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ARTICLE 1. GENERAL PROVISIONS

1.01 Overview

- A. **Title.** These regulations, shall be known, as the "Development Regulations of the City of Leavenworth, Kansas." These regulations are adopted pursuant to Kansas Statutes 12-747 *et. seq.* and 12-757 *et. seq.*
- B. **Purpose.** These regulations serve the following purposes:
1. To promote the health, safety, comfort and economic development of the city;
 2. To preserve and protect property values throughout the city;
 3. To regulate the height, number of stories and size of buildings; the percentage of lot coverage; the size of yards, courts, and other open spaces; and density of population;
 4. To divide the jurisdictional area into zones and districts;
 5. To regulate the location and use of buildings and land within each district or zone.
- C. **Jurisdiction.** These regulations apply to all land and structures within the incorporated area of the City of Leavenworth, Kansas. Fort Leavenworth, the U.S. Penitentiary, and the Veterans Administration Reservations are excluded from the jurisdiction of these regulations.
- D. **Exemptions.** The following structures and uses shall be exempt from the provisions of these regulations:
1. **Utilities.** Poles, wires, cables, conduits, vaults, laterals, pipes, street lighting, mains, valves, or other similar equipment or improvements for the distribution to consumers of telephone or other communications, electricity, gas, or water, or the collection of sewage or surface water operated or maintained by a public utility.
 2. **Railroads.** Railroad track, signals, bridges, and similar facilities and equipment located on a railroad right-of-way, and maintenance and repair work on such facilities and equipment.
- E. **Annexation.**
1. All territory annexed into the City of Leavenworth, voluntarily or involuntarily, shall be zoned after annexation in accordance with the zoning district most closely matching the Comprehensive Land Use Plan for that area, determined by Table 1-01 below.
 2. The landowner may propose a different zoning classification through an application for rezoning, as provided elsewhere in this code. The rezoning must be completed at or before the time the annexation petition is presented to the City Commission for consideration.

Table 1-01: Zoning District & Direct Future Land Use Map Associations	
Zoning District	Future Land Use Map Designation
R1-25 Low Density Single-Family Residential District	Low Density Residential
R1-9 Medium Density Single-Family Residential District	Low or Medium Density Residential
R1-7.5 Medium Single-Family Residential District	High Density Residential
R1-6 High Density Single-Family Residential District	High Density Residential
R4-16 Medium Density Multiple Family Residential District	High Density Residential
R-MF Multiple-Family Residential District	Multi Family
RMX-Residential Mixed Use	Urban Residential
MP Mobile/Manufactured Home Park District	Multi Family
NBD Neighborhood Business District	Commercial
OBD Office Business District	Commercial
CBD Central Business District	Commercial
GBD General Business District	Commercial
I-1 Light Industrial District	Industrial
I-2 Heavy Industrial District	Industrial
PUD Planned Unit Development District	Not Applicable
FP Flood Plain District	Not Applicable

- F. **Severability.** It is intended that each and every provision of these regulations, to the extent they may reasonably be interpreted and applied independently from any other provision, shall stand alone as an independent and separate regulation of the city. If any section, subsection, clause, phrase, or portion of these regulations is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining or any other portions of these regulations.

1.02. Administration

- A. **Authorities.** The following authorities are responsible for the administration of specified aspects of these regulations:
1. *Planning Commission.* It is the duty of the Planning Commission (PC) to publicly hear testimony concerning proposed changes in zoning districts, amendments to this ordinance, proposed annexations, proposed special use permits, and review disputed site plans and then to make appropriate recommendations to the City Commission. The Planning Commission shall operate according to a set of bylaws approved by the City Commission.
 2. *Board of Zoning Appeals.* It is the duty of the Board of Zoning Appeals (BZA) to conduct public hearings and to take final action on appeals from interpretation and enforcement actions of administrative officials; to conduct public hearings and act on requests for variances from this ordinance; to conduct public hearings and act on requests for exceptions to the provisions of this ordinance in those instances where

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the Board is specifically authorized to grant such exceptions and only under the terms of this ordinance. Appeal of decisions by the Board is made to District Court. The Board of Zoning Appeals shall operate according to a set of bylaws approved by the City Commission.

3. *Development Review Committee.* It is the duty of the Development Review Committee (DRC) to plan, coordinate, review, and facilitate all new development and substantial redevelopment within the City; including all development applications and requests for variances and exceptions.
 - a. Development issues will entail the adequate provision of power, potable water, sewage service, communications, road access and capacity, solid waste disposal, life safety aspects, comprehensive plan compatibility, requests for minor modifications, zoning appropriateness, storm drainage, visual aesthetics, and all other issues which may be necessary to provide for the health, safety, and welfare of the citizens of Leavenworth.
 - b. The Development Review Committee (DRC) shall be comprised of the following persons or their designated representatives, or other similar city representatives designated by the City Manager:
 - (1) Chief Building Inspector
 - (2) City Clerk
 - (3) City Manager
 - (4) Assistant City Manager
 - (5) City Planner
 - (6) Economic Development Director
 - (7) Fire Chief
 - (8) Parks & Recreation Director
 - (9) Planning & Community Development Director
 - (10) Police Chief
 - (11) Public Works Director
 - c. *Meetings.* The Development Review Committee (DRC) shall meet weekly in the City Commission Chambers, as needed. The City Planner, or designee, shall prepare the weekly agenda, and shall provide the necessary staff to record meeting minutes and maintain a record of documents submitted for each agenda item.
 - d. *Chair.* The City Planner shall be the administrative coordinator of the Development Review Committee (DRC) and shall preside as the Chair.
4. *City Commission.* Upon receipt of recommendations from the Planning Commission, the City Commission shall act as the final local authority on all requests for district boundary changes, amendments to the text of this ordinance, annexation requests, approval of disputed site plans and special use permits. The City Commission may grant extensions of time for submission or completion of projects, as it deems expedient. Appeals from decisions of the City Commission are made to District Court. The City Commission shall hear all appeals from staff decisions referred to it under these Development Regulations.

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5. **Administrative Staff.** The Director is responsible for the enforcement of this Ordinance. Implementation and administration of the provisions of the Development Regulations shall be the responsibility of the administrative officials listed throughout these Development Regulations. Administrative staff duties will include, but are not limited to, the following:
- a. Scheduling and conducting inspections of buildings, structures, and uses of land to determine compliance with the provisions of the Development Regulations.
 - b. Maintaining permanent and current records of the Development Regulations, including, but not limited to, all zoning district maps, amendments, special uses, variances, exceptions, appeals and applications therefore and records of hearings thereon.
 - c. Preparing and having available in book, pamphlet, or map form, on or before March 31 of each year:
 - (1) The compiled text of the zoning regulations and amendments thereto, including all amendments adopted through the preceding December 31, and
 - (2) A zoning district map or maps, showing the zoning districts, divisions, and classifications in effect on the preceding December 31.
 - d. Maintaining for distribution to the public paper and electronic copies of the zoning district map, the text of the Development Regulations and the bylaws, agendas and meeting minutes of the Planning Commission and the Board of Zoning Appeals.
 - e. Providing such clerical, technical, and consultative assistance as may be required by the City Commission, Planning Commission, Board of Zoning Appeals, Preservation Commission and other boards or commissions in the exercise of their duties relating to these Development Regulations.
 - f. Preparing and distributing hearing notices as required.
 - g. Providing information, clerical, technical, and consultative assistance to developers and property owners with regard to the application process and requirements of this ordinance generally.
6. **Leavenworth Preservation Commission.** The Leavenworth Preservation Commission authority and procedures are established in Article 9.
- B. **Schedule of Fees.** The Schedule of Fees and Charges for any applicable fees shall be on file with the City Clerk according to all city ordinances.

1.03. Interpretation

- A. **Rules of Construction.** In interpreting these regulations, the following rules shall apply:
- 1. Words used in the present tense shall include the future.

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2. Words in the singular number include the plural number, and words in the plural number include the single number.
 3. The phrase "used for" shall include the phrases "arranged for", "designed for", "intended for", "maintained for" and "occupied for".
 4. The word "shall" is mandatory.
 5. The word "may" is permissive.
 6. The word "person" includes individuals, firms, corporations, associations, governmental bodies and agencies and all other legal entities.
 7. Any word or phrase which is defined in in these regulations shall have the meaning as so defined, unless such definition is expressly limited in its meaning or application.
- B. **Computations of Time.** Unless specifically stated in individual sections, wherever these regulations state a time period, it shall be interpreted as follows:
1. The day of the act, event, or other means which commences the time period shall not be counted.
 2. The last day of the time period shall be included in the time period, unless it is a Saturday, Sunday, or legal City holiday, in which case the next working day shall end the time period.
 3. Whenever the time period is expressed to require a formal submittal to the City, the time period shall end at 5:00 P.M. on the last day of the time period.
 4. Any time period expressed in years shall include a full calendar year from the act, event or other means which commences the time period.
- C. **Minimum Requirements.** The provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health and welfare.
- D. **Conflicts.** Where the conditions imposed by any provision of these regulations are either more restrictive or less restrictive than any other law, ordinance, resolution, rule or regulations of any kind, the more restrictive shall control. In making a determination of which regulation is more restrictive, the Director shall determine which regulation establishes a higher standard for the promotion of the public health, safety, and general welfare shall control and more closely follows the policies of the Comprehensive Plan.
- E. **Private Agreements.** These regulations are not intended to abrogate, annul or otherwise interfere with any easement, covenant or any other private agreement of legal relationship; provided, however, that where the provisions of these regulations are more restrictive (or impose higher standards or requirements) than such easements, covenants or other private agreements or legal relationships, the provisions of these regulations shall govern.
- F. **Existing Uses.** Any existing structure, use, or occupation of land previously approved as of the effective date of this ordinance shall be permitted to continue as a lawful use or occupation. The approved site plan and all terms, covenants and conditions applicable as of the effective date of this ordinance shall continue to apply and control the use or occupation of such land. However, any proposed change or modification in the use or occupation of such land, or in the approved site plan for such land, shall be made in accordance with the standards and procedures of this ordinance.

- G. **Interpretation of District Boundaries.** Where uncertainty exists with respect to the boundaries of any district on the zoning district map, the following rules shall apply:
1. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
 2. Boundaries indicated, as approximately following city limits shall be construed as following such city limits;
 3. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks of the railroad line;
 4. Boundaries indicated as following shorelines shall be construed to follow such shore lines, and in the event of change in the shore line, the boundaries shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams shall be construed to follow such center lines;
 5. Boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed to follow such center lines; where public ways have been vacated, boundaries shall be construed to follow either the original center line or new property line;
 6. Boundaries indicated as parallel to or extensions of features shall also so be construed as to follow a parallel path;
 7. Distances not specifically indicated on the Official Zoning District Map shall be determined by the scale of the map; and
 8. No single parcel subdivided or rezoned after the adoption of these development regulations shall have 2 or more zoning districts.

1.04. Enforcement

- A. **Violations.** If any building, structure, use, or other action or condition is found to be in violation of these regulations the city, in addition to other remedies, may institute any appropriate action or proceeding to:
1. Prevent the continuance of any unlawful action or condition;
 2. Correct or abate any violation, and withhold public improvements until the violation is abated or corrected;
 3. Prevent the issuance of permits, occupancy of the building, structure or land, and otherwise prevent any further illegal act, conduct business, or use of the premises;
 4. Prevent the sale, transfer, lease or recording of any land or lot.

Such regulations shall be enforced by the Director or other administrative official so authorized in writing.

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- B. **Penalties.** Any person violating any of the provisions of this Code shall be guilty of a misdemeanor, each day, or portion thereof, constituting a separate offense. Each offense shall be punishable by a term of confinement in the City or county jail, which shall be fixed by the court, shall not exceed one year, and may, in addition to, or instead of the confinement, be sentenced to pay a fine not exceeding \$500 in addition to any other fine or remedy provided by law.

1.05. Nonconformances

- A. **General.** Nonconformities are of three types: nonconforming lots of record, nonconforming structures, and nonconforming uses. A definition of each type is as follows:
1. **Nonconforming Lot of Record.** A lot which is part of a recorded subdivision or a parcel of land, the deed to which was recorded prior to the adoption of the original Subdivision Regulations in the city, July 19, 1966, and neither the lot nor parcel complies with the lot width or area requirements for any permitted uses in the district in which it is located.
 2. **Nonconforming Structure.** An existing structure which does not comply with the lot coverage, height or yard requirements which are applicable to new structures in the zoning district in which it is located.
 3. **Nonconforming Use.** An existing use which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.
- B. **Nonconforming Lots of Record.** The Building Inspector shall issue a building permit for any nonconforming lot of record provided that:
1. The lot is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by any zoning regulations, and
 2. The lot has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of such lot has been prohibited by the applicable zoning regulations, and
 3. The lot or group of continuous nonconforming lots can meet all setback requirements for the district in which it is located, and
 4. The lot can connect with a public sewer system or can meet the minimum sanitary sewer requirements of the city.
- C. **Nonconforming Structures.**
1. **Authority to Continue.** Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable property development standards on the effective date of these Development Regulations, may be continued, so long as it remains otherwise lawful.
 2. **Enlargement, Repair, Alterations.** Any nonconforming structure may be enlarged, maintained, repaired or remodeled, provided however, that no such enlargement,

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maintenance, repair, or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure.

3. *Setbacks and Yards.* A structure which is in nonconformance with respect to a side or rear yard setback shall not use the existing setback in expanding or enlarging but may be enlarged if the new part of the structure complies with the setbacks of the district.
4. *Destruction.* If a nonconforming structure is damaged by more than fifty percent (50%) of its fair market value, such building shall not be restored if such building is not in conformance with the regulations for the zoning district in which it is located, or an exception is granted by the Board of Zoning Appeals.
5. *Moving.* No nonconforming structure shall be moved in whole or in part for any distance, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

D. Nonconforming Uses.

1. *Authority to Continue.* Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land, not involving a structure or only involving a structure which is accessory to such use or land, may be continued, so long as otherwise lawful.
2. *Ordinary Repair and Maintenance.*
 - a. Normal maintenance and incidental repair or replacement, installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing may be performed on any structure that is devoted in whole or in part to a nonconforming use.
 - b. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition a structure in accordance with an order of a public official who is charged with protecting the public safety who declares such structure unsafe and orders its restoration to a safe condition.
3. *Extension.* Any nonconforming use shall not be physically extended, expanded, or enlarged. Such prohibited activities shall include, without being limited to:
 - a. Extension of such use to any structure or land area other than that occupied by such nonconforming use on the effective date of these regulations (or on the effective date of subsequent amendments or that cause such use to become nonconforming).
 - b. Extension of such use within a building or other structure to a portion of the floor area that was not occupied by such nonconforming use on the effective date of subsequent amendments hereto that cause such use to become nonconforming; provided, however, that such use may be extended throughout any part of such building or other structure that is lawfully and manifestly designed or arranged for such use on such effective date.

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4. *Enlargement.* No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the district in which it is located.
5. *Damage or Destruction.* If a structure devoted to a nonconforming use is damaged or destroyed by more than fifty percent (50%) of its fair market value, such building shall not be restored if the use of such building is not in conformance with the regulations of the zoning district in which it is located.
6. *Moving.* No structure that is devoted in whole or in part to a nonconforming use and no nonconforming use of land shall be moved in whole or in part for any distance, to any location on the same or other lot, unless the entire structure and the use thereof or the use of land shall thereafter conform to all regulations of the zoning district in which it is located after being so moved.
7. *Change in Use.* Any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use, as an exception granted by Board of Zoning Appeals in accordance with Article 11. Board of Zoning Appeals, provided that the Board of Zoning Appeals, either by general rule or by findings of fact in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards
8. *Abandonment or Discontinuance.* When a nonconforming use is abandoned for a period of twenty-four (24) consecutive months any subsequent use or occupancy of such land after this period shall comply with the regulations of the zoning district in which such land is located.
9. *Nonconforming Accessory Uses.* No use which is accessory to a principal nonconforming use shall continue after such principal use shall cease or terminate.

E. Status of Special Use Permits.

1. *Status of Existing Special Use Permits.* Where a Special Use Permit exists at the effective date of these Development Regulations and is permitted by these regulations as a Special Use Permit in the zoning district in which it is located, such use shall be deemed a lawful conforming use in such zoning district, as provided by prior approval. Where a Special Use Permit exists at the effective date of these Development Regulations and is not permitted as a Special Use Permit in the zoning district in which it is located, such use shall be deemed a continuing nonconforming use.
2. *Status of Existing Legal Uses Designated as Special Uses.* Any existing legal use at the effective date of these Development Regulations which is designated as a special use by these Development Regulations shall be deemed as an existing special use and a lawful conforming use.

F. Signs for Nonconforming Uses. The lawful use of any sign existing at the time of the passage of these Development Regulations, in conjunction with a nonconforming use, may be continued. Any sign installed subsequent to the passage of these Development

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Regulations for a nonconforming use must conform to the Article 8, Signs in compliance with the district in which the nonconforming use is located.

ARTICLE 2. APPLICATIONS & PROCEDURES

2.01 Text Amendments

- A. **Applicability:** Text amendments to these regulations may be initiated by City Staff, the City Commission, or the Planning Commission.
- B. **Amendment Procedure:**
1. **Public Hearing.** The Planning Commission shall hold a public hearing on each proposed amendment. The Planning Commission shall select a reasonable hour and place for the public hearing, but it shall hold the hearing within 60 days from the date on which the proposed amendment is filed. An applicant for an amendment may waive the requirement that such hearing be held within 60 days.
 2. **Notice.** Public notice of a hearing on a proposed amendment shall be published once in the official city newspaper at least 20 days prior to the date of the hearing. The notice shall fix the time and place for the hearing and contain a statement regarding the proposed changes and regulations or restrictions or in the boundary or classification of any zone or district.
 3. **Conduct of Hearing.** The hearing shall be conducted and a record of the proceedings shall be preserved in such manner and according to such procedures as the Planning Commission may from time to time prescribe by rule. Any interested person or party may appear and be heard at the hearing in person, by agent or by attorney. The Planning Commission may request a report on any proposed amendment from any governmental official or agency, or any other person, firm or corporation. If such a report is made, a copy thereof shall be made available to the applicant and any other interested persons and shall be available for review in the offices of the Secretary, Leavenworth City Planning Commission at least three business days before the date set for the public hearing.
 4. **Recommendations.** Upon the conclusion of the public hearing, the Planning Commission shall prepare and adopt its recommendations in the form of a proposed Development Regulation and shall submit it with a record of the hearing to the City Commission.
 5. **Action by the City Commission.** When the Planning Commission submits a recommendation of approval or disapproval of such amendment and the reasons therefore, the City Commission may:
 - a. **Adopt:** Adopt such recommendation by ordinance,
 - b. **Override:** Override the Planning Commission's recommendation by a two-thirds majority vote of the membership of the City Commission, or
 - c. **Return:** Return such recommendation to the Planning Commission with a statement specifying the basis for the City Commission's failure to approve or

disapprove. If the City Commission returns the Planning Commission's recommendation, the Planning Commission after considering the same may resubmit its original recommendation giving the reasons therefore or submit new and amended recommendations. Upon the receipt of such recommendation, the City Commission by a simple majority thereof may adopt or may revise or amend and adopt such recommendation by ordinance or it need take no further action thereon. If the Planning Commission fails to deliver its recommendation to the City Commission following the Planning Commission's next regular meeting after receipt of the City Commission's report, the City Commission shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.

6. *Publication.* If the City Commission approves an application, it shall adopt an ordinance to that effect, but the ordinance shall not become effective until its publication in the official newspaper.

2.02 Platting

- A. **Applicability:** Plat applications are required to establish or alter the legal boundaries of property, and may be the owners or agents of any property affected.
- B. **Platting Procedures:** Applications for platting shall be proposed on forms established by the Director of the Planning Department and filed with the City Clerk. Applications shall be processed according to the following specific procedures:
1. *Types of Plats.* Plat applications are classified and processed as one of the following types:
 - a. Administrative Plats, which are routine applications for lot splits or lot combinations that do not alter development patterns or impact public services; or
 - b. Minor Subdivisions, which are platting of five or fewer new lots, including any remainder parcel, that do not alter development patterns or impact public services; or
 - c. Major Subdivisions, which larger subdivisions are with new ownership and development patterns that impact public services.
 2. *Pre-application Conference.* Prior to the filing of any plat, the applicant shall (preferably with 2 copies of a rough sketch plan of the proposed subdivision) contact the City staff to determine:
 - a. Classification of the plat.
 - b. Procedure for filing plats.
 - c. Availability of City sewers and water, and other major utilities, including a letter or similar proof of availability from any utility.
 - d. Comprehensive Land Use Plan requirements for major streets, land use, parks, schools and public open spaces.
 - e. Zoning requirements for the property in question and adjacent property.
 - f. Special setback requirements for arterial, collector and local streets.

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3. *Administrative Plat.* Administrative plats shall be processed according to the following criteria and procedures.
- a. **Criteria.** An application may be classified as an administrative plat if the Director determines that all of the following are met. Any application not classified as an administrative plat shall be processed as a minor or major subdivision.
 - (1) No new street or alley right-of-way, or other public dedication is needed.
 - (2) No significant increase in service requirements (utilities, schools, traffic control, streets, etc.), or the ability to maintain existing service levels will result.
 - (3) For a lot split, involves a single split of one lot resulting in two separate lots, or for a lot combination involves the combining of two separate lots into one lot.
 - (4) All lots meet the legal standards of the subdivision regulations and applicable zoning districts.
 - (5) The lot patterns are consistent with the surrounding area. In determining consistency, the size and dimension of lots previously developed, the layout and design of existing subdivisions and rights of way, and the degree of deviation from previous development shall be considered.
 - (6) No other significant issues exist with potential development enabled by the plat that could impact planning policies, development regulations or adjacent property owners.
 - (7) All property involved must have been previously platted.
 - b. **Filing Requirement.** An administrative plat shall include all applicable information required for final plats.
 - c. **Review and Approval.** Upon review by the Director, Development Review Committee, or any affected departments or agencies, and within 60 days of filing, the Director shall approve any administrative plats that meet all requirements of these regulations, or deny the application and recommend any further processing as a major subdivision.
 - d. **Effect of Decision.** Approval of an administrative plat requires the applicant to record the plat with the Leavenworth Register of Deeds. Denial or recommendation of major subdivision shall be processed according to major subdivision review requirements.
 - e. **The Administrative Plat shall be recorded with the Register of Deeds within 18 months of approval by the Director. Plats which are not recorded within said time period shall be deemed null and void.**
4. *Minor Subdivision.* Minor subdivisions shall be processed according to the following criteria and procedures.

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- a. Criteria. An application may be classified as minor subdivision if the Director determines that all of the following are met. Any application not classified as a minor subdivision shall be processed as a major subdivision.
- (1) No new street or alley right-of-way, or other public dedication is needed.
 - (2) No significant increase in service requirements (utilities, schools, traffic control, streets, etc.), or the ability to maintain existing service levels will result.
 - (3) The application results in five or fewer new lots, including any remainder parcel.
 - (4) All lots meet the legal standards of the subdivision regulations and applicable zoning districts.
 - (5) The lot patterns are consistent with the surrounding area. In determining consistency, the size and dimension of lots previously developed, the layout and design of existing subdivisions and rights of way, and the degree of deviation from previous development shall be considered.
 - (6) No other significant issues exist with potential development enabled by the plat that could impact planning policies, development regulations or adjacent property owners.
- b. Filing Requirement. A minor subdivision shall include all applicable information required for final plats.
- c. Review and Approval. Within 60 days after submission of a plat, the Planning Commission shall approve, disapprove, conditionally approve, or with approval of the applicant, table the plat. If the Planning Commission approves the plat, the plat shall have house numbers assigned and shall be recorded with the office of the Leavenworth County Register of Deeds.
- d. The plat shall be recorded with the Register of Deeds within 18 months of approval by the Planning Commission. Plats which are not recorded within said time period shall be deemed null and void.
5. *Major Subdivision*
- a. Preliminary Plat. A preliminary plat shall be processed according to the following criteria and procedures.
- (1) Development Review Committee. At least seven days prior to the Planning Commission review, the Development Review committee shall review the preliminary plat and submit their recommendation to the Planning Commission.
 - (2) Planning Commission Review. Within 60 days after the submission of a preliminary plat, the Planning Commission shall approve, disapprove or, with the approval of the applicant, table the plat. Action by the Planning Commission shall be conveyed to the applicant in writing within ten days

after the official Planning Commission meeting at which the plat was considered. In case the plat is disapproved, the applicant shall be notified of the reason for such action and what requirements shall be necessary to meet the approval of the Planning Commission.

- (3) **Effect of Decision.** The approval of the preliminary plat does not constitute an acceptance of the subdivision, but is deemed an authorization to proceed with the preparation of the final plat. If the Planning Commission rejects or withholds approval of a preliminary plat, the applicant may request that said plat be submitted to the City Commission and the Planning Commission shall forward the proposed plat, together with their report, stating the reason or reasons for the action taken. The City Commission may make such finding and determinations as are deemed proper.
 - (4) **Effective Date.** The approval of the preliminary plat shall be effective for one year.
- b. **Final Plat.** After approval of the Preliminary Plat, the applicant may submit a Final Plat for all or portions of the preliminary plat area.
- (1) **Planning Commission.** Within 60 days after submission of a final plat, the Planning Commission shall approve, disapprove, conditionally approve, or with approval of the applicant, table the final plat. If the Planning Commission approves or conditionally approves the final plat, it shall be forwarded to the City Commission with a recommendation that they accept dedication of easements and rights-of-way.
 - (2) **Dedication of Land for Public Purposes.** The City Commission shall approve or disapprove the dedication of land for public purposes within 30 days after the first meeting of the City Commission following the date of the submission of the Planning Commission action to the Clerk. The City Commission may defer action for an additional 30 days to allow modifications to comply with requirements established by the City Commission. If the City Commission defers or disapproves such dedication, it shall advise the Planning Commission of the reasons therefore.
 - (3) **Recording.** If the City Commission accepts the proposed easements and rights-of-way, the final plat shall have house numbers assigned and shall be recorded with the office of the Leavenworth County Register of Deeds.
 - (4) **Effective Date.** Final plats shall be recorded with the Register of Deeds within 18 months following City Commission approval of land dedicated to public purposes. Final plats which are not recorded within said time period shall be deemed null and void

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- c. Disposition of Final Plats. After the plat has been recorded, the Secretary of the Planning Commission is responsible for distribution of the Final Plat as follows:
- (1) Original Mylar and one print to Register of Deeds, Reproducible Mylar and one print to Director of Public Works.

