less in size contiguous to and surrounded by Lots with existing Structures constructed below the **Regulatory Flood** level, providing items Section 20-1309(g)(2)(ii)(a) through Section 20-1309(g)(2)(ii)(j) have been fully considered. As the **Lot** size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- (iv) Any applicant to whom a variance is granted shall be given written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (v) The **Planning Director** shall maintain the records of all variances and report any variances to the Federal Insurance Administration upon request.

**(h) Findings of Fact**

All decisions on zoning variances shall be supported by an affirmative finding of fact on each of the applicable approval criteria of Section (g). Each finding shall be supported by substantial evidence in the record of proceedings.

**(i) Filing and Mailing of Decision**

Every decision or determination by the Board of Zoning Appeals shall be:

- (1) filed in the office of the City Clerk by the **Planning Director** not more than seven (7) **Working Days** following the date of hearing; and
- (2) mailed to the applicant and all other parties who have made a written request for notification.

**(j) Date of Effect**

Decisions on variances become effective on the date the Board of Zoning Appeals makes its decision.

**(k) Expiration of Approval**

**(1) Failure to ~~Apply for~~ Obtain a Building Permit**

In the event the **Landowner** fails to ~~file an application for~~ **obtain a Building Permit** within ~~12~~ **24** months after final approval of the variance has been granted, then such variance shall expire in accordance with the following provisions:

- (i) For good cause shown, the expiration date may be extended by the Board of Zoning Appeals for a period not to exceed ~~6~~ **24** months. The application for extension or modification may be made by letter to the **Planning Director** and will be considered only if received before the expiration date of the variance. The **Planning Director** shall place such request, with any recommendation of the **Planning Director** on the agenda of the Board of Zoning Appeals. The **Planning Director** shall notify the applicant by first class mail of the date of the proposed consideration by the Board. **Mailed Notice of the extension request shall also be provided by the Planning Office in accordance with Section 20-1301(q)(3).** On that date, the Board shall hear from the applicant and the **Planning Director** and may hear from other interested parties. ~~Only one such extension may be granted.~~

- (ii) No action by the City shall be necessary to cause the variance to expire. Its expiration shall be considered a condition of the original approval. After the expiration date, or extended expiration date, any further application for a [Building Permit](#) or for other [Development Activity](#) on the site shall be considered as though the variance had not been granted.
- (iii) Approval of a variance does not, in itself, vest any rights under K.S.A. Sec. 12-764. Rights vest only after the related [Building Permit](#) is issued and substantial construction is begun in reliance on that permit.
- (iv) A variance will also expire upon expiration of a [Building Permit](#).

**(I) Appeals**

Within 30 days of the date of effect of the Board of Zoning Appeals' decision, any person aggrieved by such decision may maintain an action in District Court to determine the reasonableness of the final decision.

**20-1310 WRITTEN INTERPRETATIONS**

**(a) Application Filing**

Applications for written interpretations of this Development Code shall be submitted to the [Planning Director](#).

**(b) Planning Director's Review and Decision**

Following receipt of a complete application for a written interpretation, the [Planning Director](#) shall: (1) review and evaluate the application for compliance with this Development Code and consistency with the [Comprehensive Plan](#) and any other relevant documents; (2) consult with other staff, as necessary; (3) request additional information or documentation, as necessary and (4) render a written interpretation.

**(c) Form**

The interpretation shall be provided to the applicant in writing and be filed in the official record of interpretations.

**(d) Official Record of Interpretations**

An official record of interpretations shall be kept on file by the [Planning Director](#). The record of interpretations shall be available for public inspection from the [Planning Director](#) during normal business hours.

**(e) Appeals**

Appeals of the [Planning Director's](#) written interpretation may be taken to the Board of Zoning Appeals in accordance with procedures of Section 20-1311. If the appeal results in a change of interpretation, the new interpretation shall be filed in the official record of interpretations maintained by the [Planning Director](#).

**20-1311 APPEALS OF ADMINISTRATIVE DECISIONS**

**(a) Authority and Applicability**

Unless specifically provided for otherwise in this Development Code, the Board of Zoning Appeals is authorized to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of the provisions of this Development Code. The [Planning](#)

**Commission** is not an “administrative official” for purposes of this Development Code and the Board of Zoning Appeals shall have no jurisdiction to consider an appeal from any action, determination or failure to act by the **Planning Commission**.

**(b) Application Filing**

Appeals of administrative decisions shall be filed with the **Planning Director**. The appeal shall be filed within 10 **Working Days** after the administrative official’s decision. 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 administrative official.

**(c) Effect of Filing**

The filing of a complete application for an appeal of administrative decision stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the Board of Zoning Appeals, after the appeal is filed, that, because of facts stated in the certification that (a) a stay would cause immediate peril to life or property or (b) the situation appealed from is transitory in nature, and therefore, an appeal would seriously interfere with enforcement of this Development Code. In each instance, the official whose decision is being appealed shall place in the certificate facts to support the conclusion. In such case, proceedings will not be stayed other than by a restraining order, which may be granted by the Board of Zoning Appeals or by a court of record.

**(d) Record of Administrative Decision**

The official whose decision is being appealed shall transmit to the Board of Zoning Appeals all documents constituting the record upon which the action appealed is taken.

**(e) Public Hearing Notice**

Newspaper and mailed notice of the Board of Zoning Appeals’ public hearing on the appeal shall be provided in accordance with Section 20-1301(q). A copy of the notice shall also be mailed to each party to the appeal and to the **Planning Commission** at least 20 days before the date of the hearing.

**(f) Review and Decision**

- (1) The Board of Zoning Appeals shall hold a public hearing on the appeal and, following the close of the public hearing, take final action based on the procedures and requirements of this section.
- (2) In exercising the appeal power, the Board of Zoning Appeals has all the powers of the official from whom the appeal is taken, and the Board of Zoning Appeals may reverse or affirm wholly or in part or may modify the decision being appealed.
- (3) If the Board of Zoning Appeals determines that it is necessary to obtain additional evidence to resolve the matter, it shall remand the appeal to the official from whom the appeal is taken, with directions to obtain the needed evidence and to reconsider the decision in light of that evidence.

**(g) Approval Criteria; Findings of Fact**

The Board of Zoning Appeals may reverse an order, requirement, decision, or determination of any administrative official only when the Board of Zoning Appeals finds substantial, factual evidence in the official record of the application that the administrative official erred. The decision of the Board of Zoning Appeals shall be supported by written findings of fact prepared by the Board of Zoning Appeals.

**(h) Filing and Mailing of Decision**

Every decision or determination by the Board of Zoning Appeals shall be:

- (1) filed in the office of the City Clerk not more than seven (7) [Working Days](#) following the date of hearing; and
- (2) mailed to the applicant and all other parties who have made a written request for notification not more than seven [Working Days](#) following the date of the hearing.

**(i) Date of Effect**

Decisions on appeals become effective on the date the Board of Zoning Appeals makes its decision.

**(j) Appeals**

Within 30 days of the date of effect of the Board of Zoning Appeals' decision, any person aggrieved by such decision may maintain an action in District Court to determine the reasonableness of the final decision.

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