C. Improvement Procedures.

1. *General.* After the approval, but prior to the recording of the final plat, the applicant may do the grading and any drainage work that is required, all according to plans approved by the Director of Public Works. Prior to the issuance of building permits, all street paving, sanitary sewer, storm drainage, and utility lines must be installed in accordance with the most recent version of the Engineering and Public Works Department's Infrastructure Design and Construction Manual and plans approved by the appropriate utility company.
2. *Plans and Specifications.* Upon the approval of the Final Plat, the applicant shall have a licensed professional engineer prepare engineering drawings for proposed required improvements which will be constructed by the developer containing information and details required by the Infrastructure Design and Construction Manual or Public Works Department standards. The Director of Public Works shall review all engineering drawings in order to determine whether such drawings are consistent with the approved Final Plat and comply with their design standards.
3. *Construction of Improvements.* No improvements shall be constructed nor shall any work preliminary thereto be done until such time as a Final Plat and the engineering drawings accompanying it have been approved and there has been compliance with all of the requirements relating to an agreement, bond or deposit specified in these regulations. The developer may install 6" x 5' sidewalks in conjunction with the street paving and forgo the required sidewalk bond.
4. *Inspections.* All improvements constructed or erected shall be subject to inspection by the City or its designated representative responsible for setting and enforcing the applicable design and construction standards of the required improvement. The cost attributable to all inspections required by this regulation shall be charged to and paid by the applicant. Before any required inspections take place, the applicant may be required to post a deposit with the City Clerk to cover the cost of such inspections. Onsite inspections may be conducted at any times and work may be terminated if it does not comply with standards of final drawings.
5. *Final Inspection.* Upon completion of all improvements within the area covered by the Final Plat, the applicant shall notify the Director of Public Works who shall conduct a final inspection of all improvements installed. If the final inspection indicates that there are any defects or deficiencies in any the improvements as installed, or if there are any deviations in the improvements as installed from the final engineering plans and specifications, he shall notify the applicant in writing of such defects, deficiencies, or deviations, and the applicant shall, at his sole cost and expense, correct the defects or deviations. When the defects, deficiencies, or deviations have been corrected, the applicant shall notify the official that the improvements are ready for final re-inspection.

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6. *Acceptance.* Upon receipt by the City Commission of the certificate of the Director of Public Works that all improvements have been installed in conformance with the approved engineering drawings, and with the requirements of these regulations, and all other applicable statutes, ordinances and regulations, the City Commission and/or such appropriate utility shall thereupon, by letter or motion, formally accept such improvements. The improvements shall become the property of the City Commission or appropriate utility company involved.

2.03 Zoning Change

- A. **Applicability:** Zoning changes to specific property may be initiated by a City Commissioner, the City Commission, the Planning Commission, or the owners or agents of any property affected.
- B. **Zone Change Procedure:** Applications for a zoning change shall be proposed on forms established by the Director of the Planning Department and filed with the City Clerk. Applications shall be processed according to the following specific procedures:
1. *Certified Ownership List.* The application shall be accompanied by an ownership list certified by an attorney or a title company or a list and map prepared by the Leavenworth County GIS Department listing the legal description and name and address of the owners of record of all property located within 200 feet of the property proposed to be rezoned if within the incorporated limits of the city and if rezoning of property located adjacent to or outside the city limits, the area of notification is extended to 1,000 feet in the unincorporated area.
 2. *Public Hearing.* The Planning Commission shall hold a public hearing on each proposed amendment. The Planning Commission shall select a reasonable hour and place for the public hearing, but it shall hold the hearing within 60 days from the date on which the proposed amendment is filed. An applicant for an amendment may waive the requirement that such hearing be held within 60 days.
 3. *Notice.* Public notice of a hearing on a proposed amendment shall be published once in the official city newspaper at least 20 days prior to the date of the hearing. The notice shall fix the time and place for the hearing and contain a statement regarding the proposed changes and regulations or restrictions or in the boundary or classification of any zone or district, and the property shall be designated by legal description or a general description sufficient to identify the property under consideration. In addition to publication notice, written notice of the proposed zoning change shall be mailed at least 20 days before the hearing to all owners of record of lands located within at least 200 feet of the area proposed to be rezoned within the city. If the area proposed to be rezoned is adjacent to or outside the city limits, the area of notification of the city's action shall be extended to 1,000 feet in the unincorporated area. .
 4. *Conduct of Hearing.* The hearing shall be conducted and a record of the proceedings shall be preserved in such manner and according to such procedures as the Planning Commission may from time to time prescribe by rule. Any interested person or party may appear and be heard at the hearing in person, by agent or by attorney. The Planning

Commission may request a report on any proposed amendment from any governmental official or agency, or any other person, firm or corporation. If such a report is made, a copy thereof shall be made available to the applicant and any other interested persons and shall be available for review in the offices of the Secretary, Leavenworth City Planning Commission at least three business days before the date set for the public hearing.

5. *Conditions of Determination.* Whenever the Planning Commission or City Commission takes action on an application for a zoning change the Planning Commission and City Commission shall consider the following factors:
 - a. The character of the neighborhood;
 - b. The zoning and use of properties nearby;
 - c. The suitability of the subject property for the uses to which it has been restricted;
 - d. The extent to which removal of the restrictions will detrimentally affect nearby property;
 - e. The length of time the subject property has remained vacant as zoned;
 - f. The relative gain to economic development, public health, safety and welfare by the reduction of the value of the landowner's property as compared to the hardship imposed by such reduction upon the individual landowner;
 - g. The recommendations of permanent or professional staff;
 - h. The conformance of the requested change to the adopted or recognized Comprehensive Land Use Plan being utilized by the city; and
 - i. Other factors as may be relevant to a particular proposed amendment. The factors considered in taking action on any proposed amendment shall be included in the minutes or otherwise be made part of the written record.
6. *Recommendations.* Upon the conclusion of the public hearing, the Planning Commission shall prepare and adopt its recommendations in the form of a proposed Development Regulation and shall submit it with a record of the hearing to the City Commission.
7. *Protest by Petition.* If a written protest against a proposed zoning change is filed in the office of the City Clerk within 14 days as of the date of the conclusion of the public hearing, pursuant to the publication notice, signed by the owners of record or 20% or more of any real property proposed to be rezoned, or by the owners of record of 20% or more of the total area required to be notified by this act of the proposed rezoning of a specific property, excluding streets and public ways, the ordinance adopting such amendment shall not be passed except by at least a three-fourths vote of all of the members of the City Commission.
8. *Action by the City Commission.* The City Commission shall not consider a request prior to the lapse of the 14-day protest period. When the Planning Commission submits a recommendation of approval or disapproval of such amendment and the reasons therefore, the City Commission may:
 - a. Adopt: Adopt such recommendation by ordinance,

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- b. **Override:** Override the Planning Commission's recommendation by a two-thirds majority vote of the membership of the City Commission, or
 - c. **Return:** Return such recommendation to the Planning Commission with a statement specifying the basis for the City Commission's failure to approve or disapprove. If the City Commission returns the Planning Commission's recommendation, the Planning Commission after considering the same may resubmit its original recommendation giving the reasons therefore or submit new and amended recommendations. Upon the receipt of such recommendation, the City Commission by a simple majority thereof may adopt or may revise or amend and adopt such recommendation by ordinance or it need take no further action thereon. If the Planning Commission fails to deliver its recommendation to the City Commission following the Planning Commission's next regular meeting after receipt of the City Commission's report, the City Commission shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.
9. **Publication.** If the City Commission approves an application, it shall adopt an ordinance to that effect, but the ordinance shall not become effective until its publication in the official newspaper. If the official zoning district map has been adopted by reference, the amending ordinance shall define the change or boundary as amended, shall order the official zoning district map to be changed to reflect such amendment and shall amend the section of the regulations incorporating the same and shall reincorporate such map as amended.

2.04. Special Use Permits

- A. **Applicability:** All uses identified in the zoning districts, use table or elsewhere in these regulations as a special use in any particular zoning district shall require a special use permit. Applications for special use permits may be submitted by the owners or agents of any property affected.
- B. **Special Use Permit Procedures:** Applications for a special use permit shall be proposed on forms established by the Director of the Planning Department and filed with the Clerk.
 - 1. **Certified Ownership List.** The application shall be accompanied by an ownership list certified by an attorney or a title company or a list and map prepared by the Leavenworth County GIS Department listing the legal description and name and address of the owners of record of all property located within 200 feet of the subject property if within the incorporated limits of the city and if rezoning of property located adjacent to or outside the city limits, the area of notification is extended to 1,000 feet in the unincorporated area.
 - 2. **Public Hearing.** The Planning Commission shall hold a public hearing on each proposed special use request. The Planning Commission shall select a reasonable hour and place for the public hearing, but it shall hold the hearing within 60 days from the date on which the application is filed. An applicant for a special use permit may waive the requirement that such hearing be held within 60 days.

DEVELOPMENT REGULATIONS
ARTICLE 2. APPLICATIONS & PROCEDURES

2.04 Special Use Permits

3. *Notice.* Public notice of a hearing on a special use permit shall be published once in the official city newspaper at least 20 days prior to the date of the hearing. The notice shall fix the time and place for the hearing and contain a statement regarding the proposed special use, and the property shall be designated by legal description or a general description sufficient to identify the property under consideration. In addition to publication notice, written notice of the proposed special use permit shall be mailed at least 20 days before the hearing to all owners of record of lands located within at least 200 feet of the subject property within the city. If the subject property is adjacent to or outside the city limits, the area of notification of the city's action shall be extended to 1,000 feet in the unincorporated area. .
4. *Conduct of Hearing.* The hearing shall be conducted and a record of the proceedings shall be preserved in such manner and according to such procedures as the Planning Commission may from time to time prescribe by rule. Any interested person or party may appear and be heard at the hearing in person, by agent or by attorney. The Planning Commission may request a report on any proposed amendment from any governmental official or agency, or any other person, firm or corporation. If such a report is made, a copy thereof shall be made available to the applicant and any other interested persons and shall be available for review in the offices of the Secretary, Leavenworth City Planning Commission at least three business days before the date set for the public hearing
5. *Planning Commission Recommendations.* The Planning Commission may recommend issuance of those Special Uses which are expressly authorized to be permitted in a particular zoning district or districts as found in Article 4 – Zoning Districts and Standards and Appendix A - Use Table.
6. *Protest by Petition.* If a written protest against a proposed special use permit is filed in the office of the City Clerk within 14 days as of the date of the conclusion of the public hearing, pursuant to the publication notice, signed by the owners of record of 20% or more of the total area required to be notified by this application for a special use permit, excluding streets and public ways, the ordinance adopting such amendment shall not be passed except by at least a three-fourths vote of all of the members of the City Commission.
7. *Final Approval.* The City Commission may recommend issuance of a Special Use Permit whenever it finds that:
 - a. The proposed special use complies with all applicable provisions of this ordinance.
 - b. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public
 - c. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.
 - d. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not

dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to:

- (1) The location, nature and height of buildings, structures, walls, and fences on the site, and
- (2) The nature and extent of landscaping and screening on the site.
- (3) Off-street parking and loading areas whether on the premises or auxiliary to the premises will be provided in accordance with the standards set forth in this ordinance and such areas adjoining residential uses will be located to protect such residential uses from any injurious effect.
- (4) Adequate utility, drainage, and other necessary facilities have been or will be provided.
- (5) Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.

- C. **Discontinuance or Violation of Permit Conditions:** A Special Use Permit may be granted by and continued annually by the City Commission, City of Leavenworth, Kansas. The continuation of a Special Use Permit exists with the property as long as such Special Use Permit is used in accordance with its original intended and approved purpose and the annual SUP fee is paid. Any discontinuance of more than 12 months, violation of permit conditions, or failure to pay a fee may enable the City Commission to administratively rescind a special use permit.
- D. **Revocation:** A special use permit may be revoked for cause upon the finding that the special use permit has violated any criteria of approval, changed circumstances supporting the approval or a determination that the use has become a nuisance by reason of design or operation of the use, site or buildings. Revocation shall require that the City Commission hold a public hearing with at least 21 days' notice and no more than 60 days' notice, with a certified letter being sent to the property owner and general notice to the public. Notice shall contain the date, time, place and purpose of the hearing and cite the reason for the proposed revocation.

2.05 Site Plan

- A. **Applicability:** All applications for multi-family, commercial, industrial, SUPs, PUDs and rezoning shall be accompanied by a site plan and all submissions for a building permit for any permitted use therein must be accompanied by a Site Development Plan. Single family dwellings are exempt from this requirement.
- B. **Site Plan Procedures:** Applications for a site plan shall be proposed on forms established by the Director of the Planning Department and filed with the Planning Department. Except for site plans that accompany other required approval processes, applications shall be processed according to the following specific procedures:

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1. The City Planner shall determine if submitted site plans are in accordance with these regulations and then forward all site plan submissions to the Development Review Committee along with a written opinion on the plan's merits.
 2. The Development Review Committee is responsible for final review and approval of site plans for multi-family residential, mixed-use, mobile home parks, planned unit developments, commercial or industrial developments which are in accordance with these regulations.
 3. In its review, the Development Review Committee will consult and consider the recommendation of the various departments and agencies affected by the proposed site plan.
 4. If the Development Review Committee rejects or withholds approval of the site plan the applicant may appeal the decision to the Planning Commission at its next regular meeting. The Planning Commission may recommend approval, disapproval or approval with conditions to the City Commission.
- C. **Criteria:** Site design shall ensure that all provisions of these Development Regulations and all other ordinances, Comprehensive Land Use Plan, and general plans and standards of the City of Leavenworth shall be complied with, where applicable. In determining the applicability of a site plan to the standards, and in interpreting the standards, the following criteria shall be used:
1. The proposed development shall not have any detrimental effect upon the general health, welfare, safety, and convenience of persons residing or working in the neighborhood; and shall not be detrimental or injurious to the neighborhood.
 2. The proposed development shall promote a desirable relationship of structures: to one another; to open spaces; and to the topography on the site and in the surrounding area.
 3. The height, area, setbacks, and overall mass, as well as parts of any structure (buildings, walls, signs, lighting, etc.) and landscaping shall be adequate and appropriate to the development, the neighborhood, and the community.
 4. Ingress, egress, internal traffic circulation, off-street parking facilities, loading and service areas, and pedestrian walkways shall be so designed as to promote safety and convenience.
 5. The architectural character of the proposed structure shall meet the requirements of Article 7, Design Standards.
- D. **Amendment to Site Plan:** No approved Site Plan may be modified, or expanded in ground or structural area more than 10% of the gross floor area unless the Site Plan is amended and approved in accordance with the procedures applicable to initial approval, or as otherwise approved through Minor Modifications in Section II.F. Such changes will require the applicant to resubmit the Site Plan as outlined in the preceding sections.
- E. **Effect of Decision.** All elements of the approved site plan must be executed in association with a building permit or certificate of occupancy, except that installation of landscape may be delayed
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for up to six months to allow optimal planting, and provided other adequate assurances of implementation are provided by applicant.

2.06 Minor Modifications

- A. **General.** This section sets forth the required review and approval procedures for “minor modifications,” that are minor deviations from otherwise applicable standards that may be approved by the Director. Minor modifications are to be used when the small size of the modification requested and the unlikelihood of any adverse effects on nearby properties or the neighborhood make it infeasible to seek a formal variance. Minor modifications to development standards may only be requested where no additional permit, such as conditional use or special use, is required prior to construction.
- B. **Applicability.** Requests for minor modifications must be made in writing to the Director who shall have 21 days from receipt to respond in writing. If the Director does not act on the request within 21 calendar days, the application shall be deemed denied. The Director may approve a single minor modification per development of up to a maximum of 10% from the following general development and zoning district standards:
1. Minimum lot area requirements,
 2. Setback requirements, and
 3. Quantitative development standards generally applicable throughout the Development Regulations of the City of Leavenworth, Kansas.

The Director shall have sole decision-making authority for a minor modification.

- C. **Limitations.** In no circumstance shall the Director approve a minor modification that results in:
1. Any change in required floodplain elevations;
 2. An increase in overall project density;
 3. A change in permitted uses or mix of uses;
 4. A deviation from the use-specific standards in Article 4, Zoning Districts & Standards;
 5. A change in conditions attached to the approval of any site plan or special use permit;
 6. A change to a development feature already modified through a variance or other minor modification; or
 7. Any change in the maximum area of signage.
 8. No more than two standards may be modified on any single development project;

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- D. **Criteria.** The review and approval of a minor modification is administrative and shall not require any form of notice or a public hearing prior to determination. The following criteria shall be met for a minor modification:
1. Evidence of substantial compliance with the provisions of the Comprehensive Land Use Plan, any other applicable city plans and the Development Regulations;
 2. Compatibility with surrounding land uses; and
- E. **Appeal.** Appeal of the Director's determination shall be to the Development Review Committee.
- F. **Approval Termination:** An approved minor modification terminates at the same time as the original approval. Minor modification of an approval does not extend the lapse period of the original approval.
- G. **Record of Minor Modifications and Annual Review:** The Director shall keep a record of all minor modifications that includes information about the date of the request, the location of the project, a brief description of the minor modification request, and the Director's action. The Director shall submit the minor modification log to the Planning Commission annually for review. Upon reviewing the record, the Planning Commission may determine whether changes to the Zoning & Development Ordinance of the City of Leavenworth, Kansas are necessary.

2.07 Appeals

Any person wishing to appeal a provision of this document as it has been applied to their case shall make application for appeal to the appropriate entity as listed below.

- A. Zoning Regulations. Zoning regulations shall be appealed to the Board of Zoning Appeals as specified in Article 11. Specifically this shall include:
1. Article 1. Section 1.05 Non-conformances
 2. Article 2. Section 2.05 Site Development Plans
 3. Article 4. District Regulations
 4. Article 5. Parking
 5. Article 10. Supplementary District Regulations
- B. Development Regulations. Development regulations shall be appealed to the City Commission where specified in these regulations. Specifically this shall include:
1. Article 3. Subdivision Standards
 2. Article 4. Section 4.05 Redevelopment Overlay District
 3. Article 6. Landscaping
 4. Article 9. Historic Preservation
 5. Article 8. Signs

**DEVELOPMENT REGULATIONS
ARTICLE 2. APPLICATIONS & PROCEDURES**

Summary Table:

	Pre-application Meetings		Review Body				Notice		
	Staff	Community	Staff	PC	CC	BZA	Published	Posted	Mailed
Text Amendment	<input type="checkbox"/>		R	R/H	D		■		
Rezoning	■	<input type="checkbox"/>	R	R/H	D		■	■	■
Plat, Minor	■		R	D	A				
Plat, Preliminary	■		R	D	A			■	
Plat, Final			R	R	D			■	
Site Plan	<input type="checkbox"/>		D	A/D		A			
Planned Zoning	■	■	R	R/H	D		■	■	■
Special Use Permit	■		R	R/H	D		■		■
Minor Modification	■		D	A					
Other Appeals (specified in these regulations)	Dependent on specific applicable code sections								
Variance	<input type="checkbox"/>		R			D	■		■
Appeal of Administrative Decision						D	■		■

R = Review/Recommendation

D = Decision

A = Appeal

H = Public Hearing

■ = Required

□ = Optional or Recommended

PC = Planning Commission

CC = City Commission

BZA = Board of Zoning Appeals

ARTICLE 3. SUBDIVISION STANDARDS

3.01. Purpose and Intent

The purpose and intent of this Article is to provide for the proper location and width of streets, building lines, open spaces, safety and recreation facilities, utilities, and drainage, and for the avoidance of congestion of population through requirements of minimum lot width, depth and area and the compatibility of design; to require and fix the extent to which and the manner in which streets shall be graded and improved, and water, sewer, drainage, and other utility mains and piping or connections or other physical improvements shall be installed; and to provide for and secure the actual construction of such physical improvements.

3.02. Applicability and Exemptions

- A. **General Applicability.** The standards in this Article apply to anyone platting property, or to any application that involves or requires the construction or alteration of public improvements as a result of development.
- B. **Exemptions.** The standards in this Article shall not apply in the following instances:
1. The division of land into parcels or tracts of not more than five acres and not involving any new streets or easements of access and not affecting major streets.
 2. A change in the boundary between adjoining lands which does not create an additional lot or a nonconforming lot or further the nonconformance of any lot or any structure on that lot.
 3. Land used for street or railroad right-of-way, drainage easement or other public utilities subject to local, state or federal regulations, where no new street or easement of access is involved.
 4. The re-subdivision of land to be used for industrial purposes only.
 5. Any transfer by operation of law.
- C. **Restrictive Covenants.** The Planning Commission shall have the right to confer with the applicant regarding the type and character of development that will be permitted in the subdivision and may require that certain minimum regulations regarding this matter be incorporated in the restrictive covenants. Such regulations shall be intended to protect the character and value of the surrounding development of the property which is being subdivided.
- D. **Planned Unit Development.** In accordance with Planned Unit Development District regulations of the Development Regulations, the preliminary development plan may be used as the preliminary plat. Approval of the preliminary development plan by the City Commission signifies concurrent approval of the preliminary plat, subject to any requirements made as a condition of this approval.

3.03 Minimum Design Standards

The design of the subdivision shall provide for efficient traffic flow, proper mixing of land uses, and a logical link between surrounding, existing development, and the proposed layout. The Comprehensive Land Use Plan should be used as a guide in determining if the design of the proposed subdivision is proper. The Planning Commission shall have the authority to deny a plat or request redesign, if, in its opinion, the layout is not the most suitable for the site.

A. **Blocks:**

1. *Length:* Intersecting streets (which determine block length) shall be provided at such intervals as to serve cross traffic adequately and to meet existing streets in the neighborhood. In residential districts, where no existing plats are recorded, the blocks shall not exceed 1,320 feet in length, except that a greater length may be permitted where topography or other conditions justify a departure from this maximum. In blocks longer than 800 feet, pedestrian ways and/or easements through the block may be required near the center of the block. Such pedestrian ways or easements shall have a minimum width of ten feet.
2. *Width:* In residential development, the block width shall normally be sufficient to allow two tiers of lots of appropriate depth. In certain instances, however, a different arrangement may be required in order to provide better circulation or to protect a major circulation route. Blocks intended for business or industrial use shall be of such width and depth as may be considered most suitable for the prospective use.

B. **Streets and Alleys:** The Planning Commission shall review all plats for impacts on the urban design, transportation, and utility functions of all rights of way, including any part of the system impacted by the subdivision. According to the policies and designs in the major street plan, or other plans and policies affecting rights-of-way, public realm design, and public facilities, the Planning Commission shall have the right to restrict and regulate the design and points of access to all property from the public streets system. Such restriction shall be indicated on the final plat.

1. *Relationship to Adjoining Street System:* The arrangement of streets in new subdivisions shall provide for the continuation of the principal existing streets in adjoining additions (or their proper projection where adjoining property is not subdivided) insofar as they may be necessary for public requirements. The width of such streets in new subdivisions shall be not less than the minimum street widths established herein. Alleys, when required, and street arrangement must cause no hardship to owners of adjoining property when they plat their land and seek to provide for convenient access to it. Whenever there exists a dedicated or platted half street or alley adjacent to the tract to be subdivided, the other half of the street or alley shall be platted and dedicated as a public way.
2. *Street Name:* Streets that are obviously in alignment with other already existing and named streets shall bear the name of the existing streets. Street names should not be similar to already platted street names. All street names shall be assigned by the property owner subject to the final approval by the Planning Commission in their review of the plat. House numbers shall be assigned by the Director of Public Works.

DEVELOPMENT REGULATIONS
ARTICLE 3. SUBDIVISION STANDARDS

3.03 Minimum Design Standards

3. *Local Streets:* Local streets shall be so designed to discourage through or non-local traffic. Local streets should not intersect arterial streets. If two local streets do not line up, they shall be offset at least 125 feet.
4. *Cul-de-sacs:* An adequate turnaround of not less than a 100-foot diameter right-of-way shall be provided at the closed end of a dead-end local street longer than one lot in length. Such local street segment shall not exceed 800 feet in length from the intersection of a cross street to the juncture with the cul-de-sac.
5. *Right Angle Intersections:* Under normal conditions, streets shall be laid out to intersect, as nearly as possible, at right angles. Where topography or other conditions justify a variation from the right angle intersection, the minimum angle shall be 60 degrees.
6. *Streets Adjacent to a Railroad Right-of-Way, Limited Access Freeway, Principal Highway, or Arterial Street:* Where lots front or side, but do not back on railroad rights-of-way, limited access freeways, principal highways, or arterial streets, a marginal access street or frontage road may be required adjacent to the boundary of such rights-of-way. The distance from rights-of-way shall be determined, with consideration to minimum distance required for approach connections to future grade separated intersections.
7. *Half-Streets:* Half-streets shall be avoided, except for arterial streets and collector streets where applicable, or where they are essential to the reasonable development of the subdivision in conformity with the other requirements of these regulations; or, when the Planning Commission finds that it will be practicable to require the dedication of the other half of the street when the adjoining property is subdivided. Whenever a half-street or portion thereof is existing and adjacent to a tract to be subdivided, the other half of the street shall be based on minimum requirements as set forth in this Article and the Engineering and Public Works Department's Infrastructure Design and Construction Manual and shall be platted within such tract.
8. *Alleys:* Alleys may be required in commercial, industrial, and residential areas. Dead-end alleys shall be avoided, wherever possible, but if unavoidable, such alleys shall be provided with adequate turnaround facilities at the dead-end. In residential areas, alleys of adjoining subdivisions will not be closed or shut-off by failing to provide alleys in the proposed subdivision.
9. *Minimum Requirements:* The right-of-way grades and widths for streets and alleys, shall not be less than the minimum for each classification as follows:

Table 3-01: Required Road Rights of Way and Desirable Grades		
	Minimum Right-of-Way Width	Desirable Grade
Local Streets:		
Residential	60 feet	10%
Industrial & Commercial	80 feet	6%
Cul-De-Sacs	100 feet diameter	
Marginal Access Streets or Frontage Roads:		
Two-Way	50 Feet	10%
One-Way	50 Feet	10%
Alleys	20 Feet	10%

DEVELOPMENT REGULATIONS
ARTICLE 3. SUBDIVISION STANDARDS

3.03 Minimum Design Standards

Pedestrian Ways	10 feet	NA
When existing or anticipated traffic or arterial and collector streets warrant greater widths of rights-of-way, the additional width shall be dedicated. The minimum gradient on a street shall be 1.0%.		

12. *Street Alignment:* Minimum horizontal and vertical alignment on all streets, except in unusual cases, shall be as follows:
 - a. Minimum Horizontal-Radii at the centerline:
 - (1) Local Streets 230 Feet
 - b. Minimum Sight Distance on Vertical Curves:
 - (1) Local Streets 200 Feet
13. *Street Geometry:* On streets with reverse curves, a reasonable tangent shall be provided between curves to permit a smooth flow of traffic.
14. *Street Layout:* Proposed streets shall conform to topography as nearly as possible to reduce drainage problems and grades.
15. *Intersecting Streets:* Off-center intersecting streets shall be at least 125 feet apart measured center to center.
16. *Street Elevation:* All streets shall be constructed at least at the 100-year flood elevation, or higher.

C. **Lots Design:**

1. Minimum lot width shall be measured at the building setback line.
2. Minimum lot depth shall be 100 feet. (Said measurement shall be made through the center of the lot.)
3. Minimum lot area shall be subject to the requirements of the zoning district in which the subdivision is located and the minimum design standards of this regulation. The more restrictive of the regulations shall govern.
4. All side lot lines shall bear 60 to 90 degrees from the street right-of-way line on a straight street or from the tangent of a curved street except where made necessary to be otherwise by existing or proposed utility lines.
5. Front building or setback lines shall be shown on the final plat for all lots in the subdivision and shall not be less than the setbacks required by the Zoning District or any other regulations adopted by the City Commission; the most restrictive setback requirement shall govern.

DEVELOPMENT REGULATIONS
ARTICLE 3. SUBDIVISION STANDARDS

3.03 Minimum Design Standards

6. Double frontage lots shall be avoided unless, in the opinion of the Planning Commission, a variation to this rule will give better street alignment and lot arrangement.
 7. Every lot shall abut on a public street improved to City standards other than an alley except in a Planned Unit Development where approved private streets may be used as access.
 8. The subdivision or re-subdivision of lots shall not be permitted where said subdivision or re-subdivision places an existing permanent structure in violation of the requirements of the Zoning District or the minimum design standards of these regulations.
 9. Where possible, residential lots shall not face on arterial streets. The number of lots facing on collector streets shall be kept to a minimum in each subdivision. The street pattern shall be designed so that the side lines of lots abut collector streets wherever land shapes and topography permit.
 10. If the proposed subdivision is not served with either a public water supply or a public sewer system and the developer will be using a private water supply with an approved private sewage disposal system, the applicant shall submit his preliminary plat on the basis of lot sizes that meet the requirements of the City-County Health Department, or other authorized agency who shall secure percolation tests and submit a recommendation to the Planning Commission. The plat will be so proportioned as to permit future re-platting consistent with good subdivision design.
 11. The location and size of easements may be adjusted as required in the adopted infrastructure design manual
- D. **Easements.** Where alleys are not provided, permanent easements of not less than 10 feet in width alongside property lines and 10 feet in width along rear property lines, where necessary, for utility poles, wires, conduits, underground conductors, storm and sanitary sewers, gas, water and heat mains, and other public utilities shall be provided. These easements shall provide for a continuous right-of-way. Where the utility company or agency has the need for a wider easement than required above for a specific location, this easement shall be shown on the plat. Permanent easements shall not be obstructed by structures, retaining walls, or trees. A property owner may install fences and landscape the easement with grass and shrubs at their own risk. A 12-foot temporary construction easement shall be provided on each side of all lot lines for initial construction of water, sewer, and other utility lines.
- E. **Drainage Easements.** If a subdivision is traversed by a watercourse, drainage right-of-way shall be provided. Such easement or right-of-way shall conform substantially to the lines of such watercourse and shall be of such width or construction, or both, as may be necessary to provide adequate storm water drainage and for access for maintenance thereof. Parallel streets or parkways may be required in connection therewith. Applicant shall have an engineer's study prepared and report to the Planning Commission as to the required width of such easement. Such study and report shall be based on the 100-year flood.

F. ***Flooding.***

1. Subdivision proposals greater than five acres or 50 lots, whichever is lesser, require the following information:
 - a. Contour/grading plan.
 - b. Location of Floodway and Floodway Fringe boundaries.
 - c. Elevation of 100-year flood.
 - d. Location of lowest floor elevation of proposed structure including basement floor.
3. Adequate drainage shall be provided to reduce exposure to flood hazards.
4. All public utilities and facilities shall be located to minimize or eliminate flood damage.
5. All proposed development shall be consistent with the need to minimize flood damage and meet the floodplain management standards adopted by the City.

3.04 Required Improvements

The improvements required herein shall apply to any final plat approved by the City Commission subsequent to the passage of these regulations. The applicant shall install, or provide for the installation of these following improvements:

- A. ***Streets:*** The applicant shall provide for the installation of pavement and curb and gutter on all streets. No grading or other construction shall take place within a street right-of-way until the construction plans have been approved by the Director of Public Works. All street paving shall be located in the center of the right-of-way. All street construction shall conform to the specifications of the City and compliance therewith shall be confirmed by the Director of Public Works prior to release of surety by the City Commission.
- B. ***Walks:*** Sidewalks shall be installed on at least one side of all residential streets upon which houses face, and sidewalks shall be required on both sides of the street in a commercial district. Sidewalks may be deleted from the turn-around area on a cul-de-sac in a residential area. All sidewalks shall be not less than five feet in width, of Portland cement concrete and shall comply with the specifications of the City. Sidewalks shall be located in the platted street right-of-way, four feet from the curb. Walks shall also be installed in any pedestrian easements as may be required by the Planning Commission.
- C. ***Storm Drainage:*** The applicant shall install culverts, storm sewers, riprap slopes, stabilized ditches, and other improvements to adequately handle storm water. All improvements shall comply with the minimum standards of the City and shall be approved by the Director of Public Works prior to construction.
- D. ***Utilities:*** The applicant shall be responsible to provide for and pay the full cost of the proper installation and connection of all utilities, including sanitary sewers, connection to approved

treatment facilities, water supply, natural gas, electricity, and telephone service. All utilities shall be installed according to the specifications of the controlling utility company or public agency.

1. *Waterlines:* The applicant shall connect with such water main and provide a water connection for each line in accordance with the Water Board's standard procedure and supervision. Fire hydrants shall be provided as an integral part of the water supply system on a minimum of a six-inch waterline. Location of fire hydrants to serve the platted area will be determined by the Fire Chief in review of the Preliminary Plat.
2. *Sanitary Sewers:* Where a serviceable public sanitary sewer line with sufficient capacity is within 500 feet the applicant shall connect or provide for the connection with such sanitary sewer, and shall provide within the subdivision the sanitary sewer system required to make the sewer accessible to each lot in the subdivision. Sewer system plans, after being approved by the Director of Public Works shall be submitted to the state Board of Health for final approval, and construction shall be performed by a qualified contractor, with final approval by the Director of Public Works. Where sanitary sewers are not available, other facilities, as approved by the Kansas State Board of Health, must be provided for the adequate disposal of sanitary wastes.
3. *Permanent Monuments:* Permanent monuments shall be placed at all lot and block corners, angle points, point of curve in streets and at intermediate points as required after improvements are installed and prior to the final acceptance of the improvements by the City. Said permanent monuments shall be 1/2 inch iron core bars or pipe, two feet long and shall be set with top of monument flush with existing ground line. A permanent concrete monument, four-inch by four-inch by two-feet in depth, shall be placed at one subdivision corner (preferably the legal description point of beginning) set with an identification plate.

E. *Exceptions for Existing Improvements*

1. Where the proposed subdivision is a re-subdivision or concerns an area presently having any or all required improvements as previously set out, and where such improvements meet the requirements of this Section and are in good condition as determined by the Director of Public Works, no further provision need be made by the applicants to duplicate such improvements. However, where such existing improvements do not meet said requirements, the applicant shall provide for the repair, correction, or replacement of such improvements so that all final improvements will then meet City standards and specifications.
2. Where the proposed subdivision is a re-subdivision or concerns an area presently abutting or containing any existing public street of less than the minimum required right-of-way width or roadway width, land shall be dedicated so as to provide a minimum street right-of-way width established by these regulations and/or Planning Commission policy, and the applicant of such proposed subdivision shall provide an additional roadway pavement meeting the minimum standards set by these regulations and the City. The Director of Public Works shall determine what adjustment to make where the previously mentioned widening merges with existing streets which are of smaller width at the boundary of such proposed subdivision. The City may reduce the minimum roadway

system if the extension of such roadway is already improved at each end of the roadway in the subdivision and the roadway in the subdivision to be reduced is two blocks or less in length. Lanes to be painted on such widened streets designating driving and parking areas may also be required. The foregoing provisions requiring the widening of pavement may be waived by the Planning Commission when the length of such pavement is less than one block.

3.05. Exceptions

Whenever the Planning Commission deems full conformance to provisions of these regulations is impractical or impossible due to the size, shape, topography location or condition, or such usage of land included in a subdivision plat being presented for approval or because of the layout of surrounding properties, the Planning Commission may recommend authorization of excepting these regulations in the final plat. The exceptions are separate and distinct from those exceptions relative to zoning which are granted by the Board of Zoning Appeals and other ordinances and codes effective in the City. Such recommendation shall intend that substantial justice may be done and the public interest be secured. The Planning Commission recommendation for authorization of exceptions shall be made by letter of transmittal to the City Commission. In recommending such exceptions, the Planning Commission shall find the following:

- A. That there are special circumstances or conditions affecting the property such that strict application of these regulations would deprive the owner of the reasonable use of his land and is not merely the grant of a privilege;
- B. That the variances or exceptions are necessary for the reasonable and acceptable development of the property in question; and
- C. That the granting of any exception will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

ARTICLE 4. ZONING DISTRICTS & STANDARDS

4.01. Purpose

The standards set forth in this section establish the physical dimensions of each Zoning District in these Development Regulations.

4.02. Establishment of Districts & Intent

For the purpose of regulating and restricting the location and use of buildings and land for dwellings, business, industry, conservation, flood plain or other uses, the City of Leavenworth, Kansas, is divided into the following districts. The boundaries of zoning districts are indicated upon the most current "Official Zoning District Map" of the City of Leavenworth, Kansas, is made a part of this ordinance. Copies of the zoning district map are filed in the office of the City Clerk. In support of the Comprehensive Plan, each district has the specific intent statement indicated below.

- A. ***R1-25, Low Density Single Family Residential District.*** This district is intended to allow residential development at a low density. The principal land use is single-family dwelling with uses incidental or accessory thereto. The district also permits a variety of agricultural uses. There shall be only one principal structure per lot in this district.
- B. ***R1-9, Medium Density Single Family Residential District.*** This district is intended to allow medium density single-family residential development with smaller lots. There shall be only one principal structure per lot in this district.
- C. ***R1-7.5, Medium Single-Family Residential District.*** This district is intended to allow medium density single-family residential development. There shall be only one principal structure per lot in this district.
- D. ***R1-6, High Density Single Family Residential District.*** This district is intended to allow higher density residential development. There shall be only one principal structure per lot in this district.
- E. ***R-MF, Multiple Family Residential District.*** This district is intended to provide for development of multiple-family residential developments and allows a high population density. The district is residential in character and promotes a high quality environment through aesthetically oriented property development standards. This district is appropriate for many areas of the community and shall be located in accordance with the criteria established in the Leavenworth Comprehensive Land Use Plan. These districts need not be contiguous with other multiple family districts.
- F. ***R4-16, Medium Density Multiple Family Residential District.*** This district is intended to provide for development of multifamily dwellings up to four unit buildings in areas designated for medium density residential in the Comprehensive Land Use Plan on areas deemed appropriate

DEVELOPMENT REGULATIONS
ARTICLE 4. ZONING DISTRICTS & STANDARDS

4.02 Establishment of Districts & Intent

and compatible based upon the existing development pattern. These districts do not need to be contiguous with other multiple family districts.

- G. **RMX, Residential Mixed Use.** The RMX district is intended to provide for high-density, multi-family residential dwellings along with a mix of appropriate neighborhood-serving commercial, civic, and other uses. This district allows for single-family detached homes, townhomes, duplexes, triplexes, and apartments. Commercial uses may be included in some residential structures pursuant to the appropriate design standards, or may be permitted as stand-alone structures. This district implements the North Neighborhood area as identified in the 2010 Northeast and Downtown Leavenworth Redevelopment Plan. There shall be only one principal structure per lot in this district.
- H. **MP, Mobile/Manufactured Home Park District.** The purpose of this district is to provide low-density mobile/manufactured home park developments, which are compatible with the character of the surrounding neighborhood in which they are located. Mobile/manufactured home parks are considered as residential uses and should be located in areas where services and amenities are available such as those found in conventional residential areas. Mobile homes may be on leased spaces and may be permitted to be placed on permanent foundations.
- I. **NBD, Neighborhood Business District.** This district is intended to provide a center for convenience shopping in a residential neighborhood. This district provides for retail and service establishments, which supply commodities or perform services to meet the daily needs of the neighborhood, and shall be in locations where analysis of residential population demonstrates that such facilities are justified.
- J. **OBD, Office Business District.** The intent of this district is to allow office facilities for business and professional service uses. Density and intensity of use may be considered moderate and located in areas where analysis of residential consideration demonstrates that such facilities are justified (i.e., traffic, school, pedestrians, can be safely and efficiently accommodated.)
- K. **CBD, Central Business District.** The purpose of this district is to provide locations for a variety of commercial retail and service activities and wholesale and storage uses normally found in the core area of the city. These uses must be compatible to a dense commercially developed area and may serve local community or regional needs.
- L. **GBD, General Business District.** The purpose of this district is to provide locations for a variety of commercial, retail, and service activities serving the entire community but primarily include activities, which require large land areas or offer service to the motoring public.
- M. **I-1, Light Industrial District.** This district is to provide locations for a variety of less intense industrial, warehousing, and wholesale distribution uses. Commercial uses permitted in this district are generally those which serve the convenience of industrial establishments and their employees or those conducted in conjunction with manufacturing or wholesaling operations or those commercial uses requiring large land areas.
- N. **I-2, Heavy Industrial District.** The purpose of this district is to provide locations for basic or primary industries and related industrial activities. Many of these industries characteristically

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ARTICLE 4. ZONING DISTRICTS & STANDARDS

4.02 Establishment of Districts & Intent

store bulk quantities of raw or scrap materials for processing to semi-finished or finished products. Commercial uses permitted in this district are generally those which serve the convenience of industrial establishments and their employees and those conducted in conjunction with a manufacturing or wholesaling operation or those commercial uses requiring large land areas.

- O. **ROD, Redevelopment Overlay District.** The purpose of the Redevelopment Overlay District (“ROD”) is to facilitate the development of property in the downtown (Central Business District) and northeast Leavenworth in accordance with the 2010 Northeast and Downtown Leavenworth Redevelopment Plan (“Redevelopment Plan”) with the highest possible levels of community and building design consistent with the healthy economic development and redevelopment of the plan area. The Redevelopment Overlay District includes three distinct subareas as identified below.

1. Central Business District Subdistrict (CBD): The Central Business District subdistrict includes areas A, B, C, and D of Figure 4-01.
2. North Neighborhood Subdistrict (NN): The North Neighborhood subdistrict is area E of Figure 4-01 .
3. North Gateway Subdistrict (NG): The North Gateway subdistrict is area F of Figure 4-01.
4. Arterials that form the boundaries of any of these districts shall be subject to the ROD standards on both sides of the arterial for the length of the boundary.

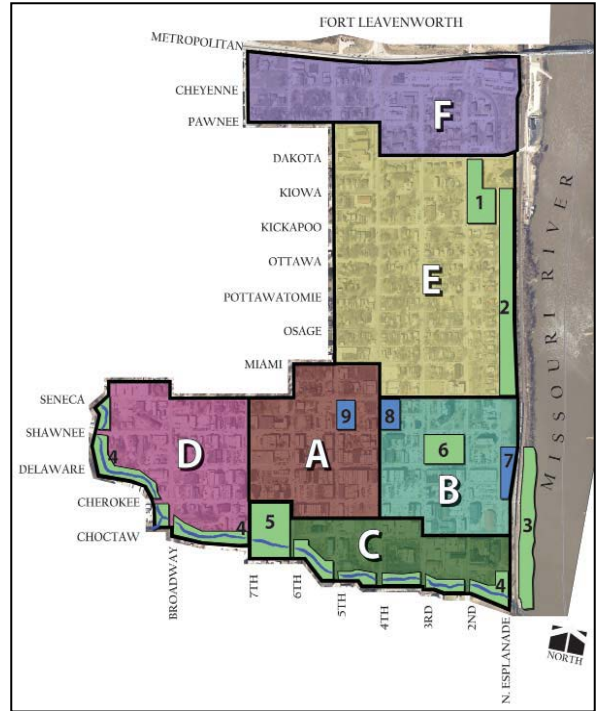


Figure 4-01: Redevelopment District

DEVELOPMENT REGULATIONS
ARTICLE 4. ZONING DISTRICTS & STANDARDS

4.04 Property Development Standards

4.03. Property Development Standards

A. **Dimension Table.** Lot and building dimension standards for zoning districts shall be according to Table 4-01.

Table 4-01: Zoning District Dimension Standards								
	Lot Standards			Minimum Setbacks				Building Height
	Min. Size	Min. Width	Max. Coverage	Front	Interior Side	Corner Side	Rear	
R1-25	25,000 s.f.[1]	160'	50%	25'	10'	25'	25'	35'
R1-9	9,000 s.f.	75'	50%	25'	6'	25'	25'	35'
R1-7.5	7,500 s.f.	75'	50%	25'	6'	15'	10'	35'
R1-6	6,000 s.f.	48'	50%	25'	6'	25'	25'	35'
R-MF	6,000 s.f. [2]	48' (1 to 2 units) 72' (3 units) 96' (4+ units)	50%	25'	6' (1-story) 10' (2-story) 15' (3-story)	25'	25'	40'
R4-16	6,000 s.f. [3]	48' (1 to 2 units) 96' (3 -4+ units)	50%	25'	6' (1-story) 10' (2-story) 15' (3-story)	25'	25'	40'
RMX	See table 4-2							
MP	10 acres	300'	50%	25'	6'	25'	25'	35'
NBD	6,000 s.f.	48'	50%	25'	6' (1-story) 10' (2-story) 15' (3-story)	25'	25'	45'
OBD	6,000 s.f.	48'	80% [8]	25'	6' (1-story) 10' (2-story) 15' (3-story)	25'	25'	45'
CBD	2,000 s.f.	48'	100%	0' [4]	0' [4]	0' [4]	0' [4]	none
GBD	6,000 s.f.	48'	80% [8]	25'	0' [5]	25'	25'	45'
ROD	See Section 4.05							
I-1	15,000 s.f.	160'	80% [8]	30'	10' [6]	20' [6]	25'	50' or 4 stories
I-2	15,000 s.f.	160'	80% [8]	30'	10' [7]	20' [7]	25'	none

- [1] only with public water and sewer. See KDHE 4-2 and Leavenworth County Sanitary Code: minimum lot size is 2 acre without public water or sewer.
- [2] lots in the R-MF district shall have 3,000 square feet per dwelling unit.
- [3] lots in the R-4-16 district shall have 4,000 square feet per dwelling unit.
- [4] There are no yard requirements in the CBD except that a 25' setback shall be provided on any side of a lot which abuts a residential district
- [5] There are no interior side yard requirements in the GBD except that a 25' setback shall be provided on any side of a lot which abuts a residential district
- [6] In the I-1 district a 25' setback shall be provided abutting any dedicated street or residential district.
- [7] In the I-2 district a 100' setback shall be provided abutting residential district, unless the use was located and platted prior to adoption of these regulations in which case a 25' setback shall be provided. Setbacks abutting any dedicated street shall be 25'.
- [8] Maximum lot coverage requirements shall be subject to stormwater quality and quantity requirements as determined by the Public Works Department for individual projects.

B. Dimension Standards for RMX. The dimension standards for the RMX district shall be:

Table 4-02: Dimensions for the Residential Mixed-Use District								
Dwelling/ Building Type	Lot Standards			Minimum Setbacks				Building Height
	Min. Size	Min. Lot Width	Max. Lot Cov.	Front	Interior Side	Corner Side	Rear	
SF detached and duplex	2,400 sf	40'	80%	10'	0' [1]	10' [1]	10' [2]	35'
Townhouse/ multi-family, mixed-use	[3]	48'	80%	10'	0' [1]	10' [1]	10' [2]	38'
Commercial, mixed-use	[3]	n/a	80%	0'	0' [1]	10' [1]	5' [2]	38'

- [1] An RMX use abutting a residential district shall match the side yard setback standards of that district.
- [2] When abutting a public street, alley, or public right-of-way. The rear setback for RMX abutting a residential district shall be 20 feet, regardless of the location of any street, alley, or ROW.
- [3] Must meet setback requirements.

C. Yard Regulations.

1. **Front Yards.** In areas where parcels were created previous to the adoption of Subdivision Regulations in July 1966, where structures have been built observing a setback other than the setback required by the applicable Zoning District, new structures shall observe the following setback:
 - a. Front setbacks may be the average setback of all lots within 150 feet of either side of the lot, but along the same block.
 - b. If only two buildings exist within 100 feet of either side of the lot, the front setback may be the average of those buildings.

2. **Structural Projections.** Every part of a required yard shall be open to the sky unobstructed, except:
 - a. The ordinary projection of skylights, sills, belt courses, cornices, and ornamental features projecting not to exceed 12 inches
 - b. Open or lattice-enclosed fire escapes, fireproof outside stairways, and balconies opening upon fire towers projecting into a rear yard not more than five feet
 - c. The ordinary projection of chimneys and flues
 - d. The projection of roof overhangs up to four feet into any front or rear yard and two feet into any side yard. In no case may an overhang project into an easement.
 - e. An open unenclosed deck or paved terrace may project into a required rear yard for a distance not exceeding 10 feet, but no closer to the property than 15 feet in any case. A deck or paved terrace under this exception may not be more than

36 inches above grade surrounding the structure and shall be opened to the sky with no roof or wall structure (except reasonable railing).

- f. An open and unenclosed porch or stoop may project into a required front setback a distance not exceeding 10 feet, but no closer to the property line than 15 feet in any case. A porch or stoop under this exception shall be no higher than the first-floor elevation of the front entry feature, may include a single-story roof structure integrated with the materials and style of the building, but shall only include support posts or pillars and railings or two walls up to three feet, but no windows, screens or other enclosures in the front-setback encroachment.

3. *Yard Requirements for Open Land.* If a lot is, or will be, occupied by a permitted use without structures, then the minimum setback and minimum side and rear yards that would otherwise be required for the lots shall be provided and maintained unless some other provision of these regulations requires or permits a different minimum front or side or rear yard setback. The front, side, and rear yards shall not be required on lots used for garden purposes without structures, or lots used for open public recreation areas. If the permitted use is the display of new or used automobiles or other vehicles for sale that display may be allowed in the front yard setback, except the first five feet thereof.

D. Height Regulations.

1. In all districts, one additional foot of height above the specified height limitations shall be permitted for commercial or industrial buildings for each one foot of additional setback on all sides provided over the minimum requirements, if no such building exceeds one 100 feet in height.
2. Single family, two family, and multiple family dwellings in the residential districts may be increased in height by one foot for each one foot of additional setback on all sides, provided that no residential building may exceed 50 feet in height.
3. Chimneys, cooling towers, elevator hothouses, fire towers, grain elevators, monuments, stacks, stage towers, or scenery lofts, tanks, water towers, ornamental towers, and spires, church steeples, radio and television towers or necessary mechanical appurtenances, usually required to be placed above the roof level and not intended for human occupancy, may be erected to a height not to exceed 25% above the maximum height for the district in which it is located.

E. Accessory Structures.

1. No accessory buildings shall be erected in any required front or side yard, or at any other place forward of the main building line.
2. No accessory use except for permitted signs, fences, and permitted off-street parking shall be permitted in any required front or side yard.
3. All accessory buildings in the rear yard shall maintain a three-foot setback from the side and rear property lines As measured from the nearest part of the structure, including any overhangs.

4. If the accessory structure has a vehicular alley entrance the sum of the right-of-way width and the setback of the structure shall not be less than 20 feet.
5. Accessory structures located elsewhere on the lot shall maintain setbacks applicable to the principal structure.
6. All accessory buildings in residential districts shall be five feet from any primary building on the site. In all other zoning districts accessory structures and uses shall not occupy required setbacks and are not subject to size restrictions except that all other requirements of the Development Regulations must be met.
7. All accessory structures shall be constructed from material customary to detached structures.
8. In no case shall an accessory structure be constructed from materials or equipment originally designed for another use such as but not limited to packing crates or a part of a motor vehicle truck or trailer regardless if wheels, axles, etc., have been removed and the structures are placed on more permanent foundations.
9. No shipping containers may be used as accessory buildings.
10. Accessory structures which are equal to or more than 15% of the footprint of the main structure shall be architecturally compatible or complementary to the architectural style of the principal building, with similar materials, color, arrangement of massing, roof forms and other details and ornamentation.

4.04. Use Standards

- A. **Permitted and Special Uses.** Permitted and special uses for each zoning district are identified in Appendix A Use Table.
- B. **Accessory Uses.**
 1. **Principal Use Required.** Accessory uses are permitted in any zoning district in connection with any principal use which is permitted.
 2. **Accessory Uses.** Accessory Uses are a structure or use which:
 - a. Is subordinate to and serves a principal building and principal use;
 - b. Is subordinate in area, extent, or purpose of the principal use or building or building served;
 - c. Contributes to the comfort, convenience or necessity of occupants, business or industry in the principal building or principal use served;
 - d. Is located on the same lot as the principal building or principal use served; and
 - e. The total square footage of all detached structures, including second stories of any such structures, functioning as accessory use in residential districts shall be less than the square footage of the primary use on the parcel. In determining square footage of the primary use (residential), attached garages and unfinished space shall not be counted. No more than two detached accessory structures shall be allowed per building lot or parcel whichever is larger in area.

3. *Permitted Accessory Uses.* Any structure or use that complies with the terms of these Development Regulations may be allowed as an accessory use or structure (accessory structures and uses include, but are not limited to, the following list of examples); provided that in each case such structure must fit the general definition:
- a. Private garages or carports: Not to exceed the following capacity:
 - (1) For single-family residences: a garage not to exceed 900 square feet on parcels less than one acre, and 1,200 square feet on parcels one acre or larger. Detached garages require construction of driveways to provide access in conformance with the parking provisions of the code.
 - (2) For multi-family residence: two cars per dwelling unit. Not to exceed 600 square feet per unit.
 - (3) Requests for garages in excess of 900 square feet on parcels less than one acre and in excess of 1,200 square feet on parcels one acre or larger may be approved by the Board of Zoning Appeals.
 - b. Storage Buildings: A structure for storage incidental to a permitted use provided no such structure that is accessory to a residential building shall exceed 250 square feet in gross floor area.
 - c. Play Structures: A child's playhouse, including tree houses.
 - d. Pools & Courts: A private swimming pool, bathhouse, or tennis court.
 - e. Miscellaneous Yard Decor: Statuary, arbors, trellises, barbecue stoves, flagpoles, fences, walls, hedges, and solar collectors.
 - f. Shelters: Fallout and tornado shelters, provided that they shall not be used for any principal or accessory use not permitted in the zoning district.
 - g. Signs: Signs, when permitted by Article 8 – Sign Regulations.
 - h. Parking: Off-street parking and loading spaces as required by these regulations.
 - i. Recreational Vehicles, Campers, Trailers, and Boats: Storage of major recreational equipment, such as boats, boat trailers, camping trailers, converted buses or trucks, house trailers, provided such storage area is in accordance with all other requirements of these Development Regulations.
 - j. Commercial Accessories: Restaurants, drug stores, gift shops, swimming pools, tennis courts, clubs and lounges and newsstands when located in a permitted hotel, motel or office building.
 - k. Supplemental Employee Services: Employee restaurants and cafeterias when located in a permitted business or manufacturing or industrial building.
 - l. Office Space: Offices for permitted business and industrial uses when the office is located on the same site as the business or industry to which it is an accessory.
 - m. Retail Sales: Retail sales in conjunction with permitted industrial uses when located on the same site as the industrial use.
 - n. Indoor Retail Storage: The storage of retail merchandise when located within the same building as the principal retail business.
 - o. Auto Sales: The retail sale of automobile parts and used automobiles on a tract of land not to exceed one acre in area when located on the same site as and in conjunction with an automobile race track.

- p. Amateur Radio Towers: Amateur radio towers and antennae shall not exceed the height of 50 feet in residential districts. A tower and antennae must maintain a setback of one foot per one foot of height from all property lines and must be located in a side or rear yard of the principal structure and the owner of the tower and property maintains and shows proof of a current federal license as an amateur radio operator. The construction of the tower must follow the manufacturer's installation specifications.
 - q. Agriculture Buildings: In residential districts an agricultural accessory building not to exceed two percent of the total square footage of the lot on which is it located on parcels two acres or larger, up to a maximum of 3,400 square feet.
 - r. Apiaries: In residential districts, bee hives or boxes may not be kept within 50 feet of any dwelling (except the dwelling of the owner of such bees), or within 15 feet of any lot line, sidewalk, alley, or other right-of-way. Notwithstanding, bees may be kept within 15 feet of a lot line, sidewalk, alley, or other right-of-way when a barrier at least 6 feet high is placed between the bee hives or boxes and the lot line, alley, or right-of-way which adequately impairs bee flight. No more than 3 hives shall be placed or kept in a location which is less than 200 feet from a house or other building used for residential purposes other than the residence of the keeper of such bees.
4. *Prohibited Accessory Uses.* None of the following shall be permitted as an accessory use:
- a. Outdoor storage or overnight parking in a residential district of commercial trucks or trailers as defined herein, or other on, or off, road items exceeding 10,000 GVW (Gross Vehicle Weight).
 - b. Outdoor storage, of dismantled, inoperative and/or unlicensed motor vehicles; parking and/or storage of construction machinery and equipment, tracked or wheeled; farm machinery and/or equipment except as specifically permitted in district regulations in conjunction with a permitted use.
5. *Accessory Uses Permitted by Special Use Permit.* The following accessory uses shall only be permitted upon approval of a special use application by the City Commission:
- a. Commercial Communication Towers and Antennae. Including television and radio towers, transmitting and receiving towers, dishes, and appurtenances, subject to the provision included in Article 10, Supplemental Standards.
 - b. Renewable Energy Facilities, including wind or solar energy facilities, subject to the provisions included in Article 10, Supplemental Standards.
 - c. Child Care Centers for 7 or more children:
 - (1) Shall not be located along an arterial street as designated on the Major Street Plan Map unless indirect vehicular access to that street, such as with a frontage road is available. The City Planner, with the advice of the DRC, shall determine if the drop off and pick up arrangements of a childcare center or business appear safe. Appeal of any negative decision shall be to the City Commission.

- (2) Shall provide at least 100 square feet of open space per child. This open space shall be 100% enclosed by a minimum 4' high fence or wall.
 - (3) Shall provide a loading zone capable of accommodating at least 2 automobiles for the easy picking up and discharging of passengers.
 - (4) Shall conform to all requirements of the State of Kansas and shall acquire a State of Kansas Child Care Center License.
 - (5) All childcare centers operated in residential zoning districts shall be the only legal residence of the operator.
 - (6) Childcare centers in residential districts may have one non-illuminated monument sign with no more than 3 square feet per side and a maximum of 2 sides, or 1 non-illuminated sign affixed to the structure of 3 square feet.
- d. Accessory Dwelling Units. Accessory Dwelling Units (ADUs) may be approved by Special Use Permit in any residential zoning district subject to the following conditions:
- (1) Shall be compatible with the design of the principal dwelling unit.
 - (2) Shall respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards.
 - (3) Shall not have a separate driveway entrance from the street(s) to which the property is adjacent.
 - (4) Shall be 900 square feet or smaller in size, not to exceed 33% of the floor area of the principal dwelling unit.
 - (5) Either the principal dwelling unit or the accessory dwelling unit must be occupied by the owner of the premises.
 - (6) Shall meet all building code requirements for a single family dwelling unit.
 - (7) Lots containing accessory dwelling units shall contain a minimum of two off-street parking spaces, exclusive of garage space.
- e. Massage Therapy establishments as a home occupation may be allowed with issuance of a Special Use Permit. Such establishments are subject to all requirements of Home Occupations as provided in these regulations, as well as all requirements for Massage Establishments as provided in the City of Leavenworth Code of Ordinances, Chapter 26, Article III.
6. *Home Occupations.* A home occupation may be established provided:
- a. That no one, other than members of the immediate family residing on the premises, be employed;
 - b. That no use will occupy more than 25% of the gross floor area on one floor nor more than 400 square feet of gross floor area;
 - c. That a carport, garage, or any accessory structure may only be used for home occupations with issuance of a Special Use Permit;
 - d. That there shall be no use of material or mechanical equipment not recognized as being part of normal household or hobby use;
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- e. Home occupations are allowed to display a single non-illuminated sign affixed to the main structure no larger than ½ square foot on a vertical wall below the roof soffit.
- f. That no offensive noise, vibration, smoke, dust, odors, heat, or glare shall be produced;
- g. That the home occupation shall be conducted entirely within the principal residential building except with issuance of a Special Use Permit;
- h. That no machinery or equipment shall be installed which interferes with radio or television reception, and which is not customarily incidental to the practice of such occupation or profession, but in no case shall any machine exceed one rated horsepower;
- i. That only one type of profession or occupation shall be permitted within the occupied dwelling or building;
- j. That two off-street parking spaces are provided; and
- k. That there is no keeping of stock in trade for on-site retail or wholesale trade or sales.
- l. Permitted home occupations shall not in any event be deemed to include:
 - (1) Automobile and vehicular repair on any other than the property owner's personally owned and currently registered vehicle(s)
 - (2) Antique sales.
 - (3) Equipment rental business.
 - (4) Stables, kennels, veterinarian services, pet shops, and animal hospitals.
 - (5) Eating or drinking places.
 - (6) Mortuaries and embalming establishments.
 - (7) Private clubs, including fraternity and sorority houses.
 - (8) Retail sales (over the counter).
 - (9) Repair of home appliance and electronic equipment.

C. Temporary Uses Permitted.

- 1. *Sidewalk Sales.* The retail sale of merchandise not within an enclosed structure shall be permitted for a period not to exceed three days and need not comply with the yard and setback requirements. Yard sales are permitted in the residential district after obtaining necessary permits from City Clerk. Sidewalk sales are permitted in the commercial and industrial districts after obtaining necessary permits from the City Clerk. No merchandise will be displayed in the vision clearance triangle and street right-of-way except in the Central Business District.
- 2. *Christmas Tree Sales.* Christmas tree sales shall be permitted in any commercial or industrial district for a period not to exceed 60 days. Display of these need not comply with the yard and set-back requirements of these regulations, provided that no trees shall be displayed within the vision clearance triangle or in the street right-of-way except in the Central Business District.

3. *Contractor's Office.* Contractor's office and equipment sheds shall be permitted accessories to a construction project only during the duration of such project.
4. *Real Estate Offices.* Real estate offices (containing no sleeping or cooking accommodations unless located in a model dwelling unit) shall be permitted incidental to a new housing development to continue only until the sale or lease of all dwelling units in the development.
5. *Carnivals and Circuses.* A carnival or circus shall be permitted, but only in an OBD, NBD, CBD, GBD, I-1, or I-2 District, and then only for a period that does not exceed three weeks. Such use need not comply with the front yard requirements, provided that structures or equipment which might block the view of operators of motor vehicles on the public streets shall conform to the requirements of the vision clearance triangle as defined by these regulations.
6. *Recreational Vehicle Storage.*
 - a. Storage:
 - (1) Between April 1 and October 31, the storage and parking of major recreational equipment such as boats, boat trailers, pick-up campers or coaches, camping buses or converted trucks and tent trailers shall be allowed in the front and side yard. A maximum of two (2) such recreational vehicles may be stored in the front or side yard of a property at any time. Any recreational vehicles stored in the front or side yard shall be located a minimum of 10' from the curb or edge of any street, and a minimum of 2' from any interior side lot line and shall not block any sidewalk. All recreational vehicles must be stored or parked on a paved or aggregate block surface.
 - (2) Between November 1 and March 31, the storage and parking of major recreational vehicles shall be prohibited in the front and side yard setbacks for a period in excess of 72 hours per month but may be stored or parked in a rear yard on a paved or aggregate block surface.
 - b. RV Occupation: No recreational equipment shall be utilized for living, sleeping, or housekeeping purposes when parked on a residential lot or in any location, not approved for such use, for a period in excess of 14 days per calendar year.

4.05. Redevelopment Overlay District

The following standards for the ROD district replace or supplement standards of the underlying district. These provisions address the physical relationship between development and adjacent properties, public

streets, neighborhoods, and the natural environment in order to implement the Redevelopment Master Plan vision for a more attractive, efficient, and livable community.

A. Residential Uses.

1. Dwelling, Live/Work: In the CBD subdistrict, the residential living portion of the live/work unit is not permitted within the front half or front 30 feet of space, whichever is greater, on the first floor.
2. Dwelling, Residential: Residential dwelling units shall only be permitted in the CBD subdistrict as part of a vertical mixed-use building where the residential uses can be located either behind the front half or front 30 feet of space, whichever is greater, on the first floor or on the second or higher floors.

B. Public and Institutional Uses

1. *Arboretum or Botanical Garden.*
 - a. In all residential zone districts, the use shall abut an arterial or collector street.
 - b. No sales are allowed except through gift shops that are approved accessory uses.
2. *Hospital/Medical Center.*
 - a. The application shall be accompanied by written proof that the proposal meets all federal, state, and county regulations.
 - b. A minimum of 25% of the net lot area shall be provided in open space.
 - (1) A minimum of three-fourths of the total open space requirement shall be provided as frontage open space to provide a setting for the building, visual continuity within the community, and a variety of spaces in the streetscape. The frontage open space shall not be required to exceed 50 square feet per one foot of public street frontage and shall not be less than 30 square feet per one foot of public street frontage.
 - (2) The remainder of the required open space shall be provided in common open space.
 - c. When the height of the building exceeds 50 feet, the following yard requirements shall apply:
 - (1) A side or rear yard of not less than 100 feet shall be maintained where the side or rear of the lot abuts a single-family residential district or abuts an alley that is adjacent to a single-family residential district. The 100 feet may include the width of the alley.
 - (2) A side or rear yard of not less than 75 feet shall be maintained where the side or rear of the lot abuts a multiple-family residential district or abuts an alley that is adjacent to a multiple-family residential district. The 75 feet may include the width of the alley.

- (3) On-street parking adjacent to a hospital may not be counted toward required off-street parking requirements.
- 3. Library: In all residential zone districts, the use shall abut an arterial or collector street. Gift and coffee shops are permitted in libraries as accessory uses.
- 4. Community Services: In all residential zone districts, the use shall abut an arterial or collector street.
- 5. Schools: All uses under the educational facilities category in Table A-1 shall have their principal vehicular entrance and exit on a local street or adjacent street with the lowest volume of traffic.

C. Commercial Uses.

- 1. *Bank or Financial Institution.*
 - a. Banks and financial institutions may be permitted as an accessory to a major retail sales establishment in the North Gateway subdistrict provided that the bank or financial institution is not in a separate, free-standing building.
 - b. Banks or financial institutions that are located within 100 feet of a residential zoning district shall comply with the following requirements:
 - c. The use shall be compatible with the neighborhood and shall not be detrimental to the same due to:
 - (1) Increased automobile traffic;
 - (2) Noise generated from within the site; or
 - (3) Character of proposed building.
 - d. The maximum gross floor area of the building shall be 4,000 square feet.
 - e. If the bank is to include drive-through services, a maximum of two drive-through windows lanes shall be permitted along with a non-drive-through escape lane. The drive-through area shall be designed pursuant to Article 5, Off-Street Parking - Vehicle Stacking Requirements and shall be screened either by site perimeter landscaping or a landscape buffer, whichever is applicable.
- 2. *Car Wash.* In the ROD, service bays facing a public street or a residential zoning district shall be screened to a height of at least eight feet as viewed from the facing public street or facing residential property line.
- 3. *Hotels.* The following shall be provided:
 - a. Building Design
 - (1) Access to guest rooms shall be restricted exclusively to interior corridors, which shall be accessed via the main lobby of the building or entryways individually equipped with some form of security controlled access system.
 - (2) The hotel shall install and maintain, in proper operating order, surveillance cameras in each interior hallway and lobby/lounge area, in

- the parking lots and at each exterior door along with lighting sufficient to support the camera's range of view but fully-shielded to prevent light spill-over in other locations. The cameras shall be placed to provide visibility to the front and rear exteriors of the building. Monitors shall be provided for security and other hotel personnel so that on-site activities may be viewed at all times. Surveillance cameras shall be in operation 24 hours per day and records of images recorded shall be kept a minimum of 30 days.
- (3) Building Design shall meet the Physical Facility Criteria for Federal Facilities established by the federal Interagency Security Council.
- b. Interior Design:
- (1) A minimum of 125 guest rooms.
- (2) An open and unobstructed lobby area (excluding the work area for hotel employees) which is designed as part of the check-in/check-out area for guests.
- (3) Two meeting rooms, each at least 2,000 square feet in size.
- (4) Recreation facilities including a swimming pool with and an exercise room.
- (5) A lounge area capable of hosting a required daily continental or better breakfast service.
- c. Guest Services:
- (1) Daily housekeeping service.
- (2) On-site management 24 hours per day to provide check-in/check-out services, custodial and maintenance response, or other guest services.
- (3) Room service 24 hours a day.
- (4) A 24-hour business center featuring personal computers with internet access, facsimile and copy machines as well as photo copying and administrative services. Business centers shall be a minimum of 200 square feet with access provided via guest room key.
4. *Limited Service Hotels (Motels)*. The following shall be provided:
- a. Building Design:
- (1) Access to guest rooms shall be restricted exclusively to interior corridors, which shall be accessed via the main lobby of the building or entryways individually equipped with some form of security controlled access system.
- (2) The hotel shall install and maintain, in proper operating order, surveillance cameras in each interior hallway and lobby/lounge area, in the parking lots and at each exterior door along with lighting sufficient to support the camera's range of view but fully-shielded to prevent light spill-over in other locations. The cameras shall be placed to provide visibility to the front and rear exteriors of the building. Monitors shall be provided for security and other hotel personnel so that on-site activities may be viewed at all times. Surveillance cameras shall be in operation

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ARTICLE 4. ZONING DISTRICTS & STANDARDS

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- 24 hours per day and records of images recorded shall be kept a minimum of 30 days.
- (3) Building design shall meet the Physical Facility Criteria for Federal Facilities established by the Federal Interagency Security Council.
- b. Interior Design:
- (1) The following shall be provided:
- (2) A minimum of 75 rooms
- (3) An open and unobstructed lobby area (excluding the work area for hotel employees) which is designed as part of the check-in/check-out area for guests.
- (4) A lounge area capable of hosting a required daily continental or better breakfast service.
- (5) Two conference/meeting spaces each a minimum of 1,000 square feet.
- (6) An exercise room with one exercise machine per 25 rooms or comparable recreation facilities.
- c. Guest Services:
- (1) Daily housekeeping service.
- (2) On-site management 24 hours per day to provide check-in/check-out services, custodial and maintenance response, or other guest services.
- (3) A business center featuring personal computers with internet access, facsimile and copy machines open between 6:00 am and 10:00 pm. Business centers shall be a minimum of 100 square feet with access provided via guest room key.
5. *Residence Hotels.* The following shall be provided:
- a. Building Design:
- (1) Access to guest rooms shall be restricted exclusively to interior corridors, which shall be accessed via the main lobby of the building or entryways individually equipped with some form of security controlled access system.
- (2) The hotel shall install and maintain, in proper operating order, surveillance cameras in each interior hallway and lobby area, in the parking lots and at each exterior door along with lighting sufficient to support the camera's range of view but fully-shielded to prevent light spill-over in other locations. The cameras shall be placed to provide visibility to the front and rear exteriors of the building. Monitors shall be provided for security and other hotel personnel so that on-site activities may be viewed at all times. Surveillance cameras shall be in operation 24 hours per day and records of images recorded shall be kept a minimum of 30 days.
- (3) Building design shall meet the Physical Facility Criteria for Federal Facilities established by the federal Interagency Security Council.
- (4) A minimum of 50 rooms
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- b. Interior Design:
 - (1) A lounge area capable of hosting a required daily continental or better breakfast service.
 - (2) Two conference/meeting spaces each a minimum of 1,000 square feet.
 - (3) An exercise room with one exercise machine per 25 rooms or comparable recreation facilities.
 - c. Guest Services:
 - (1) Weekly housekeeping service.
 - (2) On-site management 24 hours per day to provide check-in/check-out services, custodial and maintenance response, or other guest services.
 - (3) On-site laundry facilities.
 - (4) A business center featuring personal computers with internet access, facsimile and copy machines open between 6:00 am and 10:00 pm. Business centers shall be a minimum of 100 square feet with access provided via guest room key.
6. *Outdoor Display and Sales.*
- a. Outdoor display and/or sales may be allowed as an accessory use for all commercial uses, if the display of such items does not impede the flow of pedestrian or vehicular traffic or create an unsafe condition. These provisions are not intended to apply to permanent outdoor display and sales, such as vehicle sales, that must be approved as part of the development site plan. The accessory outdoor display of goods shall meet all of the following requirements:
 - b. Outdoor display or sale shall require approval of the Director and may be subject to appropriate conditions set by the Director to ensure compliance with the provisions of this section.
 - c. Display of goods shall not be in drive aisles, loading zones, or fire lanes and shall not obstruct any entrance to the building.
 - d. The total area for display or sale of goods in the front of the building shall be limited to an area that equals 25% or less than the display area for the principal building.
 - e. The outdoor display area may be located in a parking lot if the parking available does not fall below 80 percent of the off-site parking required for the building.
 - f. No goods shall be attached to a building's wall surface.
 - g. The outdoor display area shall take place on an improved surface such as the sidewalk or pavement.
 - h. No outdoor displays shall be allowed in required landscape areas.
 - i. At least five feet along the parking lot side of the display shall be maintained free of obstruction to allow for pedestrian and handicap movement, such that handicapped pedestrians and others do not have to enter the parking lot or drive aisle to walk around the display.
7. *Retail Sales Establishment.*
- a. The front half or 30 feet, whichever is greater, of any street-level storefront shall be limited to retail or retail-compatible use.

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4.05 Redevelopment Overlay District

- b. Unless otherwise provided for in this ROD, retail sales establishments shall not maintain exterior display or storage.
 - c. Retail sales establishments that sell large items (e.g., furniture, appliances, lumber, etc.) may be permitted in the North Gateway subdistrict.
8. *Sidewalk Café.* In all subdistricts in which a sidewalk café is allowed, occupancy of a public sidewalk or parkway for a sidewalk café shall be permitted under the following conditions:
- a. The area of occupancy must be abutting and contiguous to the restaurant in which food preparation, sanitation, and related services for the sidewalk cafe will be performed.
 - b. A sidewalk cafe may not be enclosed by fixed walls, unless such walls are necessary to comply with requirements to serve alcohol as described below, and shall be open to the air, except that it may have a canopy.
 - c. An applicant for a sidewalk café with a license to serve alcohol shall require approval by the, City Clerk, the Director, and the applicable state liquor-licensing agency. The applicant shall submit a request for a sidewalk café with alcohol service along with a dimensioned sketch of the requested café area that meets the design standards of this section and incorporates a 36- to 42-inch ornamental metal perimeter fence with a minimum 44-inch opening for ingress and egress. Fabric insert and chain-link fences are prohibited.
 - d. There shall be unimpeded sidewalk remaining for pedestrian flow and sufficient to meet the requirements of the Americans with Disabilities Act from the face of the curb to the area of temporary occupancy.
 - e. The sidewalk café shall be located a minimum of five feet from driveway and alleys, and ten feet from intersections.
 - f. All curbs, alleys, sidewalks, and public rights-of-way adjacent to such occupation shall be kept in a clean and orderly condition.
 - g. Any sidewalk café located adjacent to a residential district or use shall be screened by an opaque wall or fence that is six feet tall.
 - h. In no case shall any permanent utilities be located in the public ROW located to serve outside facilities associated with the outdoor café.
9. *Industrial Uses.* All industrial uses shall be subject to the following standards:
- a. All traffic hazards shall be minimized;
 - b. Lights shall be directed away from adjoining residential areas;
 - c. Off-street loading areas shall be available as needed;
 - d. No dust, smoke, fumes, gas, noxious odor, excessive noise, or other atmospheric effluent shall exceed in intensity at the boundary of the lot the conditions normally found in a residential neighborhood
10. *Recycling Center.*
- a. The area used for recycling activities shall be limited to 500 square feet.
 - b. Recyclables may be deposited in refuse-type containers, storage igloos, kiosks, or other containers.
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DEVELOPMENT REGULATIONS
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- c. No processing of the recyclables shall take place except for the depositing of materials and the collection of materials for transport to a different recycling center or other location for sorting and processing.
- d. No household hazardous waste shall be accepted at a recycling center.
- e. The proposed recycling center cannot displace any required parking for the existing use.
- f. The operator of the recycling center shall be responsible for vermin control.

D. **Dimensional Standards.** Within the Redevelopment Overlay District, the base districts shall have the following dimensional requirements:

Table 4-03: Redevelopment Overlay District Dimensional Standards								
Overlay Area	District	Lot Area (sq. ft.)	Lot Width (ft.)	Yards				Building Height (ft.)
				Front (ft.) (min/max)	Side Internal (ft.) (min/max)	Side Corner or Intersection (ft.) (min/max)	Rear (ft.)	
CBD and North	NBD	--	--	0/10	0/10 [2]	0/10 [2]	0 [2]	45 [3]
	OBD	--	--	0/10	0/10 [2]	0/10 [2]	0 [2]	45 [3]
	CBD	--	--	0/10	0/10	0/10	0 [2]	--
	GBD	--	--	10/25	0 [2]	10/25 [2]	0 [2]	45 [3]
North Neighborhood	R1-9	9,000	40	10 [1]	6	25	25	35
	R1-7.5	7,500	40	10 [1]	6	6	25	35
	R1-6	6,000	40	10 [1]	6	15	15	35
	R-MF	6,000 (1-2 units)	40	10 [1]	6	15	15	40
	R-MF	9,000 (3 units)	40	10 [1]	6	15	15	40
	R-MF	3,000 per unit over 3	40	10 [1]	6	15	15	40
	R4-16	6,000 1 unit; 4,000 each 2-4 units	40	10 [1]	6	15	15	35
	RMX	As identified in the district						
[1] The contextual front setback standards of this Article may be applicable. [2] 25-foot minimum setback for side or rear yards that abut a residential lot line. [3] No building shall be taller in height than its distance to a residential lot line or as permitted in the height restrictions herein.								

1. *Contextual Front Building Setbacks for Infill Development.*

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- a. The applicant shall use a contextual front setback when existing front setbacks on the same block are greater or less than that required by the underlying zoning.
- b. The front setback for the proposed development shall be set back no further from the primary street than the furthest front façade of the principal building on either of the two abutting lots in the same base zone district, and shall be located no closer to the primary street than the closest front façade of the principal structure on either of the two abutting lots in the same base zone district. Where there are no immediately abutting structures, the setback range shall be determined by the location of up to five structures on either side of the lot on the same side of the street, or as determined by the Director.

ARTICLE 5. ACCESS & PARKING

5.01 Applicability

The parking standards in this article shall apply in the following circumstances:

- A. Whenever a structure is erected, converted, structurally altered or moved;
- B. Whenever an existing structure or use is expanded or a use changed to increase the required parking by more than 10%.
 - 1. Where the increase is between 10% and 25%, parking shall be provided only for the increase caused by the proposed expansion.
 - 2. Where the increase is greater than 25%, parking shall be provided based on the entire building and site.
- C. These off-street parking and loading requirements shall not apply in the CBD (Central Business District) nor shall these requirements be imposed upon existing structures or uses at the time of passage of these Development Regulations.

5.02. Required Parking

- A. **Parking Table:** All uses shall provide the parking specified below, unless reduced by other provisions of this Article. Any required ADA accessible spaces shall be included in this parking requirement. Any use not specifically listed shall be interpreted as a listed use that most similarly matches the proposed use in terms of traffic impacts, site design and performance.

Table 5-01 Parking Rates	
Specific Use	Required Parking Rate
Animal Hospital	1 per 400 s.f.
Assembly Hall	1 per 3 persons at maximum capacity
Auditorium, Theater, Stadium, Arena, or Convention Hall	1 per 4 seats
Automobile Service Station	2 per service bay, plus 1 per employee
Automobile Wrecking Yard	1 per 2 employees, plus 1 per 10,000 s.f. storage.
Banks	1 per 300 s.f., plus 1 per 2 employees.
Bowling Alley	5 per alley, plus 1 per 200 s.f. non-alley
Cartage, express, Parcel Delivery and Freight Terminal	1 per 2 employees, plus 1 per each vehicle on premises
Car Washes	3 waiting spaces per stall
Church, Temple, Synagogue, or Place of Assembly	1 per 4 seats (1 per 30 s.f. if no fixed seating)

**DEVELOPMENT REGULATIONS
ARTICLE 5. ACCESS & PARKING**

5.02 Required Parking

Table 5-01 Parking Rates	
Specific Use	Required Parking Rate
Country Club or Golf Course	1 per 200 s.f., plus 1 per 2 practice tees, plus 4 per each green.
Day Care Centers and Pre-Schools	2 per employee
Dwelling Unit (single-family or two-family)	2 per each dwelling unit
Dwelling Unit (multi family)	1 per unit (1BR); 2 per unit (2BR); 2.5 per unit (3BR); except units exclusively for elderly may have 1 per 2 units
Elementary, Junior High or High School	2 per class room, plus 1 per 4 seats of assembly areas
Funeral or Mortuary Home	1 per 4 seats, plus 1 per employee, plus 1 per vehicle on premises.
Furniture or Appliance Store,	1 per 400 s.f. of floor area
College, Business or Trade School	8 per classroom, plus 1 per 2 employees
Hospital	1 per 3 beds, plus per 2 employees, plus 1 per doctor
Manufacturing or Industrial	1 per 3 employees OR at least 1 per 500 s.f.
Medical Offices or Clinics	3 per examination room, plus 1 per employee OR 1 per 200 s.f.
Mobile Home Park	2 per home lot, plus two per office
Machinery, Equipment, Automobile and Boat Sales and Services	1 per 400 s.f., plus 1 per 3000 s.f. of sales lot, plus 1 per employee
Office	1 per 300 s.f.
Parks and Open Space (public or private)	3 per acre, plus 1 per six seats for any spectator or assembly area
Plant Nursery, Building Material Yard or Storage Yard.	1 per 300 s.f. of sales display area
Private Clubs or Lodges	1 per occupant up to 75% capacity OR 1 per 3 persons
Restaurant (drive-in or carry out)	1 per 3 seats, plus 1 per employee
Restaurant (dine in); Tavern or Bar	1 per 3 seats
Retail	1 per 200 s.f.
Rooming, Boarding or Lodging House	1 per guest room
Sanitarium, Convalescent Home, Home for the Aged	1 per 4 beds, plus 1 per employee
Skating Rink, Swimming Pool or Recreation without fixed seats	1 per 250 s.f., plus 1 per 40 s.f. of water area
Social Service Center	1 per 400, plus 1 per employee
Tennis or Racquetball Club	4, plus 2 per court
Motel, or Hotel	.75 per guest room, plus auxiliary commercial or assembly areas meet applicable standards
Warehouse, Wholesaling	1 per 750 s.f.

* Standards based on seating or employee shall be interpreted as maximum capacity; standards with two requirements ("OR") shall require the greater number.

* For uses not specifically listed above, parking spaces will be provided on the basis of 1 space for every 200 square foot of building floor area to which the public has access.

- B. **Reduced Parking.** The following circumstances are eligible for a reduction in required parking:
1. *Mixed-use Districts.* All sites in any mixed use district may reduce the parking requirement by 15 percent to reflect reduced automobile use associated with mixed use developments. The total number of required parking may be further reduced by the Director if the applicant prepares a parking evaluation that demonstrates expended parking needs will be less due to the context, design or operation of the project.
 2. *Historic Properties.* The Development Review Committee may approve requests for a reduction in the required parking for registered historic properties or properties within a historic district in order to preserve the historic integrity of the subject property. The request must be justified with information on the size and type of development, composition of tenants, the anticipated rate of parking turnover, and the anticipated peak parking and traffic
 3. *Multi-family Development.* Multifamily development may seek to reduce required off-street parking from between 1.5 to 3.0 spaces per unit to 1.0 space per unit by application to the Director for a minor modification.
 4. *On-Street Parking.* Any site on a block containing on-street parking may reduce the required parking by up to 50% for each space within 500 feet. The total number of required parking may be further reduced by the Director if the applicant prepares a parking evaluation that demonstrates expended parking needs will be less due to the context, design or operation of the project.
 5. *Shared Parking.* The Director may approve applications for shared parking subject to the following requirements:
 - a. All spaces shall be within 500 feet of any public entrance for all uses served by the space, measured along practical walking routes which may include legal crosswalks less than 80 feet.
 - b. All uses sharing a space must be connected to the parking by safe pedestrian access including sidewalks, crosswalks or pedestrian bridge.
 - c. The shared parking area shall be located on a site with the same or more intensive zoned district than required for the primary uses served.
 - d. A shared parking request must be justified with information on the size and type of development, composition of tenants, the anticipated rate of parking turnover, and the anticipated peak parking and traffic loads of all uses sharing the spaces.
 - e. The maximum reduction of parking spaces for all uses shall be 50 percent, except sharing with religious institutions or schools can allow a reduction of up to 80 per cent.

- f. A shared parking plan shall be enforced through a written agreement among all owners of record. An attested copy of the agreement between the owners of record must be recorded at the Register of Deeds, prior to issuance of any building permits.
- g. A shared parking agreement may be revoked by the affected property owners only if all required off-street parking spaces for both parties are provisioned before the agreement is revoked.

C. **Non-Contiguous Off-Street Parking.**

1. *Separation Distance:* Off-street parking facilities to fulfill a multiple-family, commercial, industrial or special use permit requirement may be located within 200 feet of the development (measured between property lines) if off-street parking requirements cannot be met on the site.
2. *Special Use Permit Required:* Separate off-street parking facilities must meet the following requirements and be approved as a Special Use:
 - a. Screened or enclosed with a fence, wall, or other suitable enclosure having a height of not less than three feet, and maintained in good condition.
 - b. Any lights used to illuminate the parking areas shall be so arranged as to direct the light away from any adjoining residential premises.
 - c. Approval of the site plan, drawn to scale; showing proposed parking lot. The developer will submit a site plan for off-street parking together with his application for a building permit. This parking plan will be reviewed by the DRC for adequacy prior to the issuance of a building permit.

5.03. General

- A. **Use.** Required parking used only for parking operable motor vehicles using the site or use. Any other use of parking areas for outside storage, display or commercial activity shall be permitted by different provisions of these regulations
- B. **Surfaces and Markings.** All off-street parking areas and driveways shall be surfaced and provided with a minimum of:
 1. *Residential Parking:* (All dwelling units) Four inches of Portland Cement concrete, reinforced, or four inches of stone and two inches of asphaltic concrete.
 - a. A gravel parking pad in the rear yard may be installed with a border to contain the gravel. Such gravel parking pad must be accessed directly off the alley.
 - b. For lots over 2 acres in size on which the primary structure will be set back a minimum of 100 feet from the front property line, a gravel driveway may be

installed past the required 25' front setback, provided that all other applicable building and fire codes are met.

2. *Commercial and Industrial Loading and Parking:* Six inches of Portland Cement concrete, reinforced, or six inches of stone and two inches of asphaltic concrete.
3. *Parking Lot Marking:* Parking spaces in lots of more than six spaces shall be marked by painted lines or curbs or other means to indicate individual spaces. Signs or markers shall be used as necessary to ensure efficient traffic operation of the lot.
4. *Bumper Guards:* Wheel or bumper guards when used shall be located so that no part of any vehicle shall extend beyond the boundary lines of the parking area, intrude on pedestrian ways, or come in contact with walls, fences, or plantings.

C. **Drainage:**

1. Off-street parking facilities shall be drained to eliminate ponding water and prevent damage to abutting property and/or public streets and alleys.
2. No surface water from such parking area shall be permitted to drain onto adjoining private property without adequate drainage precaution being taken by the developer.
3. All new and redeveloped parking areas shall be required to present a drainage study prepared by an engineer licensed in the State of Kansas.

5.04. Parking Design

- A. Parking lots should be designed with a hierarchy of circulation. For example, major driveways should be clearly delineated by landscaped areas and should have limited or no parking along them while parking aisles should provide direct access to parking spaces. Parking lot circulation shall accommodate emergency response vehicles.
- B. Parking lots should be located behind buildings or in the interior of a block whenever possible.
- C. Parking lots containing more than 200 parking stalls shall be divided into two or more lots, separated by a 15-foot wide landscaped area that may be counted toward the required off-street parking landscaping area.
- D. Within each parking lot, parking spaces shall be grouped into blocks of 40-50 spaces with each block separated from the others by curbed planting areas at least the size of one parking stall.
- E. Parking stalls shall measure at least 8.5 feet by 18 feet, except angled stalls as low as 30 degrees may be used to reduce the lengthwise right-angle of the stall proportionately. Additionally, up to 10 percent of all parking may be reduced to 7.5 feet by 15 feet, if specifically marked for compact cars.

- F. Generally there shall be at least 25 feet of back-up space in drive aisles beyond the parking stalls, unless configurations of parking and drives allow for better arrangements. Configurations which incorporate two or more parallel rows of parking may use common back up space.

5.05. Access

Access to sites and parking areas shall generally follow the following standards, unless streetscape design, street networks, development patterns and traffic patterns dictate otherwise:

- A. **Width.** Access for one-way traffic shall be between 12 feet and 20 feet at the property line. Access for two-way traffic shall be between 24 feet and 30 feet at the property line. Access widths may be wider to account for vehicle turning movements at the street edge. Any access that requires greater widths, or access to an arterial street shall be median divided.
- B. **Spacing.** Unless no other practical alternative is available, all driveways and access points shall be spaced as follows:
1. Residential. 50 feet from a street intersection, 12 feet from another access driveway, and 2 feet from an interior property line.
 2. Non-residential. 75 feet from a street intersection, 50 feet from another access driveway, and 10 feet from an interior property line.
- C. **Shared Access.** Shared driveways, cross access easements, and other internal access systems are desired in all contexts in order to minimize curb cuts that disrupt the streetscape design and create pedestrian and traffic conflicts.

5.06. Off-street Loading

- A. Loading and unloading spaces shall be provided off-street for such uses involving receipt and distribution of materials or merchandise by motor vehicle or rail. All loading and unloading operations shall be so located to avoid undue interference with public use of streets, alleys, and walkways. Such space shall include loading areas as specified below for loading and unloading operations and shall have a minimum height clearance of 14 feet. The number of spaces shall be provided as follows:
1. **Gross Floor Area Space Required:**
 - a. Under 5,000 sq. ft. None
 - b. 5,000 to 9,999 sq. ft. 1 space (12'x25')
 - c. 10,000 to 24,999 sq. ft. 1 space (12'x70')
 - d. 25,000 to 49,999 sq. ft. 2 spaces (12'x70')
 - e. 50,000 to 100,000 sq. ft. 3 spaces (12'x70')

- f. For each additional 50,000 sq. ft. 1 space (12'x70')
 2. *Amusement Establishments:* For bowling alleys, pool halls, dance halls, gymnasiums, indoor and outdoor theaters, swimming pools, skating rinks and other similar amusement establishments, one loading space shall be provided for each building that contains 1,000 to 100,000 square feet of gross floor area, plus one additional loading space for each additional 100,000 square feet or fraction thereof, in excess of 100,000 square feet.
- B. The developer shall submit a site plan for all off-street loading facilities meeting the following.
1. *Screening:* All motor vehicle loading berths which abut or are adjacent to the residential district shall be properly screened. No permitted or required loading space or berth shall be located within 40 feet of the nearest point of intersection of any two streets or highways. No loading space or berth shall be located in a required front yard, and any loading space or berth located in a required rear yard shall be open to the sky.
 2. *Access:* Where the off-street loading space does not abut on a street, public or private alley, or easement of access, there shall be provided an access drive of a least twelve (12) feet in width leading to the loading areas. Exclusive of aisle and maneuvering space, no part of any alley or street shall be used for loading excepting areas designated and approved by the City Commission

5.07. Drive-Through Stacking

The following standards shall apply to businesses that contain a drive-through establishment, regardless if the drive-through is part of another use (e.g., restaurant or financial institution) or if it is a stand-alone use (e.g., automatic teller machine).

- A. **General Standards:**
1. Audible electronic devices such as loudspeakers, automobile service order devices, and similar instruments shall not be located within 50 feet of any residential property line.
 2. No service shall be rendered, deliveries made, or sales conducted within the required front yard or corner side yard; customers served in vehicles shall be parked to the sides and/or rear of the principal building.
 3. All drive-through areas, including but not limited to menu boards, stacking lanes, trash receptacles, loudspeakers, drive up windows, and other objects associated with the drive-through area shall be located in the side or rear yard of a property to the maximum extent feasible, and shall not cross, interfere with, or impede any public right-of-way.
- B. **Stacking and Lane Requirements:** The number of required stacking spaces shall be as provided for in Table 5-02, Stacking Space Requirements.

DEVELOPMENT REGULATIONS
ARTICLE 5. ACCESS & PARKING

5.07 Drive-Through Stacking

Table 5-02 Stacking Space Requirements		
Activity	Minimum Stacking Spaces (per lane)	Measured From:
Bank, Financial Institution, or Automated Teller Machine (ATM)	3	Teller or Window
Convenience Food Restaurant	5	Order Board
Full Service Vehicle Washing Establishment	6	Outside of Washing Bay
Self-Service or Automated Vehicle Washing Establishment	2	Outside of Washing Bay
Fuel or Gasoline Pump Island	2	Pump Island
Other	As determined by the city	

- C. **Stacking Lanes:** Stacking lanes shall be provided for any use having a drive-through establishment and shall comply with the following standards:
1. Drive-through stacking lanes shall have a minimum width of ten feet.
 2. When stacking lanes are separated from other stacking lanes, bypass lanes, or from other site areas, the separation shall be by means of a raised concrete median, concrete curb, or landscaping.
 3. Stacking lanes shall be set back 20 feet from property line.

ARTICLE 6. LANDSCAPE & SITE DESIGN

6.01 Purpose & Applicability

- A. **Purpose.** The purpose of the landscaping and site design standards is to ensure adequate and appropriate and site arrangement, including:
1. Integrate building sites with both natural topography and existing vegetation;
 2. Minimize disturbed areas;
 3. Reduce the amount of reflected glare and heat absorbed in and around developments;
 4. Manage stormwater runoff with naturally absorptive vegetation;
 5. Break up large expanses of parking lots; and
 6. Preserve residential neighborhoods by lessening and screening the impacts of potentially incompatible uses.
- B. **Applicability.** The standards in this section apply to all new development and redevelopment, except single-family zoning districts.

6.02 Landscape Units

Required landscaping is calculated in landscaping units. Table 6-01 indicates the landscape units awarded for various preserved or planted landscape materials:

Table 6-01: Landscape Units Awarded		
Landscape Material	Landscape Units Awarded	
	Newly Installed	Existing Retained
Evergreen Tree, >10 ft high	8	14
Evergreen Tree, >8 – 10 ft high	8	11
Deciduous Tree, > 8" caliper	n/a	14
Deciduous Tree, >4 – 8" caliper	n/a	11
Deciduous Tree, >2.5 – 4" caliper	7	9
Deciduous Tree, 2.0" – 2.5" caliper or multi-stem	4	4
Shrubs, 36" high	1	1.2
Shrubs, 24" high	0.8	0.9
Shrubs, 18" high	0.5	0.6
Perennials/ground cover	1 per 400 sq ft	
Annual flower bed	1 per 400 sq ft	
Lawn Grass	1 per 800 sq ft	
Flower Basket Support	0.2 per basket	
Earthen Berm, minimum 18" high	0.05 per linear foot	
Earthen Berm, over 18" high	0.05 per linear foot x 1.5 per each foot in height	
Hardscape Material	Units Awarded	

DEVELOPMENT REGULATIONS
ARTICLE 6. LANDSCAPE & SITE DESIGN

6.02 Landscape Units

Table 6-01: Landscape Units Awarded		
Landscape Material	Landscape Units Awarded	
	Newly Installed	Existing Retained
Split Rail Fence	0.20 per linear foot	
Screening (Opaque) Fence	0.40 per linear foot	
Shredded bark or 3"+ rock mulch such as river rock	1 per 500 sq ft	
Ornamental pavers	1 per 250 sq ft	
Landscape Boulders, 1' or greater in height	0.33 per foot in height, per boulder	
Seating	0.40 per linear foot	
Landscape lighting, sculpture, art, water feature, and/or sheltering structure/landmark	As determined by Director	
Retained Existing Vegetation Mass [1]	Bonus Landscaping Units Awarded [2]	
300+ square feet with a minimum of 3 deciduous trees (4" caliper or greater), 3 evergreen trees (minimum six feet high) or any combination thereof	15%	
500+ square feet with a minimum of 5 deciduous trees (4" caliper or greater), 5 evergreen trees (minimum six feet high) or any combination thereof	20%	
800+ square feet with a minimum of 8 deciduous trees (4" caliper or greater), 8 evergreen trees (minimum six feet high) or any combination thereof	25%	
NOTES:		
[1] Points awarded for retained vegetation in perimeter buffers may only be applied in the buffer area along the same lot line or street frontage where the vegetation is found.		
[2] Percentages applied to total units calculated above.		

6.03 Required Landscaping

All development types shall have a minimum landscaped area on the lot as determined by zoning district. Landscaping shall be provided at a minimum of 3 landscape units per 1000 square feet of landscaped area. At least 25 percent of all required landscape units shall be provided as trees.

- A. **Required Landscaped Area.** Minimum landscaped area of the lot outside of the building envelope for Zone shall be as indicated in Table 6-02, below:

Table 6-02: Minimum Landscaped Area		
Zoning District		Minimum Area (percent)
R1-25	Low Density Single Family Residential District	0
R1-9	Medium Density Single Family Residential District	0
R1-6	High Density Single Family Residential District	0
R1-7.5	Medium Single-Family Residential District	0
R4-16	Medium Density Multiple Family Residential District	20
R-MF	Multiple Family Residential District	20
RMX	Residential Mixed Use	15
MP	Mobile/Manufactured Home Park District	20

DEVELOPMENT REGULATIONS
ARTICLE 6. LANDSCAPE & SITE DESIGN

6.03 Required Landscaping

Table 6-02: Minimum Landscaped Area		
Zoning District		Minimum Area (percent)
NBD	Neighborhood Business District	15
OBD	Office Business District	15
CBD	Central Business District	20
GBD	General Business District	20
I -1	Light Industrial District	10
I -2	Heavy Industrial District	5
PUD	Planned Unit Development District	Negotiable
FP	Flood Plain Overlay District	None
ROD	Redevelopment Overlay District	Underlying zoning

B. ROD North Gateway Subdistrict Landscaping.

1. *Required Landscaping.* A 20-foot strip of landscaping shall be provided along the perimeter property line of all multifamily, commercial, and industrial development sites except for approved points of pedestrian or vehicle access. Site perimeter landscaping shall be planted pursuant to the requirements for a 20-foot buffer.

2. *Exceptions.* Site perimeter requirements may be reduced up to 100 percent for projects on lots and parcels allowing setbacks less than the required site perimeter yard width utilizing the Alternative Equivalent Compliance requirements of these Development Regulations. Reductions shall only apply to lots and parcels where the primary building setback is less than the required perimeter landscaping width, and shall only apply to specific required site perimeter areas between the property line and proposed principal building. A zero side setback requirements shall not be construed to allow a reduced rear yard setback.

3. *Alternative Compliance Review.* As part of Alternative Equivalent Compliance Review, the city may consider landscaping in the public right-of-way as a substitution for some or the entire required onsite street frontage landscaping where in the opinion of the Director the proposed public right-of-way landscaping meets the intent of this section. Any property owner requesting to landscape the public right-of-way as an alternative shall be required to maintain the landscaping into perpetuity unless the landscaped area is accepted for maintenance by the city. In addition to substituting for street frontage landscaping, public right-of-way landscaping may be substituted for other required landscaping if approved by the Director. This may include the landscaping of public right-of-way or public lands within the city on a separate unrelated site in some cases where in the opinion of the Director the public landscaping proposed will have significantly greater community benefit.

6.04 Parking Lot Landscaping

- A. **Perimeter Landscaping.** Parking lots located outside of the CBD subdistrict shall provide 20 feet of perimeter landscaping planted pursuant to the requirements for a 20-foot buffer. Where required, the perimeter landscaping shall be substituted for parking lot perimeter landscaping that would otherwise be required in the same location. Where lots are being developed in a mixed-use district, the parking lot perimeter landscaping requirement may be reduced along an interior lot line, at the discretion of the Director, provided that interior parking lot landscaping applies to both parking lots.
- B. **Landscape Islands.** 200 square feet shall be installed for every 10 parking spaces contained in a parking row, either within the parking row or at the end of the parking row.
- C. **Internal Landscaping.** Landscape strips shall be installed between the parking rows of every other double row of parking when parking rows exceed 50 parking spaces. Internal landscape islands shall:
1. Be a minimum of six feet in width.
 2. Be at least 200 square feet.
 3. Have a minimum of four, five-gallon deciduous shrubs and one deciduous tree a minimum of two and one-half inch caliper per 200 square feet.
 4. Incorporate perennials and grasses for seasonal color.
 5. Contain a minimum of 50 percent living landscaping material, with a maximum of 50 percent nonliving landscaping material. Approved sidewalks are not counted toward the non-living landscape material percentage.
- D. **Curbs.** Landscaped areas within parking lots or the along perimeter of the property must be protected from vehicular traffic through the use of continuous concrete curbs. At least one break per 10 lineal feet of curb is required to allow for runoff inflows into the landscaped areas.
- E. **Parking Lot Landscaping for Infill in the CBD Subdistrict.** Any boundary of a surface parking lot in the CBD subdistrict that abuts a public street or alley or lot used for detached residential dwellings, shall be landscaped according to this subsection.
1. For corner-lot buildings with side-yard parking, the boundary between the parking lot and the street-facing side property line shall be landscaped or screened adjacent to the right-of-way according to one of the following options:
 - a. A minimum four-foot-wide planting strip containing a low, continuous hedge a minimum of 30 inches tall at installation consisting of a double row of evergreen shrubs planted a minimum of three feet on-center in a triangular pattern; or
 - b. A minimum two-foot-wide planting strip containing an ornamental metal fence or masonry wall, with a minimum height of three and one-half feet and a maximum height of four feet, combined with a single row of evergreen shrubs planted a minimum of three feet on-center.
 2. For all other parking lot boundaries, the boundary shall be landscaped or screened according to one of the following options:
 - a. A minimum two-foot-wide planting strip containing a single row of shrubs planted a minimum of three feet on-center combined with a minimum three-foot high ornamental metal fence or masonry wall of materials compatible with the primary

- structure. In the place of shrubs, deciduous shade trees may be planted a minimum of 10 feet on-center along the common boundary line; or
- b. A minimum four-foot-wide planting strip containing a low, continuous hedge a minimum of 30 inches tall at installation consisting of a double row of evergreen shrubs planted a minimum of three feet on-center in a triangular pattern.
 - c. As applicable, landscaping materials shall be planted on the side of the fence/wall closest to the street, alley, or residential property.
 - d. The interior landscaping requirements shall apply to all parking areas that meet the applicability standards of that section.

6.05 Buffers

The following regulations apply to properties where a multi-family, mixed-use, or non-residential district or use abuts a single-family residential district or use without an intervening public right-of-way and/or where these uses are not separated by a perimeter landscaping requirement.

- A. **Buffer Required.** Minimum buffer spaces as described in Table 6-03 shall be provided between adjacent or abutting dissimilar structures.

Dwelling Unit Height	Dwelling Unit Height			
	1 story	2 stories	3 stories	+3 stories
1 story	--	10	15	20
2 stories	10	--	15	20
3 stories	15	10	--	10
+3 stories	20	15	10	--

- B. **Buffer Design.** The buffer shall be landscaped in accordance with Table 6-04;

Requirement (per lineal foot of property line)	Buffer Width (feet)		
	0	5	10
Total Landscaping Units	.5	.0	.5
Minimum Tree Units	.25	.50	.0
Minimum Shrub Units	.05	.10	.15

1. New trees and shrubs shall be evenly spaced at planting.
2. Where a natural buffer exists, as determined by the Director, it shall remain undisturbed.
3. If used in addition to a landscape screen, fences shall have additional evergreen shrubs planted on the residential side of the fence.
4. Mechanical equipment, permanent detention and temporary erosion and sedimentation control basins, trash containers, loading docks, service uses, and employee break areas are prohibited in the buffer area.
5. Utility easements may cross but not be placed in the long dimension of a buffer yard.
6. Wherever practical, pedestrian access shall be placed through the buffer yard.

6.06 Landscape Design

All landscaping elements, including but not limited to planters, retaining walls, and berms must be specifically approved and shall conform to the following standards:

- A. **Preservation of Trees and Existing Vegetation.** Landscaping plans should be designed to preserve and protect existing native vegetation and mature trees. Bonus landscape credit shall be awarded for preserved vegetation as indicated in Table VIII-1 above, where the Director accepts the existing vegetation and/or trees as being in good health and meeting the intent of the landscaping requirements of this section.
- B. **Allowed Plant Materials.** Proposed materials must be specified on development plans. The use of low water, drought-tolerant plants is strongly encouraged for all new landscaping. A list of permissible plant species that are either native vegetation or compatible with the climate zones found in the city shall be adopted by the Planning Commission and may be amended from time time-to-time. Materials not on the list may be approved if the Director determines that they are equally or more suitable for local soil conditions, climate, and would provide the same or better level of visual benefits and have desire growth habits. No noxious weeds, as defined by the state, are permitted for use in the city.
- C. **Irrigation and Watering Requirements.**
1. The landscaping site plan must identify the area of approximate installation of an automatic irrigation system, its maintenance, and intended uses. All landscape plans must note and delineate all irrigated and sod areas. No in-ground irrigation components shall be permitted in the right-of-way.
 2. Required landscape areas shall be irrigated by an automatic underground irrigation system, surface drip system, subterranean drip system, or a combination of these systems.
 3. A hose bib system may be used for irrigation when a landscape area is less than 1,000 square feet in size and when all portions of the area are within 50 feet of a hose attachment;
 4. Irrigation systems shall be equipped with timers and scheduled to operate during evening or early morning hours to minimize evaporation rates.
 5. Sprinkler systems shall be configured to prevent over-spray of water onto streets and sidewalks.
- D. **Landscape Maintenance.** The responsibility for the maintenance of the landscaping shall lie with the property owner, his /her successor, and/or their agents for all non-residential property. Failure to maintain required landscaping shall be consider a site design violation of this code. All landscaping elements shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with these standards. All required landscaped areas shall be kept free of weeds, debris, and litter. In addition, all walls and fences shall also be maintained in good condition and, when necessary, be repaired or replaced. Any required landscape material, including any tree, grass or shrub, that dies shall be replaced by June 1 of each year. All required landscaping shall be cleared of all unplanned vegetation including weeds at least once each year prior to June 1.

6.07 Screening

- A. **Single-Family Residential Screening.** On residential lots, utility equipment shall be located behind the building line of the house and screened from public view by a wall, fence, or landscaping screen according to these Development Regulations.
- B. **Multi-Family, Mixed-Use, Commercial, and Industrial Screening.** For all developments other than single-family residential, the following mechanical equipment screening standard shall apply to the maximum extent feasible:
1. **Roof-Mounted Mechanical Equipment.** Roof-mounted mechanical equipment shall be screened by a parapet wall or similar feature that is an integral part of the building's architectural design. The parapet wall or similar feature shall be of a height equal to or greater than the height of the mechanical equipment being screened. Roof-mounted mechanical equipment, except solar energy systems, is prohibited on single-family residential dwellings.
 2. **Wall-Mounted Mechanical Equipment.** Wall-mounted mechanical equipment, except air conditioning equipment (e.g., window AC units), that protrudes more than six inches from the outer building wall shall be screened from view by structural features that are compatible with the architecture and color of the subject building. Wall-mounted mechanical equipment that protrudes six inches or less from the outer building wall shall be designed to blend with the color and architectural design of the subject building.
 3. **Ground-Mounted Mechanical Equipment.** Ground-mounted mechanical equipment shall be screened from view by landscaping or by a decorative wall that is compatible with the architecture and landscaping of the development site. The wall shall be of a height equal to or greater than the height of the mechanical equipment being screened.
- C. **Utilities.**
1. All new utility lines, with the exception of major transmission lines, shall be placed underground.
 2. Utility poles (other than wooden poles erected by a public utility company) and supports shall be painted or be of materials neutral in color.
 3. All transformers and other facilities and equipment, including communications equipment, shall either be screened through the use of architectural materials compatible with the architectural materials present on the site or, screening shall be adequate to screen such facilities from all rights-of-way.
- D. **Alternate Screening.** Mechanical equipment that is not screened in full compliance with the screening standards of these development regulations shall be reviewed in accordance with the procedures of the section dealing with, *Alternative Equivalent Compliance*. *Alternate screening* methods may include, but shall not be limited to, increased setbacks,

increased landscaping, grouping the equipment on specific portions of a site, and painting or otherwise camouflaging the equipment.

E. Screening of Service, Loading, and Storage Areas.

1. *Applicability.* These screening requirements are applicable to all service, loading, and storage areas. Owners are encouraged to locate the types of features listed in this subsection where they are not visible from off-site or from public areas of a site, so that screening is unnecessary.
2. *Placement.*
 - a. All service areas shall be placed at the rear, on the side of, or inside buildings.
 - b. No service area shall be visible from a public right-of-way or from adjacent residential areas.
 - c. Service areas and access drives shall be located so they do not interfere with the normal activities of building occupants or visitors on driveways, walkways, in parking areas or at entries.
3. *Outside Storage Areas and Loading Docks.*
 - a. All storage areas, service areas, and loading docks not screened by an intervening building shall be screened from view from any public street right-of-way. In addition, storage and loading areas must be screened from view from any adjoining property when that property requires a transitional buffer. Property zoned or used as an industrial area must also screen from view all outside storage areas that are adjacent to nonindustrial-zoned property.
 - b. An opaque screen consisting of one or a combination of the following shall be used:
 - (1) Freestanding walls, wing walls, or fences;
 - (2) Earthen berms in conjunction with trees and other landscaping; or
 - (3) Landscaping, that must be opaque and eight feet in height within 18 months of planting.
 - c. Screening shall be a minimum height of eight feet to screen truck berths, loading docks, and areas designated for permanent parking or storage of heavy vehicles and equipment or materials.
 - d. Screening shall be long enough to screen the maximum size trailer that can be accommodated on site. Sites that can accommodate a full size tractor-trailer shall provide a 48-foot wing wall, where wing walls are used.
4. *Shopping Cart Storage.* All shopping carts shall be stored inside the building they serve. Shopping cart corrals shall be made of a material suitable for withstanding weathering and rusting. Plastic corrals are prohibited.
5. *Refuse Facility Screened.* All refuse facilities, including new refuse facilities placed on an existing development, shall be large enough to accommodate a trash dumpster and shall be completely screened from view of public streets and adjoining nonindustrial zoned properties by:
 - a. Meeting the requirements of the other sections of this section; or

- b. Screening on three sides by a minimum six-foot masonry wall enclosed by an evergreen living screen. Screening shrubs shall be a minimum of four feet in height at installation and shall provide a minimum six-foot high screen when fully grown. An opening shall be situated so that the container is not visible from adjacent properties or public streets and the opening shall be a metal clad opaque gate. Chain-link gates are not permitted. Gates must have tiebacks to secure them in the open position.
6. *Design of Screening.* All screening shall be complementary to the building served in landscaping approach and with similar colors and material palette.

6.08 Fences

A. *Fence Types.*

1. Open fences means those fences constructed of wood, masonry, metal, woven wire, or other material whose surface area is greater than 50 percent open.
2. Solid fences means those fences constructed of wood, masonry, metal, planting, hedge or other material whose surface area is or may become less than 50 percent open.
3. The smooth or most finished side shall be facing outward on all fences.

B. *Permit Required.*

1. It shall be unlawful for any person, property owner or fence construction company to erect or install fencing without first paying the permit fee as set out in Appendix F, Schedule of Fees and Charges, Code of Ordinances, City of Leavenworth, Kansas and obtaining a fence or building permit pursuant to the provisions of these Development Regulations.
2. Masonry fences, or fences which contain a portion of masonry, four feet or more in height, or more than 4 feet above the nearby grade, shall be designed by an Engineer licensed in the State of Kansas and shall require construction documents and a building permit.
3. A survey by a surveyor licensed in the State of Kansas may be required by the Building Official before issuing a permit.

C. *Residential Areas.*

1. *Prohibited Types.*
 - (a) Barbed wire fence prohibited. No person shall construct, keep or maintain any barbed wire fence, or fence any part of which is composed of barbed wire, within a residential area of the city except when permitted as a farm use or as a condition to a special use permit for those uses listed as a special use connected with farming or agricultural activities in the R1-25 single-family residential district.
 - (b) Electric fence prohibited. No person shall construct, keep or maintain an electrically charged fence within a residential area of the city except when permitted as a farm use or as a condition to a special use permit for those uses listed as a special use connected with farming or agricultural activities in the R1-25 single-family residential district of the Development Regulations of the City of

Leavenworth, Kansas. These installations will then only be permitted when the electric fence is installed behind an open fence separated by three feet.

2. *Residential Front Yard.*

- (a) Open fences and hedges may be installed in all front yards on the property lines but may not exceed 48 inches above the natural contour of the ground.
- (b) No solid fences shall be constructed or reconstructed closer to the street line than the front wall of the residential structure. The front wall of the residential structure shall be determined by excluding porches, roof overhangs, dormers, or other extensions.
- (c) Where a residential property abuts a commercial or industrial property or use and where screening has not been installed or is not required, the residential property owner may install a solid or open screening fence on the property line not to exceed 72 inches in height above the natural contour of the ground along the property line that abuts the commercial or industrial property or use.

3. *Residential Side or Rear Yards.*

- (a) Open fences and hedges may be installed in all side and rear yards on the property line but may not exceed 72 inches above the natural contour of the ground.
- (b) Solid fences may be installed on the rear property line and on the side property line to a point aligning with the front wall of the residential structure as defined in subsection 2. of this section not exceeding 72 inches in height above the natural contour of the ground; provided that no solid fence greater than 48 inches above the natural contour of the ground shall be built within six feet of a residential structure on adjoining property; provided further, that if any portion of the adjoining structure is closer than six feet, then such solid fence shall not exceed four feet in height for the entire length of the side or rear yard property line.
 - (1) On corner lots, both yards adjacent to streets are considered front yards. In this instance, the fence on the addressed side must be erected in accordance with subsection 2.; on the other side a solid fence not exceeding 72 inches in height above the natural contour of the ground may be built on the property line, provided that the property line is a minimum of 15 feet from the curb or edge of pavement. If the property line is less than 15 feet from the edge of the pavement, the fence shall be installed a minimum of 15 feet from the curb or edge of pavement, or 50 percent of the existing setback from the house to the property line, whichever is less.
 - (2) For the purpose of determining yard requirements on corner lots, the street the property is addressed from shall be considered the frontage and yards shall be provided, as set forth in this section.
- (c) Where a residential property abuts a commercial or industrial property or use, and where screening has not been installed or is not required, the residential property owner may install a solid-type screening fence on the property line no less than six feet nor more than eight feet above the contour of the natural ground along the property line that abuts the commercial or industrial property or use.

- (d) A solid fence may be installed around a private swimming pool or patio not to exceed 96 inches above the natural contour of the ground and not more than ten feet from the edge of the pool or patio, provided all other requirements of this section are met.

D. Commercial and industrial areas—Types permitted.

1. *Decorative Fences.* Decorative fences shall be permitted in the Central Business District upon approval by the Development Review Committee. Decorative fences shall be designed to contribute to the beauty and principal use of the property and not as a retaining structure.
 - (a) Decorative fences shall not exceed four feet in height.
 - (b) Decorative fences shall be made of aluminum, steel, wrought iron, masonry, wood, or combinations thereof.
 - (c) Decorative fences shall be limited to black, white, and metallic colors.
2. Fences in commercial zoned areas of the city shall be either of open or solid type construction.
3. *Height restrictions.*
 - (a) Fences for commercial uses may be up to eight feet above the natural contour of the ground. Fences may be installed on the property line, except that no fence adjacent to the right-of-way may exceed 6 feet in height and no fence may be installed in the vision clearance triangle.
 - (b) Fences for industrial uses shall be no less than six feet or more than eight feet above the natural contour of the ground and may be installed on the property line except in the vision clearance triangle.
4. *Use of barbed wire.*
 - (a) Fencing of the chain-link type for commercial and industrial properties or uses may be topped with barbed wire on slanted arms. When these slanted arms are used, they shall be slanted outward and upward at an angle of not less than 45 degrees. No barbed wire will be permitted on nonconforming business properties in residential zoning districts.
 - (b) When the commercial or industrial property or use abuts a residential property or use, a chain-link fence with the barbed wire topping may be installed along the abutting residential property line provided the lowest point of the barbed wire is at least six feet above the ground.
 - (c) Chain-link fencing with barbed wire topping shall not be installed any closer than five feet to any street, sidewalk, or pedestrian way.

E. Agricultural Fence. The term "agricultural fence" shall apply only to areas conforming to the requirements of the R1-25 District and those activities permitted as a farm use, or as a condition to a special use permit for those uses listed as a special use connected with farming or activities in the R1-25 single-family residential district, Development Regulations of the City of Leavenworth, Kansas.

1. *Permitted types.* Agricultural fences shall be of the open type construction only.
2. *Height restriction.* Agricultural fences shall not exceed four feet in height above the natural contour of the ground.

3. *Use of barbed wire by special permit; prohibited when abutting residential property.* The use of barbed wire in the construction, reconstruction or maintenance of agricultural fences shall be by a special permit issued by the city inspector. The permit shall not be given or renewed if the fence forms a boundary with a residential development.
 4. *Hedges and evergreens along public ways—Height restricted.* The owner of any hedge or evergreen fence along the side of any street, avenue, or alley shall not permit any such hedge or evergreen fence to grow to exceed four feet in height.
- F. **General restrictions – all fences.**
1. *Sight Distance.* No fence shall be constructed nor shall a hedge or evergreen fence be planted or allowed to grow in such a manner as to obstruct the vision triangle at intersections.
 2. *Exposure of solid fences.* When tight-board fences are constructed, the smooth finished surface shall face the exterior of the property.
- G. **Notice to trim.** The owner of any hedge or evergreen fence along the side of any street, avenue, or alley shall on 30 days' notice in writing given by the city inspector be required to trim such hedge or evergreen fence to conform to the requirements of the City's property maintenance notice.
- H. **Fence maintenance notice.** Any property owner who fails to maintain any fence or screening structure in a clean, sanitary and inoffensive condition and free and clear of all obnoxious substances, rubbish and weeds shall, after 30 days' written notice from the Director or his agent, be deemed guilty of a misdemeanor and subject to the penalty provisions of these Development Regulations and any other applicable City Ordinance.

6.09 Tree Preservation

The purpose of this subsection is to protect the existing tree canopy as well as protect future tree canopies of the city when development or redevelopment occurs. The standards in this subsection are intended to regulate the removal of trees on lots within the city. It is not the intent of this subsection to unduly restrict desirable development and redevelopment that would otherwise be possible without these standards. The standards in this subsection shall be applied during review of any development or building permit application.

- A. **Preservation of Significant Trees.** Significant trees shall be preserved to the maximum extent feasible. For the purposes of this standard, the caliper of a "significant" tree shall be at least 24 inches for a deciduous tree and 18 inches for an evergreen.
- B. **Significant Tree Replacement.** Where significant trees cannot feasibly be preserved, the total caliper inches of the tree(s) that are removed shall be replaced on-site by the same caliper inches of new trees. For example, if a 24-inch caliper sugar maple is removed from the site; new trees with total caliper inches of 24 must be replanted. The new trees shall either be of the same or similar species, or, if identified by the Director or his/her designee for species diversification, shall be from a list of permissible species provided by the Director or designee.

- C. **Combination Planting and Payment Replacement.** If site limitations affect the ability of the developer to replace the total caliper inches of the removed tree(s), the Director or his/her designee may allow the developer to reduce the replacement measurement. The planted caliper inches shall allow for the maximum replacement of caliper inches feasible on the site. This reduction may not exceed 50 percent of the total caliper inches removed.
- D. **Enforcement.** The Director or his/her designee shall send a letter to all development applicants reminding them of the significant tree replacement requirements.
- E. **Removal of a Dead or Dying Tree or Unsafe Tree.** Nothing in this section shall be interpreted to require a property owner to keep a dead or dying tree. The status of a tree shall be determined by the Director or his/her designee prior to removal. The city may require a property owner to remove a dead or dying tree if it is determined to be a hazard to public safety.
- F. **Tree Protection During Construction.**
1. **Owner's Responsibility.** During development, the owner or developer is responsible for the erection of all barriers necessary to protect any existing or installed trees from damage both during and after construction in accordance with the standards of this subsection.
 2. **Tree Protection Fencing.** All significant trees and trees intended for use as credit towards the landscaping and tree-protection standards of article shall be fenced in accordance with this subsection before grading or other land-disturbing activity begins.
 - a. Fencing shall extend at least one foot in distance from the edge of the tree for each inch of Diameter at Breast Height (DBH) to a maximum of ten feet, but in no case closer than five feet to the trunk. The Director shall consider existing site conditions in determining the exact location of any tree protection fencing.
 - b. The developer shall erect a plastic mesh fence or chain link fence a minimum of four feet in height at the drip line around each tree or group of trees to prevent the placement of debris or fill within the drip line of any tree.
 - c. All tree protection measures shall be inspected and approved by the Director prior to start of any land disturbing activities. Failure to have tree protection measures prior to the commencement of construction is a violation of these regulations.
 - d. The tree protection fencing shall be clearly shown on the site plan or grading permit. No construction, grading, equipment, material storage, or any other activity shall be allowed within the fenced area except in accordance with the standards in subsection (3) *Encroachments into Root Zones*. Fencing shall be maintained until the land disturbance activities are complete.
 3. **Encroachments into Root Zones.** Encroachments within the root zones of trees protected in accordance with this subsection shall occur only in rare instances. If such an encroachment is anticipated, the following preventive measures shall be employed prior to the encroachment:
 - a. Written verification is prepared by a qualified arborist of the tree's condition before and after the encroachment, including preventive measures that shall be

DEVELOPMENT REGULATIONS
ARTICLE 6. LANDSCAPE & SITE DESIGN

6.09 Tree Preservation

- employed prior to, during, and after the encroachment to insure the viability of the tree.
- b. Where compaction might occur due to traffic or materials through the protection area, the area shall first be mulched with a minimum four-inch layer of wood chips or a six-inch layer of pine straw. Equipment or materials storage shall not be allowed within the tree protection zone.
 - c. In no instance shall any effluent associated with construction process, including concrete mixing, pouring, or rinsing processes, drain onto lands protected by tree protection fencing or other control measures.

ARTICLE 7. DESIGN STANDARDS

7.01 Purpose and Applicability

- A. **Purpose.** The purpose of the design standards is to preserve the quality and character of the built environment in the city. More specifically, the purposes of this section are to:
1. Ensure greater public safety, convenience, and accessibility through the physical design and location of land-use activities;
 2. Emphasize Leavenworth's unique community character while maintaining and enhancing the quality of life for its citizens;
 3. Enhance the sense of place by shaping the appearance, aesthetic quality, and spatial form of structures and developments;
 4. Promote the sustainability of both the structure and the overall community;
 5. Encourage high quality development as a strategy for investing in the city's future;
 6. Minimize negative impacts of development on the natural environment;
 7. Promote both the sustainability of the structure and the overall community; and
 8. Protect and enhance property values.
- B. **Applicability.** The design standards in this Article apply to all new and significantly redeveloped structures in all zoning districts.

7.02 Residential Design

- A. **Design Objective.** The Design objective or the Residential design standards are to:
1. Promote "4-sided" architecture, where buildings are designed as a complete and integrated product, considering visibility and impact on all adjacencies
 2. Encourage variation in building design so that a compatible range and scale of buildings encourage diversity in details that prevent monotonous streetscapes.
 3. Create relationships between residential streetscapes and buildings and sites that reinforce the overall character of the block and neighborhood.
- B. **Specific Applicability.** The following standards apply to all residential buildings of any type, unless specifically noted and limited to a certain building type or context.
- C. **Mass and Form.** The following standards require a compatible mass and form of residential buildings, particularly when different building types are mixed or transition on or across adjacent blocks. Mass and form standards are broken out by specific building types and contexts.
1. **Single Family Infill.** Single-family infill located on a block face where more than 50 percent of the existing homes are single-family shall employ the following technique to help maintain a lower-intensity residential character along the street frontage:
 - a. Design of the infill structure shall mimic the building proportions, setbacks, drive style, and location, orientation, height, bulk, and mass of the predominant architectural styles(s) found on both sides of the street.
 - b. Professionally prepared elevations are not required, unless the Director is unable to determine the nature of the design from the documents submitted.
 - c. Designs submitted in accordance with this section shall be reviewed by the Director. Appeal from the decision of the Director shall be to the City Commission.

2. *Townhomes.* No more than six single-family dwelling units shall be attached in a single row. Facades shall be differentiated into separate units by the following:
 - a. Each unit shall have distinctly different facades and no attached single-family structure facade shall be repeated more than once every four structures on the same side of the street.
 - b. The facades of single-family attached town homes shall be punctuated by a change in texture material, offset, or other architectural feature to differentiate individual units.

3. *Multi-dwelling Structures.* Buildings with 3 or more dwellings or any residential buildings constructed as part of a multi-family development shall meet the following mass and form standards:
 - a. The minimum separation between multi-family buildings, including accessory buildings, on the same lot or development parcel is 15 feet.
 - b. Multi-family buildings in a single development shall be clustered or grouped to form neighborhoods.
 - c. Developments with at least four units shall provide 150 square feet of private common open space for each multifamily dwelling unit. A minimum of 40 percent of the open space shall be usable for recreation, including swimming pools, sport courts, or playgrounds with equipment. Required landscaping is excluded from open space calculations.
 - d. Each elevation shall incorporate wall plane projections or recesses having a depth of at least four feet and extending a minimum of four feet at a minimum interval of 30 feet
 - e. The elevations of all multi-family buildings shall be articulated through the incorporation of at least three or more of the following:
 - (1) Balconies;
 - (2) Bay or box windows;
 - (3) Porches or covered entries;
 - (4) Dormers;
 - (5) Accent materials such as brick, stone, or stucco with banding highlights;
 - (6) Window grills and shutters;
 - (7) Variation in window sizes and shapes; or
 - (8) Vertical elements that demarcate building modules.
 - f. The height of each multi-family building taller than 35 feet shall be stepped down from its highest roofline at least one full story on any end of the building located within 50 feet of a street-right-of-way or an adjacent area zoned or used for single-family residential.
 - g. Multi-family buildings shall provide concentrated unit access points. Monotonous access balconies and corridors running the length of the exterior of a building are prohibited.
 - h. Multi-family infill located on a block face where more than 75 percent of existing homes are single-family shall employ one or more of the following techniques to help reduce the overall bulk and mass of individual buildings and help maintain a lower-intensity residential character along the street frontage:
 - (1) Articulating the front façade so that the building appears from the street to be separate homes by “stepping back” the front façade a minimum of 10 feet at the traditional side yard setback would typically be found between two single-family homes;
 - (2) Organizing units around a central courtyard that maintains the impression of the traditional side yard setback between units along the street frontage; or

(3) Designing the multi-family building so that the massing, arrangement of architectural elements, and use of exterior materials gives the appearance of a large single-family home.

- i. Rooflines longer than 50 feet shall include at least one vertical elevation change of at least two feet.
- j. The incorporation of a variety of roof forms is strongly encouraged. Upper-level residential floors may be incorporated into the roof form to reduce the apparent height and mass of buildings.

D. **Orientation and Articulation.** The following orientation and articulation standards require that buildings relate to neighborhood streetscapes and share a pedestrian-oriented details that help reduce the scale of buildings and create a range of compatible but distinct designs and patterns, even when different building mass or forms exist, and particularly when different architectural styles are blended.

- 1. **Entrances.** To the maximum extent feasible, the primary entrance and façade of individual buildings shall not be oriented towards parking, but shall be oriented towards:
 - a. An abutting public street, or
 - b. Common open space, such as interior courtyards, parks, or on-site natural areas or features with a clearly defined and easily accessible pedestrian circulation system.
 - c. All ground-floor units with frontage along the primary street shall have an entrance that faces the street. Multi-family buildings located with multiple street frontages shall provide entrances to units along each street frontage.
 - d. Exterior entrances from a public sidewalk or common open space are permitted for dwelling units on the ground floor. These entrances shall be raised from the finished ground-floor level of the sidewalk a minimum of two feet 18 inches.
 - e. Dwelling units above the ground floor shall have interior unit entrances, except that exterior stairs are permitted for access to upper-floor units only if they are oriented towards a central plaza not visible from any street.
- 2. **Transparency.** At least 25% of all wall surface area facing a public street shall be windows.
- 3. **Vertical Articulation.** Buildings three stories or more shall use the following design details to reduce the scale of the façade:
 - a. The top floor of any building shall contain a distinctive finish, consisting of a cornice, banding, or other architectural termination.
 - b. An expression line shall delineate divisions between floors of all buildings, and a cornice shall delineate the tops of facades for buildings that do not utilize a pitched roof.
 - c. Buildings shall be designed to incorporate visually heavier and more massive elements at the building base, and lighter elements above the base. Upper stories shall not appear heavier or demonstrate greater mass than the lower stories of the building.

E. **Materials.** The following materials are acceptable for construction:

- 1. Brick, concrete stucco, stone, stone facing, textured masonry block, wood, glass in combination with metal, or similar, durable architectural materials.
- 2. This list may be amended by the addition of other acceptable materials without amending these regulations.
- 3. All added acceptable materials shall be approved by the DRC. The Chief Building Official shall maintain the list of additional acceptable materials.
- 4. EIFS, or synthetic stucco may be approved on a case-by-case basis.

- F. **Garages, Parking and Access.** The following garage, parking and access standards balance the design of sites and buildings for cars, with impacts on neighborhood streetscapes and pedestrian scale residential design.
1. Front-loaded garage doors shall not comprise more than 45% of the building line on the front façade.
 2. Alternative garage locations such as side- or rear-entry, detached garages, or garages setback at least 12-feet from the front building line are encouraged.
 - a. Any detached garage shall be architecturally compatible, and consistent in materials, design and colors as the main building.
 - b. Any side loaded garage shall have designs on the street-facing wall that are compatible with the house design materials identical to the primary façade, and by incorporating at least two of the following elements:
 - (1) Two or more windows, with a size, orientation and design similar to those on the primary façade;
 - (2) A permanent trellis covering a minimum of 25% of the wall area. One vine for every eight linear feet of trellis shall be planted at its base. Appropriate vine species are approved by the Director; or
 - (3) Garage or living area façade offset from the other a minimum of 4 feet.
 3. Driveway widths within the front yard shall be limited to no more than 30% of the lot frontage width measured at the front building line or 30 feet, whichever is less. Where this limits access to a lot, alternatives such as single-drives to expanded driveway pads, shared driveways and lanes, or alley-loaded access should be considered.
 4. To the maximum extent feasible, garage entries, carports, parking areas and parking structures shall be internalized in building groupings or internalized into a residential block and oriented away from the streetscape.
 5. Overall, parking areas and freestanding parking structures (detached garages or car ports) shall not occupy more than 30 percent of the perimeter public street frontage for multi-family development.
- G. **Variation of Design.** In order to avoid the monotony of repetitive building design, to encourage diversity and visual interest, and to promote a wide range of distinct details within a narrow range of compatible building types, scale and forms, the following techniques should be used in residential projects affecting multiple adjacent buildings:
1. Variation of building types, models or floor plans that result in distinct but compatible building forms when viewed from the streetscape.
 2. Variation of front entry features, and to design of roof structures associated with front-entry features;
 3. Distinct architectural styles that impact the materials, placement of windows, or level of details and ornamentation while still presenting a compatible design and relationship to the neighborhood streetscape.

7.03 Non-Residential Design

- A. **Design Objective.** The non-residential design standards are intended to protect and preserve the quality and character of the built environment in the city's mixed use, commercial, and industrial districts. More specifically, the purposes of this section are to:
1. Reflect on the impact of various design and development decisions, and how the various styles of within our community can be applied to include a greater degree of interest and diversity, but also a greater degree of compatibility and effective transitions.
 2. Promote a specific an intentional relationship of buildings and sites to streetscapes and public or civic spaces through design.
 3. Require compatibility in scale, massing and form through recognition of basic building patterns and with subtle transitions through well designed spaces between buildings.

4. Ensure quality design through unique styles, details and patterns that support different types of development and contexts in the city.

B. *Mass and Form.*

1. *Vertical Articulation.* Buildings greater than 2 stories or taller than 30 feet shall be designed to reduce apparent mass by including a clearly identifiable base, body, and top, with horizontal elements separating these components. The component described as the body must constitute a minimum of 50 percent of the total building height.
 2. *Horizontal Articulation.* Buildings shall be designed to reduce apparent mass by dividing facades into a series of smaller components. No individual component shall have a length of more than 60 feet. Components shall be distinguished from one another through two or more of the following:
 - a. Variations in roof form and parapet heights;
 - b. Pronounced recesses and projections;
 - c. Wall plane off-sets;
 - d. Distinct changes in texture and color of wall surfaces;
 - e. Ground level arcades and second floor galleries/balconies;
 - f. Protected and recessed entries;
 - g. Vertical accents or focal points.
 3. *Stepping Back of Building Mass.* To the maximum extent feasible, buildings greater than 3 stories or taller than 45 feet shall provide step backs in the building form to achieve at least one of the following objectives where such an objective is relevant:
 - a. Frame or otherwise maintain important views or view corridors;
 - b. Relate to the surrounding development context;
 - c. Provide human scale adjacent to streets, pedestrian walkways, plazas, or other public spaces; or
 - d. Provide a transition in scale from pedestrian scale to large scale.
 - e. Step backs shall:
 - (1) Be at least eight feet in depth.
 - (2) Generally occur between 12 feet and 45 feet above the finished grade (based upon the height of the structure and the surrounding development context).
 - (3) Where large variations in topography exist (e.g., a building is backed up to an adjacent hillside) or where other unique site constraints exist, alternatives to the building massing and height configurations required above may be approved.
 - (4) Taller structures may require multiple step backs, or variations in building massing and height in order to meet the objectives stated in standard (1), above.
 4. *Multi-story Buildings.* Upper stories shall consist of usable space.
 - a. "False," unoccupied upper floors designed to give the appearance of multiple floors are prohibited.
 - b. If a limited number of buildings within a particular development have multiple stories, the multi-story buildings or the portions of buildings that are multiple stories shall be concentrated at corners, along entry corridor roadway frontages, and near transit stops.
 5. *Outparcels.* To the maximum extent feasible, outparcels and their buildings shall be clustered in order to define street edges, entry points, and intimate spaces for gathering or seating between buildings.
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- a. The even dispersal of outparcel sites in a widely spaced pattern along streets is strongly discouraged. Buildings shall be organized to promote a compact pattern of development, pedestrian-friendly spaces, streetscapes, areas of naturalized landscaping, and screen parking areas.
 - b. Spaces between buildings on outparcels shall be improved to provide small-scale pedestrian amenities such as plazas, seating areas, pedestrian connections, gathering spaces, or well-landscaped parking areas.
 - c. Buildings located at entrances to a development demarcate a gateway to create an overall identity, set the tone for the development, and mark arrival or entry.
 - d. At major entry points of a development with three or more buildings, buildings shall be organized along the street and at the intersection to create a gateway.
 - e. Architectural attachments shall be incorporated into the facades of buildings, and be placed at major entry points, to help emphasize arrival or entry into the development. These features may include, but are not limited to:
 - (1) Civic amenities such as patios or plazas with seating and landscape, mini parks or squares.
 - (2) Landscape features such as planters, water features and monument signs.
 - (3) Architecture enhancements such as pilasters, arcades, and tower elements.
6. **Roofs.**
- a. **Roofline Articulation.** Variations in rooflines shall be used to add interest and reduce the scale of large buildings. Roof features shall complement the character of the overall development.
 - b. **Flat Roofs.** Flat roofs shall include parapets that adhere to articulation requirements for the main face of the structure. The average height of the parapet shall not exceed 15% of the height of the supporting wall, unless rooftop equipment cannot be sufficiently screened. A three-dimensional cornice treatment is encouraged for parapets. Parapets shall look complete from all sides if visible at any distance from the ground. Parapets shall be constructed of the same material as the primary façade.
 - c. **Overhanging Eaves.** Overhanging eaves shall extend no less than three feet past the supporting walls.
 - d. **Roof Pitch.** Pitched roofs shall have a pitch consistent with the majority of buildings within 1,000 feet. This requirement excludes roofs for entries and dormers.
 - e. **Architectural Elements.** Architectural elements that add visual interest to the roof, such as dormers and masonry chimneys, are encouraged.
 - f. **Roof Materials.**
 - (1) Asphalt shingles, industry-approved synthetic shingles, standing seam metal or tile roofs are allowed.
 - (2) Wood shingles, corrugated metal, tarpaper, and brightly colored asphalt shingle roof materials are not allowed where visible from a roadway, public park, or residential district.
- C. **Orientation and Articulation.**
- 1. **Entrances.** Doors shall be used to establish interest, character, and variety along the public right-of-way.
 - a. All buildings shall have a principal building entrance that faces an adjacent public street, public plaza or public walkway. In cases where this is not feasible buildings may face a parking area provided it is connected to the street with a sidewalk.
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- b. Where feasible, gates, courtyards, staircases, and bridges shall be used to connect buildings and create outdoor rooms and linkages.
 - c. Primary entries shall be clearly visible from the street and accentuated from the overall building facade by:
 - (1) Differentiated roof, awning, or portico;
 - (2) Covered walkways or arcades;
 - (3) Projecting or recessed entries from the surrounding building facade;
 - (4) Detailed doors and doorways with transoms, sidelights, trim details, and/or framing;
 - (5) Windows within doorways equivalent in size to 50% of door surface area;
 - (6) Decorative nighttime lighting where appropriate.
2. **Transparency.** Building frontages and sides of buildings oriented to the street or other public areas (e.g., parks, open space, trails, or corridors) shall incorporate a combination of arcades, pedestrian level display windows, storefronts, and store entrances.
- a. At least 25% of the total area of all walls facing a public street shall consist of windows or doorways.
 - b. Glazing shall be effectively clear, and shall not exceed 50% reflectance. Divided-light windows are encouraged. Materials that create noticeable glare or which restrict the ability of the public to view the inside of a structure from the outside are prohibited
 - c. Energy conserving window films and coatings are permissible within these standards.
 - d. To encourage activity along the building frontage, entrances shall be located at intervals of a maximum of 50 feet. Building frontages shall be designed at a human scale, with details, windows and other openings along ground floor pedestrian areas.
 - e. Defensive architecture such as burglar bars, steel gates, and steel roll-down curtains are prohibited.
3. **Awnings and Canopies.** Structural awnings are encouraged at the ground level to enhance the articulation of the building and provide shade.
- a. The material of awnings and canopies shall complement the building.
 - b. Awnings shall not be internally illuminated.
 - c. Canopies shall not exceed 40 linear feet without a break.
 - d. Awnings shall not extend more than five feet over the sidewalk, unless otherwise approved by the Director, up to a maximum of 10 feet, and are in keeping with the architectural style of the building.
 - e. Canopies shall respect the placement of street trees and lighting and shall not interfere with them.
 - f. All large canopies that require structural columns for support shall have a minimum six-foot masonry (or other approved material) finish measured from the finished grade. Materials used on columns and canopies shall be complementary to the building.
- D. **Building Materials and Colors.**
- 1 **Wall Materials.**
 - a. All exterior walls, including parking structures, garages, and accessory structures shall be 85 percent masonry. A maximum of 15% of each elevation may include accent materials not listed on the approved masonry list.
 - b. No single building material shall cover more than 80% of the front building façade.

DEVELOPMENT REGULATIONS
ARTICLE 7. DESIGN STANDARDS

7.03 Non-Residential Design

- c. The masonry coverage calculation shall not include doors, windows, chimneys, dormers, window box-outs, bay windows that do not extend to the foundation, or any exterior wall that does not bear on the foundation.
 - d. Masonry shall be defined as:
 - (1) Native stone, brick or tile laid up unit by unit and set in mortar;
 - (2) Stucco (exterior Portland cement plaster with three coats over metal lath or wire fabric lath);
 - (3) Cultured stone or cast stone;
 - (4) Architecturally finished block (i.e. Burnished block, split faced concrete masonry units or architecturally finished tiltwall);
 - (5) Architecturally finished pre-cast wall that is profiled, sculptured, or provides three dimensional interest;
 - (6) Poured-in-place concrete wall;
 - (7) Architectural glass (less than 25% reflectance).
 - e. The rear façade of a building that is adjacent to an industrial use may be constructed with tiltwall concrete, concrete block, or aggregate concrete in addition to the materials permitted herein.
 - f. Structures 20,000 square feet or less shall require a minimum of two distinct building materials from the approved masonry list be utilized on all facades to provide architectural detail and interest.
 - g. Structures over 20,000 square feet shall require a minimum of three distinct building materials from the approved masonry list be utilized on all facades to provide architectural detail and interest.
2. *Awnings and Overhanging Eaves.* The following materials are approved for the construction of awnings and overhanging eaves:
- a. Industry-accepted metal;
 - b. Canvas;
 - c. Woven vinyl.
3. *Prohibited Materials.* The following materials are prohibited as primary cladding or roofing materials:
- a. Aluminum siding or cladding (excluding composite aluminum cladding such as Alucobond);
 - b. Galvanized steel or other bright metal;
 - c. Plastic siding;
 - d. Cementitious fiberboard;
 - e. Unfinished or smooth concrete block/masonry units or concrete wall;
 - f. Exposed aggregate;
 - g. Wood roof shingles;
 - h. Reflective glass.
4. *Façade Colors.*
- a. Colors of paint, stains, and other finishes or materials shall complement each other.
 - b. Generally, no more than three colors per building are suggested.
 - c. Fluorescent colors are prohibited.
 - d. Primary colors are prohibited.
 - e. The use of stark white is discouraged.
- E. **Green Design.** To the maximum extent feasible, new buildings are encouraged to incorporate one or more of the following features:

1. Opportunities for the integration of green power in the design of buildings or sites. Green power may be derived from solar, wind, geothermal, biomass, or low-impact hydro sources;
 2. Energy-efficient materials, including recycled materials that meet the requirements of this Code;
 3. A sustainable roof, such as a vegetated roof; and/or
 4. Materials and design meeting the U.S. Green Building Council's LEED-NC certification requirements.
- F. **Historical Structures.** Changes to buildings within designated historic districts shall be compatible with registered buildings within the same district and conform to the City of Leavenworth's Historic Preservation Ordinance.

7.04 Alternate Equivalent Compliance

To encourage creative and unique design, "alternative equivalent compliance" (AEC) allows development to occur in a manner that meets the Purpose and Design Objectives of the Design Standards, yet through an alternative design that does not strictly adhere to the standards. This is not a general waiver of regulations. Rather, this section authorizes a site-specific plan that is equal to or better than the strict application of the standard.

- A. **Applicability.** The alternative equivalent compliance procedure is available only for the Design Standards, or for any property in the ROD District the Off-Street Parking, Landscaping & Site Design, and Design Standards.
- B. **Pre-Application Conference Required.** An applicant proposing alternative equivalent compliance shall request and attend a pre-application conference with the Director prior to submitting application materials for the applicable permit(s). This meeting is to discuss the project, the applicable standards, and the proposed method of alternative compliance. The application should include sufficient explanation and justification, in both written and graphic form, for the requested alternative compliance.
- C. **Decision-Making Responsibility.** Final approval of any alternative compliance proposed under this section shall be the responsibility of the City Commission. For example, if an applicant is requesting a rezoning along with an alternative equivalent compliance application for landscaping, the AEC application will be reviewed with the rezoning application by the Planning Commission and City Commission. Administratively approved projects proposing alternative compliance shall receive written approval of the alternative compliance from the Director.
- D. **Criteria.** Alternative equivalent compliance may be approved if the applicant demonstrates that the following criteria have been met by the proposed alternative:
1. Achieves the Purposes and Design Objectives of this Article and the specific intent of the subject standard to the same or better degree than the subject standard;
 2. Advances the goals and policies of the any official plans or policies of the City, and the intent of the base zoning district.;
 3. Results in benefits to the community that are equivalent to or exceed benefits associated with the subject standard;
 4. Imposes no greater impacts on adjacent properties than would occur through compliance with the specific requirements of these Development Regulations.
- E. **Effect of Approval.** Alternative equivalent compliance shall apply only to the specific site for which it is requested and shall not establish a precedent for approval of other requests.

ARTICLE 8. SIGNS

8.01. Purpose and Intent

- A. The purpose of this Sign Code is to create the framework for a comprehensive and balanced system of content- and viewpoint-neutral regulation of signs to facilitate easy and pleasant communication between people while protecting the First Amendment rights of resident individuals and businesses of the city and preserving and improving the quality of the city's environment by avoiding visual clutter harmful to traffic and pedestrian safety, property values, business opportunities, and community appearance.
- B. This chapter is intended to:
1. Promote public safety, order and cleanliness;
 2. Prevent needless visual cluttering within the city;
 3. Promote aesthetics and the quality of community life;
 4. Reduce distraction of motor vehicle operation by signage;
 5. Provide a means to display signs compatible with their surroundings, and legible to the driving public; and
 6. Impose the least regulation and restriction on the expression of opinions and the conveying of information while accomplishing the above purposes.

8.02. Scope

- A. No sign in the City of Leavenworth shall be permitted in any district except in accordance with the provisions of this sign code.
- B. This sign code does not apply to signs erected in the public right-of-way, which are regulated by other processes and does not apply to signs erected wholly within a building and not visible outside of the building.
- C. All sign permits requested under this Article, if they lie within a historic district, are subject to prior review and approval procedures found in Article 9, Historic Preservation Regulations.

8.03. Computations

The following principles shall control the computation of sign surface, sign face and sign height:

- A. **Computation of Sign Face of Individual Signs:** The entire area within a single continuous perimeter enclosing all elements (individual letters and/or logo) of the sign which form an integral part of the display including the perimeter border.
- B. **Computation of Area of Multi-Face Signs:** The sign surface for a sign with more than one sign Face shall be computed by adding together the area of all sign Faces on the sign.
- C. **Computation of Height:** The height of a sign shall be computed as the distance from the base of the sign at average grade to the top of the highest attached component of the sign.

8.04. Permits

A. **Permits Required.**

1. Except as otherwise provided in this chapter, it shall be unlawful for any person to erect, construct, enlarge, move, modify, alter, or convert any sign in the City, or cause the same to be done, without first obtaining a sign permit for such sign as required by this chapter. Issuance of a permit is contingent upon the sign being in compliance with all applicable laws and regulations of the City.
2. Every sign permit issued by the Director shall become null and void if installation is not commenced within 120 days from the date of approval of such permit. If work authorized by such permit is suspended or abandoned for 120 days from the date of permit approval, a new permit shall be required for such work, even if no changes have been made to the original sign plan.
3. *Required Information:* Application shall be made upon forms furnished by the Planning and Community Development Department and shall be accompanied by such information as may be required to assure compliance with all appropriate laws and regulations of the City.

B. **Penalty for Failure to Obtain Permit.** If the Director discovers or is informed of a sign constructed or being constructed that requires a permit that has been constructed, installed, or erected without a permit according to this sign code, s/he shall collect three times the permit fee specified for the type of sign in question.

C. **Signs Excluded from Permit.** The following signs are not required to have a permit; however, these signs shall otherwise comply with this section and all other applicable provisions of the sign Code.

1. Directional signs.
2. Holiday decorations.
3. Home security and neighborhood watch signs.
4. Identification signs.
5. Official signs.
6. Name Plate Signs: Where multiple tenants share the same rear door, the sign may display the name and address of each tenant. These signs shall not exceed four (4) square feet.
7. Window signs, as further described in section 8.10.F of this chapter.
8. Contractor signs: One free standing, non-illuminated contractor's sign, not to exceed eight square feet of sign surface, shall be permitted for each contractor if the

property is zoned Residential, or not to exceed 32 square feet if the property is zoned other than Residential. The sign shall not be installed before commencing work on the project or the issuance of a building permit for the project and the sign shall be removed upon completion of the project.

9. Public interest signs that do not exceed the size limitations.
10. Address signs.
11. Commercial Real Estate signs not exceeding 32 square feet in area per sign face with two faces permitted. Signs shall not exceed 8 feet in height. Signs are limited to one sign per street frontage, with a maximum of two signs for each project. Signs must be located at least 10 feet from the edge of the curb or behind any existing public sidewalks and may not be illuminated or have an electronic changeable face.
12. Residential Real Estate signs not exceeding 3 square feet in area. Signs are limited to 1 on-premises sign per street frontage, and two off-premises signs permitted only with permission of property owner. Signs must be located at least 10 feet from the edge of the curb or behind any existing public sidewalks and may not be illuminated or have an electronic changeable face.
13. Garage Sale signs may only be placed at the site of the sale. All garage sale signs shall be removed immediately upon completion of the sale. Garage sale signs include sample and yard sale signs. Garage sale signs shall not exceed four square feet per sign, with two faces per sign permitted. A garage sale permit shall be obtained as required by Section 12-541 of the City Code of Ordinances.
14. Signs carried by a person.
15. Costumed people promoting a business or event.
16. Flags, pennants, emblems, memorial tablets, cornerstone etches, monuments and insignia of any governmental body, public or private school, church, synagogue or other place used primarily for worship, community centers, or other public, semi-public, or civic organizations or other similar noncommercial entity, when not displayed in connection with a commercial promotion or as an advertising device; provided that not more than three flags, pennants or insignia shall be displayed on any building, structure or premises, unless specifically herein provided. Any other provisions as applicable regarding display of the American flag as contained in Title 4, U.S. Code.
17. Integral decorative or architectural features of buildings, so long as these features do not contain letters, trademarks, moving parts or lights.
18. Decorative landscape markers, which may include logos or trademarks.
19. Signs attached to a currently licensed, operational and legally parked or legally moving vehicle.

20. Temporary signs containing non-commercial messages at churches, synagogues and other similar places of worship, community centers, public and private schools, and buildings or structures owned or leased and used by other public, semi-public, or public service organizations.
21. Special Event signs shall be exempt from a permit as follows: Signs of a temporary nature for campaigns, drives, seasonal events of civic or philanthropic organizations not to exceed 32 square feet. These signs must be placed on private property and must be removed within three days after the event.
22. A new sign permit shall not be required unless (a) the existing sign base, pole, or face is nonconforming to these regulations or, (b) the existing sign base or pole is going to be relocated, changed, or enlarged.
23. Political signs may be placed on private property only after permission has been granted by the owner of the property or his or her authorized agent. In commercial or industrial areas, signs shall not exceed 32 square feet in area per face. In residential areas, signs shall not exceed 3 square feet per face.
24. Contractor signs as further defined in section 8.07.C.
25. Decorative light pole banners, which may not include any business or advertising information.

8.05. Sign Installers

All persons, firms, or corporations engaged in the business of sign or billboard fabrication, erection, installation or maintenance within the corporate limits of the city shall comply with the provisions of this Section.

- A. **License Required:** There shall be an annual license and fee for each person, firm, or corporation engaged in the business of sign installation, hanging and erecting signs and billboards.
- B. **Subcontractors:** All persons engaged in the business of sign fabrication, installation and the erection of signs and billboards shall obtain such a license, except those who are employed by contractors carrying a license.
- C. **Certificate of Insurance Required:** All persons, firms, or corporations engaged in the business of sign or billboard fabrication, installation, or erection shall file a Certificate of Insurance with the City Clerk before installing, erecting, or maintaining any sign or billboard. The Certificate of Insurance shall be in the amount of bodily injury liability \$100,000 each person, \$300,000 each accident and property damage liability: \$25,000 each accident or a good and sufficient bond in the same amounts shall be filed with and approved by the City Clerk or Duly Authorized Representative. The certificate or bond shall state that the policy or bond shall not be cancelled or in any manner amended, changed, or altered without giving the authorized representative five days written notice thereof. If a surety bond is provided in lieu of a certificate of insurance, such bond shall be approved and shall be conditioned for the installation and erection of signs in accordance with the Ordinances of

the city and the laws of the State, and shall provide for the indemnification of the city for any and all damages or liability which may accrue against it by reason of faulty installation, erection, demolition, repair, removal, or defects in or collapse of any sign for a period of one year after erection and for such period of time that such a sign is maintained or serviced by or under the direction of the maker of such bond. Such bond shall further provide for the indemnification of any person who shall, while upon public property or in any public place, incur damage for which the principal named in the bond is legally liable.

- D. **Revocation of an Installer's License:** If at any time within any rolling six month period any holder of a sign installer's license is found to have erected more than two signs without a permit, the Director shall notify the holder that the license is revoked.

8.06. General Standards

- A. **Maintenance.** All signs, together with all of their supports, braces, guys and anchors, shall be kept in repair and in a proper state of preservation. The sign Surface of all signs shall be kept neatly painted or posted at all times. Every sign and the immediate surrounding premises shall be maintained by the owner or person in charge thereof in a clean, sanitary, and inoffensive condition and free and clear of all obnoxious substances, rubbish, and weeds. All maintenance required is the responsibility of the owner of the sign. Where sign ownership cannot be determined, the property owner is responsible for the maintenance of the sign. Failure to maintain signs shall result in citation and/or city -ordered correction as permitted.
- B. **Sign Illumination.** Signs may be internally or indirectly illuminated unless specifically prohibited elsewhere by this sign Code. All illuminated signs, including electronic changeable message signs and digital billboards, shall comply with the National Electric Code and other codes as applicable. Illuminated signs shall not be permitted in residential districts unless specifically allowed by this sign code. All electronic changeable message signs shall comply with the performance standards herein.
- C. **Electronic Signs Subject to Safety Review.** Electronic changeable message signs and digital billboards within a sight line of any traffic control or safety device signal shall be subject to approval by the City Engineer. Signs found by the City Engineer after their installation to be hazardous to the traveling public shall be immediately disabled and the burden of demonstrating an alternative location or method of display for that sign shall be the responsibility of the property owner.
- D. **Inspections.** All signs for which a permit is required shall be subject to inspection by the Director or his/her designee. Footing inspections shall be required by a Building Inspector for all signs that have footings. All signs containing electrical wiring shall be subject to the provisions of the governing electrical code; electrical components shall bear the label of an approved testing agency and shall be subject to inspection by the City Electrical Inspector. The City may order the removal or repair of any sign that is not maintained in accordance with the provision of this sign code.
- E. **Substitution of Message.** For any sign authorized in any zoning district, a non-commercial message may be substituted for any allowed commercial message or any other allowed non-commercial message, provided that the sign is legal without consideration of message content. If

the sign is one for which no sign permit is required, the message substitution may be made without additional approval. The purpose of this provision is to prevent inadvertent favoring of commercial speech over noncommercial speech, or favoring of any particular non-commercial message over any other non-commercial message. This provision does not allow for the substitution of an off-premise commercial message in place of an on-premises commercial message.

- F. **Materials.** All attached signs and free standing signs shall be constructed of materials generally used for permanent signage. A vinyl, fabric, or other similar material banner may not be utilized for a permanent attached or free standing sign.

8.07. Signs Permitted in All Districts

The following signs shall be permitted in all zoning districts; permits shall be required unless excluded from the permit requirements.

- A. Official governmental jurisdiction flags, including flags indicating weather conditions, and flags that are emblems of religious, charitable, public, and nonprofit organizations. No flag shall exceed 50 square feet in area. Title 4 of the United States Code provides instructions on how to display the Flag of the United States.
- B. One directional sign shall be permitted at each entrance to a building site and at each entrance to a drive-thru facility when zoned business or industrial. Such signs shall not exceed four feet in height, shall not exceed four square feet of area per sign face, and may be single or double-faced. Such signs may indicate entrances, exits, addresses, direction of traffic flow, and the location of loading docks, parking areas, delivery doors, drive-thru lanes, and similar facilities. Up to 25% of the area of the sign may be used to display the name or logo of the developer, building or principal tenant. Such signs shall not be located on the right-of-way and shall not block vision to traffic. These signs are not computed as part of allowable free standing signage and will not be subject to spacing restrictions. Directional signs shall not be electronic changeable message signs.
- C. Contractors' remodeling signs identifying the contractor(s) who perform remodeling or property improvement work are permitted. Not more than one sign, not to exceed eight square feet, shall be permitted for each contractor if the property is zoned residential, or not to exceed 32 square feet if the property is zoned other than residential. Said signs shall not be installed before commencing work on the project or the issuance of a building permit for the project and the sign shall be removed within 80 days of completion of the project. Contractor's remodeling signs may be a non-affixed sign, but shall not be an illuminated sign or an electronic changeable message sign.
- D. Address signs that do not exceed two square feet in areas zoned residential and three square feet in areas not zoned residential and may include the name of a legal home occupation. Address signs shall not be an illuminated signs or electronic changeable message sign.

8.08. Signs Permitted in Residential Districts (R1-25, R1-9, R1-6, R1-7.5, R4-16, R-MF)

Table 8-01: Residential Signage Standards			
	Maximum Number	Height	Area
Home Based Business Signs	1	N/A	6 s.f.
Temporary Signs	3	N/A	3 s.f.
Real Estate Signs	1	6'	6 s.f.
For Sale Signs (undeveloped land over 5 acres)	2	10'	40 s.f.
Open House Signs	1	6'	6 s.f.
Neighborhood Identification Signs	1 per entrance	8'	50 s.f.
Public & Semi-Public Buildings	See Table 8-02		

The following types of signs are permitted in residential districts, in accordance with the requirements set forth or referred to herein:

- A. All signs as regulated and permitted in Section 8.07 - Signs Permitted in All Districts.
- B. A 6 square foot home based business sign.
- C. Temporary signs, not specifically otherwise identified by sign type, conforming to the restrictions set forth herein are allowed as follows;
 - 1. Three temporary signs are permitted on any lot.
 - 2. These temporary signs may be double faced, and have a sign face no larger than 3 square feet
- D. In lieu of the temporary signs permitted herein a real estate sign not exceeding six square feet per sign face, with two faces per sign are permitted. The maximum height of the sign shall not exceed six feet. A maximum of one sign per street frontage shall be permitted.
- E. Undeveloped land over five acres in size shall be allowed two "For Sale" signs not to exceed 40 square feet in area per sign face, with two sign faces permitted. No sign shall exceed 10 feet in height.
- F. In lieu of the temporary signs permitted a sign designating an open house may be erected at the site of an open house. No open house sign shall exceed six square feet per sign face with two faces per sign permitted. One sign face shall be allowed in lieu of each one of the temporary signs permitted by subsection (B) above. The maximum height of the sign shall not exceed six feet. Open house signs shall be removed immediately upon completion of the open house. Such signs shall comply with the real estate sign restrictions except as specifically restricted herein.

- G. Permanent property identification signs may be permitted at each entrance to a neighborhood, subdivision, or residential development in accordance with subdivision plat approval.
- H. **Public and Semi-Public Buildings.** Churches, schools, libraries, community centers, hospitals, or other public/semi-public facilities located in a residentially zoned district shall be allowed signage as regulated and permitted in Section 8.10, Signs Permitted in the Neighborhood Business District (NBD).

8.09. Signs Permitted in the MP (Mobile Home Park)

The following signs shall be permitted in the MP Zoning District as set forth herein:

- A. All signs as regulated and permitted in Section 8.07 - Signs Permitted in All Districts.
- B. For rental and/or management offices, one identification sign not exceeding 12 square feet in sign surface, attached flat against the wall is allowed.
- C. Other signs as reviewed and approved as part of a rezoning request may be allowed.

8.10. Signs Permitted in the Neighborhood Business Districts (NBD) and Residential Mixed Use District (RMX)

Table 8-02: NBD Signage Standards			
	Maximum Number	Maximum Size	Maximum Height
Attached Signs	1 per side	96 s.f. or 10% of wall surface [1]	N/A
Free Standing Signs	1	32 s.f.	15
Sandwich Board (A-frame) Signs	1	6 s.f.	N/A
Window Signs	N/A	32 s.f. or 33% of window area	N/A

[1] Projecting signs are allowed as regulated by Section 8.10.B.2

The following signs shall be permitted in the Neighborhood Business District and Residential Mixed Use District:

- A. All signs as regulated and permitted in Section 8.07 - Signs Permitted in All Districts.
- B. Signs attached to a building shall be allowed as follows:
 - 1. One wall sign shall be allowed for each side of the structure. A structure with multiple businesses may have one sign for each separate business. Each separate business shall have clearly defined exterior wall space and the size of that wall space shall be the determining factor on sign size allowance. The sign Surface shall not exceed 96 square feet or 10% of the wall surface, whichever is less. This wall

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8.10 Neighborhood Business District

sign may be an electronic changeable message sign, provided it complies with the applicable standards for same.

2. A projecting sign that does not project from a building greater than a distance of six feet, does not encroach in the public right-of-way, and maintains eight feet of clearance from grade is permitted. In computing the square foot allowance for a projecting sign, the total area of the sign surface shall be included in the total area allowed for all wall signs, but shall not be larger than 24 square feet. Projecting signs do not reduce the number of wall signs as regulated by the zoning district, however, only one projecting sign shall be allowed per business.
- C. One free standing sign shall be allowed per parcel, regulated as follows:
1. Free standing signs shall not exceed 15 feet in height.
 2. No part of a free standing sign face, frame, or base shall be closer than five feet to the public right-of-way or side or rear property line and shall not obstruct traffic vision.
 3. Free standing signs may have two faces and shall not exceed 32 square feet per face, or one square foot of sign per lineal foot of lot frontage, whichever is less.
 4. No free standing sign face, frame or base shall be closer than 50 feet to another free standing sign.
 5. Separate and distinct street frontages shall be computed individually for allowable signage; however, signs shall be located on the street frontage that is used for computation. (No accumulation is allowed for unused street frontages.)
 6. The allowed free standing signs may be electronic changeable message signs, provided they comply with all other standards in this article addressing lighting, safety, and electronic changeable messages.
- D. One sandwich board (A-frame) sign that meets the following requirements per street frontage is allowed as follows:
1. A permit shall be required for sandwich board signs. Permits are good for the life of the sign.
 2. Sandwich boards signs shall be on-premises signs.
 3. The sign may be located on the public sidewalk or the planting strip adjacent to the edge of the street on which it fronts. Signs shall not be placed in any raised streetscape or publicly owned planters.
 4. The sign may not exceed six square feet in area per side and may have no more than two sides for the display of messages.
 5. The spread of the "A" at the open end shall be sufficient to insure stability and no wider.
 6. Signs shall be adequately weighted to resist wind gusts.
 7. Chalkboard, whiteboard, changeable letters, and any other non-electronic changeable or erasable surfaces are permitted.

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8. All signs shall be in good repair and neatly painted. No attachments to signs are permitted, other than brochure pockets.
 9. Creative shapes that reflect the theme of the business are encouraged (e.g., ice cream shops may display a sign in the shape of an ice cream cone).
 10. The sign must be constructed of materials that present a finished appearance. Rough-cut plywood is not acceptable. The sign lettering should be professionally painted or applied; a "yard sales" or "graffiti" look with hand-painted or paint-stenciled letters is not acceptable.
 11. The sign shall not be an electronic changeable message sign or be an illuminated sign.
 12. The sign shall be displayed only during business hours and stored inside after hours.
 13. The placement of the sandwich board sign shall not impede pedestrian or wheelchair travel in the vicinity of the sign or otherwise create a traffic or other safety hazard by obstructing vision or otherwise, as determined by the person designated by the Director to enforce the provisions of this sign code.
 14. The owner must assume liability for damage or injury resulting from the use of a sandwich board sign and provide the city with an appropriate legal document satisfactory to the City Clerk holding the city harmless and indemnifying it for any resulting loss or injury.
 15. Except as otherwise provided in this sign code, a sandwich board sign may be posted for so long as it remains in good condition. Once a sandwich board sign is tattered or otherwise is no longer in good condition, it shall be removed or replaced.
 16. If the Director determines that a sandwich board sign is not in good condition, the property owner shall be notified of that determination and shall remove, repair or replace the sign within three days of that notification. Signs that are not removed, repaired, or replaced within three days of the notification shall be deemed a nuisance and shall be subject to abatement or removal by City staff. The Director's determination that a sandwich board sign is not in good condition may be appealed to the City Commission under the procedures set forth in this article.
 17. One temporary sign, as otherwise restricted and permitted herein this sign code, is allowed on any lot.
- E. Window signs shall be allowed as follows:
1. The window sign shall not obstruct more than 33% of the window area for each front, side or rear wall; provided that, the total sign surface shall not exceed 32 square feet, per side of the building. For the purposes of this subsection, the term "window area" includes the non-opaque parts of any doors or other fenestrations.
 2. The allowable window sign area as defined herein may be illuminated.
 3. Window signs constructed of neon, stained glass, gold leaf, cut vinyl, and etched glass are allowed.
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8.10 Neighborhood Business District

4. Painted signs shall display the highest level of quality and permanence, as determined by the Director.
5. No message or identification (i.e., the name of establishment or the services offered) may be displayed more than once within the permitted total sign surface area per each front, side or rear wall.
6. The listing of an establishment's hours of operation shall be exempt from these regulations, provided that the area of the sign containing hours of operation shall be no greater than two square feet.
7. The listing of directional information (i.e., "parking in rear" or "use other door") shall be exempt from these regulations; provided that the area of the sign containing directional information is no greater than three square feet.
8. The use of window framing (i.e., a continuous light source illuminating the perimeter of an individual windowpane or a group of windowpanes) is prohibited.
9. Accessible doors to a business establishment shall be limited to the following types of window signage:
 - (a) Business name;
 - (b) Hours of operation;
 - (c) Phone number;
 - (d) Building or tenant address;
 - (e) Website; and
 - (f) The use of dark, opaque background panels for internally illuminated signs or letter faces is required to reduce the glare or glow of such signs.

8.11. Signs Permitted in Commercial and Industrial Districts (OBD, CBD, GBD, I-1 & I-2)

Table 8-03: OBD, CBD, GBD, I-1 & I-2 Signage Standards									
	Maximum Number			Maximum Size			Maximum Height		
	CBD	OBD	GBD, I-1 & I-2	CBD	OBD	GBD, I-1 & I-2	CBD	OBD	GBD, I-1 & I-2
Attached Signs [1] [2]	1 per side	1 per side	1 per side	150 s.f.	96 s.f.	500 s.f.	N/A	N/A	N/A
Freestanding Signs [3] [4]	1	1	1	50 s.f.	50 s.f.	100 s.f.	15	15	15
Window Signs	N/A	N/A	N/A	150 s.f. or 33% of window area	150 s.f. or 33% of window area	150 s.f. or 33% of window area	N/A	N/A	N/A

[1] Maximum 10% of wall surface to which signs are attached

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ARTICLE 8. SIGNS

8.11 Commercial & Industrial

[2] Projecting signs are allowed as regulated by section 8.11.C.5

[3] When located across street from commercial or industrial use, height may be increased per section 8.11.D.1

[4] Size may not exceed 1 s.f. per lineal foot of frontage in OBD or CBD, and 2 s.f. per lineal foot of frontage in GBD, I-1 & I-2

- A. All signs as regulated and permitted in Section 8.07 - Signs Permitted in All Districts.
- B. Signs as regulated and permitted in the NBD.
- C. Signs attached to a building shall be allowed as follows:
 - 1. One sign shall be allowed for each side of a structure or part of a structure clearly defined as an individual storefront. An individual storefront shall have an exterior wall clearly related to the interior space of that storefront and may or may not have windows or an entrance door to the inside of the building.
 - 2. The sign surface area shall not exceed ninety-six (96) square feet in Office Business District (OBD), 150 square feet in Central Business District (CBD) and 500 square feet in General Business District (GBD) and Light and Heavy Industrial Districts (I-1 & I-2) or 10% of the wall surface to which the sign(s) are attached, whichever is less.
 - 3. The permitted signs may be wall signs, projecting signs, mansard signs, roof signs, or marquee signs. A roof sign shall not exceed the highest point of the roof of the structure. A marquee sign may be an electronic changeable message sign.
 - 4. The signage permitted herein may be an electronic changeable message sign, provided it complies with all applicable standards.
 - 5. Projecting signs shall not project from the wall greater than a distance of six feet or encroach in a public right-of-way in OBD, GBD, I-1 or I-2 and shall maintain eight feet of clearance from grade. Projecting signs in the CBD may encroach in the right-of-way, but shall be constructed of approved nonflammable, safety material, shall maintain eight feet of clearance to grade, and shall not be closer than five feet to a curb line.
 - 6. In computing the square foot allowance for a projecting sign, the total area of the sign shall be included in the total sign surface area allowed, but shall not exceed 24 square feet, unless an exception is granted by the City Commission, provided that no projecting sign shall exceed 48 square feet. Projecting signs shall not reduce the number of signs allowed per wall as otherwise allowed by this code.
- D. One free standing sign shall be permitted per parcel and regulated as follows:
 - 1. Free standing signs shall not exceed 15 feet in height. Where a sign is located across the street from a property zoned for commercial or industrial uses, the height of the sign may be increased to a height of 25 feet, provided that the nearest edge of the sign is setback from the property line 2 feet for each additional 1 foot in height.

2. No part of a free standing sign face or sign structure shall be closer than five feet to any property line and shall not obstruct traffic vision.
 3. Free standing signs may have two faces and shall not exceed 50 square feet per face or one square foot of sign per lineal foot of lot frontage, whichever is less, in OBD or CBD, and 100 square feet in or two square feet of sign per lineal foot of lot frontage, whichever is less, in GBD, I-1 or I-2.
 4. No free standing sign face, frame or base shall be closer than 50 feet to another free standing sign.
 5. Separate and distinct street frontages shall be computed individually for allowable signage; however, signs shall be located on that street frontage which is used for computation (No accumulation is allowed for unused street frontage.)
 6. The free standing signs may be electronic changeable message signs, provided they comply with all applicable standards.
- E. Window signs, as otherwise restricted and permitted herein shall be allowed provided that:
1. The total window sign area in a tenant space shall not exceed 33% of the window area, for each front, side or rear wall, provided that, the total sign surface shall not exceed 150 square feet per side of the building. For the purposes of this subsection, the term "window area" includes the non-opaque parts of any doors or other fenestrations.
 2. The allowable window sign area as defined herein may be illuminated and may be an electronic changeable message sign.

8.12. Temporary Signs

- A. The following restrictions, in addition to any other restriction set forth in this sign code, shall apply to any permitted temporary sign.
1. All temporary signs shall obtain a permit before placement except as otherwise specifically stated in this sign code.
 2. Application for a permit after placement shall cause the permit fee to triple.
 3. Temporary signs shall be set back a minimum of six feet from the street line.
 4. Temporary sign permits shall be for no more than 60 days.
 5. A temporary sign permit may be renewed for a second consecutive 60-day period.
 6. No parcel shall display a temporary sign for more 120 days in any calendar year.
 7. No parcel shall have more than one temporary sign displayed at any time except as otherwise specifically stated in this sign code.
 8. No temporary sign, except as otherwise specifically provided, shall have a sign surface greater than 25% of the allowable permanent signage which might be permitted per parcel.

9. No temporary sign shall exceed 100 square feet in area. Example; a two-sided sign with 50 square feet of sign surface equals 100 square feet of sign area.
10. No temporary sign shall obstruct or impair access to a public sidewalk, public or private street or driveway, traffic control sign, bus stop, fire hydrant or any type of street furniture, or otherwise create a hazard, including a tripping hazard.
11. Temporary signs shall not be posted on trees or utility poles.
12. No temporary sign shall be placed off-premise or in any road right-of-way except as otherwise specifically stated in this sign code.
13. No temporary sign shall be internally or indirectly illuminated or painted with light-reflecting paint.
14. A temporary sign related to an event shall be removed no later than three days after the event has taken place.
15. Except as otherwise provided in this sign code, a temporary sign may be posted for so long as it remains in good condition. Once a temporary sign is tattered or otherwise is no longer in good condition, it shall be removed or replaced.
16. If the Director determines a temporary sign is not in good condition, the property owner shall be notified of that determination and shall remove or replace the sign within three days of that notification. Signs that are not removed or replaced within three days of the notification shall be deemed a nuisance and shall be subject to abatement or removal by City staff. The Director's determination that a temporary sign is not in good condition may be appealed to the City Commission under the procedures set forth in this article.
17. Temporary signs shall be allowed in the public right-of-way for 45 days immediately preceding any primary, general or special elections as defined by the Leavenworth County Clerk, and shall be removed 2 days following said election. The person, party or parties responsible for the erection or distribution of any such signs shall be jointly and individually responsible for their removal. All temporary signs placed in the public right-of-way during this time period shall be subject to the following size and setback distance regulations:
 1. Signs shall be set back a minimum of 6 feet from the back of curb.
 2. Signs shall not be placed where they interfere with intersection sight distances.
 3. Signs shall not exceed 3 square feet in face area and 3 feet in height.
 4. Signs shall not be affixed to any utility poles, trees, street lights, bridges, benches or other similar public structures.

B. Excluded Temporary Signs.

1. Temporary commercial signs carried by a person(s) are not regulated in these Development Regulations. However, if the sign is affixed to any structure or the ground at any time it becomes a regulated sign. Carried signs are not permitted within the public right-of-way.
2. People dressed in costumes to further business or civic activities are not regulated in these Development Regulations.

- C. **Specified Types of Temporary Signs.** In addition to the posting of temporary signs allowed by other sections of this sign Code, the following specified types of temporary signs shall be permitted, as set forth herein, and shall be subject to permit fees unless otherwise exempted by this sign code.
1. **Special Event Banners:** On private property used in commercial and industrial zoning districts banners may be used to announce a grand opening of a new business, special sale, or promotion. Banners may be used for 30 days after which time they must be removed. A new banner may be installed after the lapse of 60 days upon obtaining a new permit. Banners shall be attached securely to a building or structure and shall not create a nuisance as determined by the Duly Authorized Representative.
 2. **Searchlights:** Searchlights may be used for announcing a grand opening and may be located on private property for a period not to exceed three consecutive days unless special circumstances authorized by the Director warrant a longer duration. Special circumstances shall be described in writing by the owner or the agent associated with the grand opening promotion and shall be approved by the Director prior to the establishment of the search light(s) on the business premises. No light emanating from such a device shall be cast on any adjacent property or building. Lasers are not searchlights and the use of lasers is prohibited.
 3. **Balloons:** Gas-filled balloons and figures up to 1,000 cubic feet in mass may be displayed to announce a grand opening of a new business in a commercial or industrial district, but shall be displayed on or above private property. The balloon or figure may be tethered and shall be permitted to rise to a height not to exceed 50 feet above mean ground level. The balloon or figure shall not be permitted to float above any public right-of-way, and shall not interfere with traffic vision or public safety as determined by the City Planner. Any vision or safety interference shall be immediately corrected by the owner or agent upon notice from the Director. A partially deflated balloon or figure shall be considered a public safety hazard and shall require immediate removal by the owner or his agent.
 4. **Pennants, Flags and Light Strings:** Flags, pennants, or strings of electric lights or strings of pennants may be strung or hung across or above parking areas on private property used commercially and zoned GBD, but shall not interfere with vision clearance triangles or public safety as determined by the Director or the Duly Authorized Representative.
 5. **Banners:** Banners over public rights-of-way or other public property announcing a parade, celebration, festival, play, fund drive or other public promotional activity are allowed as follows:
 - a. Application to install the hanging banner shall be made to the City Clerk in accordance with current city procedures. No sign permit shall be required in addition to this application;
 - b. The banner shall maintain a clearance of at least 20 feet as measured from the bottom-most portion of the banner to the highest elevation of the street or land surface below;

- c. The banner shall be perforated sufficiently to reduce wind resistance and shall be anchored sufficiently to prevent a traffic or safety hazard as determined by the city;
 - d. Banners may be installed up to 14 days prior to an event and shall be removed within 72 hours of the closing of the event. The city reserves the right to reduce the time frame to accommodate multiple requests for a location; and
 - e. Not more than the 10% of a banner's face may be devoted to a commercial space of sponsor's logo.
6. *Portable Signs:* Portable signs, except sandwich board signs as otherwise restricted and permitted by this sign code, shall be subject to the following:
- a. Portable signs may only be used in conjunction with special promotions of a temporary nature. The allowable size of a portable sign shall not exceed 40 square feet;
 - b. Portable signs shall only be permitted in GBD, I-1 and 1-2 zoning districts and shall not interfere with vision clearance triangles or public safety as determined by the Director;
 - c. Portable signs shall be located on private property only; and
 - d. A portable sign may be used for 30 consecutive days and a ninety (90) day period must elapse between the use of a portable sign and its next use. A new permit shall be required each time the sign is erected.

8.13. Electronic Message Center Signs (EMCs)

When allowed by any other section of this sign code, an electronic changeable message sign shall comply with the following performance standards provided that, no individual parcel of land shall be allowed more than one animated electronic changeable message sign.

- A. ***Illumination/Lumination:*** An EMC shall utilize automatic dimming technology to adjust the brightness of the sign relative to ambient light so that at no time shall an EMC exceed a brightness level of 0.3 foot-candle above ambient light, as measured using a foot-candle (lux) meter calibrated within the past 36 months.
- B. ***Movement:*** The following display features are prohibited- flashing, strobing, blinking, fluttering, spinning, rotating, bouncing, scrolling and chasing.
- C. ***Right-of-Way:*** No EMC shall overhang into a public right-of-way and shall not be included in a portable or temporary sign.
- D. ***Audio Messages:*** An EMC shall not include any audio message, tones or music.

- E. **Transitions:** All EMCs shall transition instantaneous between message without the use of frame effects.
- F. **Size and Placement:** The maximum size of any EMC shall be 25% of allowed square footage of any monument or wall sign or 32 square feet, whichever is less. No EMCs shall be located adjacent to residential property.
- G. **Compliance Assurance:** No permit shall be granted unless the applicant provides sufficient proof from the manufacturer that the sign has the technical capacity to comply with all applicable regulations governing EMCs in this code and that the sign owner and/or operator has reviewed and understands the applicable regulations pertaining to the EMC and agrees not to violate the regulations.
- H. **Proximity to Residential Uses:** No EMC shall be located closer than 100 feet to any existing residence.

8.14. Billboards

- A. Billboards are declared to be incompatible to, and inconsistent with, land development and other permitted signs set forth within any particular zoning district. All existing billboards, in any zoning district, are declared nonconforming.
- B. This section supersedes and controls over any conflicting provision in this Chapter.
- C. Billboards now in existence in any zoning district are declared legal nonconforming uses and may remain, subject to the following restrictions:
 - 1. A legal nonconforming billboard may not be increased in size or elevation, relocated to another site or to a new location on the same site or expanded, enlarged, or extended in any way, including, but not limited to, the addition of advertising faces, the addition of digital faces, adding additional illumination or the addition of rotating faces with movable panels designed to create additional advertising space.
 - 2. Structural alterations, including replacement of either the billboard face or the supporting structure, are prohibited. Advertising content may be changed, except as prohibited above.
 - 3. All legal nonconforming billboards shall be kept in good repair and maintained in a neat, clean, attractive and safe condition. Routine repairs and maintenance of nonconforming billboards necessary to maintain health and safety may be permitted. Such repairs and maintenance shall include activities such as painting and the replacement of a damaged or deteriorated sign face.
 - 4. The repair and replacement of a legal nonconforming billboard which has been damaged by fire, explosion, collision, other casualty or act of God by more than 25% of its value shall be prohibited. An exception is made for those billboards which were destroyed by vandalism or other criminal or torturous acts.
 - 5. A billboard that has toppled or fallen because its support structure has been broken or buckled shall be considered more than 25% damaged.

6. Any legal nonconforming billboard which remains damaged or in disrepair, regardless of the percentage of construction (or damage) value or area of square footage which is damaged, for a period of three months following the date of damage shall be removed.
- D. Any one-faced billboard that has remained vacant for a period of three months or more shall be deemed to have been abandoned and shall result in the removal of the billboard. Any two-faced billboard that has both sides vacant for a period of three months or more shall be deemed to have been abandoned and shall result in the removal of the billboard. The term "vacant" shall not be interpreted to include any type of "for lease" sign displayed by the billboard owner with a minimum size of four feet by eight feet.
- E. Failure to comply with any applicable restrictions or performance standards of this ordinance may result in the removal of both the billboard sign face and structure by the City at a cost to be paid by the owner of the billboard.

8.15. Nonconforming, Hazardous, Illegal, and Prohibited Signs

- A. **Nonconforming:** A nonconforming sign existing lawfully at the time of the passage of this sign code may be continued under the terms as hereinafter provided that such nonconforming signs shall be modified to conform, replaced with a conforming sign or removed according to the following:
 1. If there is a change in business ownership, tenant, name or type of business.
 2. Any maintenance, repair or alteration of a nonconforming sign shall not cost more than 25% of the current value of the sign as of the date of alteration or repair.
- B. **Hazardous, Dangerous, or Illegal Signs:**
 1. *Notification:* If the Director shall find that any sign or other advertising structure regulated herein is unsafe and insecure, or is a menace to the public or has been constructed or erected or is being maintained in violation of this sign code, he or she shall give written notice to the owner thereof, to remove or alter the structure so as to comply with the standard herein set forth.
 2. *Abatement:* Failure to abate the same shall cause the City to abate such sign with costs assessed to the property owner.
 3. *Emergency Abatement by City:* When, in the opinion of the City Engineer, there is actual or immediate danger to the public caused by a hazardous or dangerous sign, the City shall cause the same to be abated with no written notice or hearing. Costs for such emergency abatement shall be assessed to the property owner.
- C. **Vacated and Abandoned Signs:** Within 6 months following discontinuance of the business or usage to which the sign relates, the sign face and structure shall be removed in entirety.
- D. **Reuse:** Reuse of a vacated, nonconforming sign, or any of its appurtenances shall require altering the sign to comply with this sign code. A new business use intending to reuse a conforming sign base or pole properly capped and vacated shall obtain a sign permit in accordance with this sign code.

DEVELOPMENT REGULATIONS
ARTICLE 8. SIGNS

8.15 Nonconforming, Hazardous, Dangerous, Illegal, and Prohibited Signs

- E. ***Signs for Nonconforming Uses:*** Nonconforming uses which are otherwise permitted by these regulations may obtain permits for signage in conformance with the least intensive zoning district in which the use is permitted by right.

8.16. Appeals

Any person who has been denied a permit under the provisions of this sign code or disagrees with a decision of the City Administrator with respect to an interpretation of any provision of the sign code has the right to appeal that decision to the City Commission. All appeals must be filed within 10 days from the decision of the Director. The City Commission shall render a finding regarding an appeal based upon the intent of the sign code.

ARTICLE 9. HISTORIC PRESERVATION

9.01. Purpose

The purpose of this article of the development regulation is to:

- A. Preserve buildings and sites of historic and architectural importance and safeguard the heritage and culture of Leavenworth;
- B. Stabilize and improve property values in such locations of historic resources and thus strengthen the economy of the city;
- C. Promote and encourage restoration, rehabilitation, and maintenance of historic properties, neighborhoods and districts and thus combat blight and decay;
- D. Foster civic pride in Leavenworth and the appearance of the community; thereby protecting and enhancing the city's attraction to tourists and visitors and providing support and stimulus to business and industry;
- E. Promote the restoration and productive use of historically and architecturally significant structures, property and areas for the culture, education, enjoyment and economic welfare of the city's citizens and visitors; and
- F. Promote the study of history, culture, and architectural design.

9.02. General

- A. A historic resources preservation code establishing the Leavenworth Preservation Commission, providing for the designation of Leavenworth landmarks and historic property districts, and regulating improvements to and demolition or clearance of buildings, sites, structures, or objects listed as landmarks or located in historic districts.
- B. The City is authorized, under the Kansas Historic Preservation Act, KSA 75-2724, to participate in the Certified Local Government (CLG) program by establishing a partnership with the Historic Preservation Department, Kansas State Historical Society,
- C. The City Commission finds and determines that it is desirable to identify and promote the City's prehistoric, historic and cultural heritage, to enhance the attractiveness of the City, thereby promoting business and tourism,
- D. The Code is intended to enhance and promote Leavenworth's contribution to the history of the State of Kansas as well as to this nation.

9.03. Applicability

This Code shall apply to all historically and architecturally important structures, properties, and districts located within the City limits, which have demonstrated and have been determined to be significant through nomination and placement on local, state, or national registers of historic properties.

9.04. Leavenworth Preservation Commission

- A. **Creation:** The Leavenworth Preservation Commission (hereafter in this article "commission") is created to inventory, promote, list, record, protect, preserve and enhance places, areas, features or sites within the City that have special significance of an architectural, archaeological, cultural or historical sense. The commission shall advise the City Commission and cooperate with other historic agencies and organizations concerning preservation of the City's historic and cultural heritage.
- B. **Membership:** The commission shall consist of seven Leavenworth residents by appointment by the mayor with concurrence by the City Commission. The membership shall include at least one architect, one real estate professional, one planning commissioner, and one historian (amateur or professional), as well as members at large. Appointments shall be for a term of three years, except that the first commission shall be appointed as follows: three for three-year terms, two for two-year terms and two for one-year terms. The mayor may reappoint, as above, persons who have met the minimum attendance requirement and who otherwise have served adequately. The mayor may remove any member of the commission, for cause. Vacancies shall be filled by appointment as above within 60 days, such appointment for the remainder of the unexpired term.
- C. **Rules of Procedure:** The commission shall adopt bylaws or rules of procedure, which specify attendance requirements, conflict of interest, officer/selection process, quorum, agenda formulation, notice, and such other appropriate matters. Minutes of the meeting will be distributed to commission members, the City Manager and the State Historic Preservation Officer (SHPO).
- D. **Annual Report:** The commission shall prepare an annual report of its activities to be submitted to the City Commission and SHPO. The report shall include an account of the number and type of cases reviewed and their disposition, a listing of new designations made during the year and a record of current and appointed commission members. The report should also assess progress in preserving historically important structures and assess the need for future changes to the Code. The report shall conclude with a statement of goals for the ensuing year and shall be duly authorized by majority vote of the commission.
- E. **Authority and Responsibilities:**
1. **Jurisdiction:** The geographic area of authority shall be the area contained within the Leavenworth corporate limits.

DEVELOPMENT REGULATIONS
ARTICLE 9. HISTORIC PRESERVATION

9.04 Leavenworth Preservation Commission

2. *Mission:* The commission's central purpose is the designation and the protection of historic properties in compliance with the Kansas Historic Preservation Act (KSA 75-2724 et seq.). Matters arising under the statute shall require notification of the SHPO.
3. *Nomination Reviews:* The commission shall review all proposed nominations for local, state, and national registers of historic properties. All nominations shall be evaluated by a professional in a specific discipline, if not represented on the commission, prior to commission recommendation.
4. *Certified Local Government (CLG):* The SHPO may, by mutual agreement with the City, delegate responsibilities to the commission.
5. *Training:* Each commission member shall attend at least one information or training meeting each year as approved by the SHPO.
6. *Historic Inventory:* The commission shall review and maintain the historic property inventory to add properties, which may be eligible for designation as landmarks or districts in accordance with procedures established by the SHPO. In addition to the Kansas Historic Structures Inventory form, the City shall use the Urban Study Unit Manual prepared by the SHPO for the preservation planning process. Copies of all inventory materials shall be submitted to the SHPO.
7. *Transparency:* The City shall provide for adequate public participation in all aspects of the implementation of this Code. All meetings shall be open to the public pursuant to KSA 75-4318. The commission shall meet at least four times each year. Agenda materials provided to commission members shall be open to the public. Decisions shall be made in a public forum and minutes of all meetings shall be kept on file and available for public inspection. Minutes shall be considered notice of any action or decision.
8. *Programming:* The commission shall have the discretion to establish other programs and services, including but not limited to: create public information programs, use of City funds to promote preservation activities, review other departmental plans being considered that may affect historic structures or properties, and cooperate with local groups or agencies to provide the widest possible promotion of historic programs and places.
9. *Participation Incentives:* The commission shall review and recommend local incentives that may encourage Landmark designation in Leavenworth. These may be in the form of retail discounts, tax rebates, permit fee waivers, utility reductions, and other means to stimulate interest in historic preservation available only to designated Landmark properties. Such incentives shall be by agreement between the city, the Landmark owner and the respective business or utility providing the reduction or rebate.
10. *Review of Public Projects:* The commission shall review and recommend policies regarding historic, public streetscape, lighting, and signage in historic districts to encourage their development. Resources available to create such places may include general or special tax authority as well as assessment processes.

DEVELOPMENT REGULATIONS
ARTICLE 9. HISTORIC PRESERVATION

9.04 Leavenworth Preservation Commission

11. *Grants and Gifts:* The commission shall prepare applications for City Commission approval for any gift, grant, bequest, devise, lease, fee, development right, easement, covenant, or conveyance for the purpose of preservation, including state, federal, or corporate grants or bequests.
12. *Code Review:* The commission shall review the provisions of this Code at least every five years to make comprehensive or individual changes deemed appropriate. The commission may make recommendations for amendment at any time deemed necessary to improve the enforceability of the Code.
13. *Compensation and Expenses:* Commission members shall serve without compensation except for necessary expenses sustained in mandatory attendance at state historic preservation meetings and/or training as described above. The City Commission shall establish budget authority to provide for historic preservation administration and promotion activities.

9.05. Administration

- A. ***Department:*** The Planning and Zoning Department shall be responsible for the administration of this Code and performing the staff function for the commission. The department is authorized to enforce the provisions of, and to develop such application forms and procedures consistent with, this Code. The department shall process all applications for Landmark designations in accordance with Section 9.10 as described herein.
- B. ***Department Director:*** The Planning and Zoning Department Director shall review all building permit applications to determine if a Landmarks property may be affected by a proposed development. If so, the Director shall follow the procedure to either issue a certificate of appropriateness or begin a review process in accordance with the provisions further described herein. The Director shall forward the commission's recommendations to the City Commission, record and file all landmark designations, and maintain the Map of Landmarks and keep all agendas, minutes, reports, findings, determinations, and correspondence for the commission.
- C. ***Landmark Impact Determination:*** No historic property may be occupied or used in a different manner unless/until the Director has made a Landmark Impact Determination, which shall be attached to a certificate of appropriateness (see Sections 9.10 through 9.16). Such determination shall include: Name and address of owner, address of historic property, nature of repair/alteration/demolition, historic or architectural significance, physical condition of the property, county appraised value of the property, detrimental effect of the permit, if any, and the Director's recommendation to approve or deny a certificate of appropriateness.

9.06. Enforcement

- A. ***Building Permit Required:*** It shall be unlawful for any person, firm or corporation to enlarge, alter, repair, convert, demolish or change the use of any property listed on the National Register of Historic Places, or located within a registered Historic District, without

- first obtaining a building or other permit as lawfully required for such purpose by the City of Leavenworth, Kansas.
- B. **Maintenance:** Normal property maintenance which does not require a permit from the City shall be exempt from the provisions of this Code, unless and/or until a permit for work to be done is required by other City development regulations.
- C. **Sufficient Documentation Required:** No building permit shall be issued until the property owner has submitted accurate building elevations, site plan and construction drawings and material lists in sufficient detail to enable the City to conclude that the project meets the appropriateness test as set by the Secretary of the Interior's standards for historic preservation and the special terms of this Code.
- D. **Compliance with Plans Presented Required:** Building construction shall be halted if inspection staff notes that the project description presented to the City for approval differs in any way from the construction practices being performed on-site. During this stop-construction period, the City shall require compliance with the original approved depiction. The owner may appeal the order to the Leavenworth Preservation Commission by submitting amendments to the original plan and construction may proceed upon their approval. If the Leavenworth Preservation Commission denies the amendment the owner may appeal to the City Commission.
- E. **Orders to Cease Construction:** The Director, upon discovery that a demolition or improvement to a property is being made without review of the appropriate permit, shall issue notice to cease to the owner and shall take all appropriate measures to prevent such unlawful act. Notice shall explain the nature of the violation in clear terms and shall allow the owner to give satisfactory evidence that the action will be corrected within 30 days or an appropriate action to comply with the provisions of this Code will be initiated. Failure to comply may result in citation to municipal court and may result in the City taking corrective action to abate the offense and assess the costs of such abatement to the owner.
- F. **Assessment of Compliance Costs:** If the City has filed proper notice and the time has elapsed for correction by the owner, the City may take corrective action and any and all costs incurred by the City under the provisions of this article shall be assessed against each lot or piece of ground, chargeable therewith as a special assessment, and the City Clerk shall certify the assessment to the County Clerk for collection as other special assessments are collected.

9.07. Appeals

Any property owner aggrieved by any section of this Article may apply for an appeal. Appeals shall be to the Leavenworth Preservation Commission. Any decision of the commission may be further appealed to the City Commission. All rulings by the City Commission shall be final and binding on all parties unless appealed to a court of valid jurisdiction.

9.08. Variances

Any property owner, or authorized representative, may apply for a variance from specific guidelines for historic preservation as set and amended by the Secretary of the Interior Department. Variance applications shall be made to the Leavenworth Preservation Commission whose decisions are final. Before the commission may grant a variance from the specific regulation, it must make a finding that all five conditions below are affirmed:

- A. Such variance would not be contrary to the health, safety or best interest of the public;
- B. A literal enforcement of the provision will result in an unnecessary hardship to the property owner;
- C. There is a condition unique to the property which was not created by the property owner;
- D. There is no adverse effect on surrounding properties, and,
- E. The variance would not be contrary to the general spirit or intent of this Article.

9.09. Historic Resources Survey

The commission shall annually update the historical resources survey to identify buildings, structures, sites, neighborhoods and areas that may have historical, cultural, or architectural importance to the community. As part of the survey, the commission shall evaluate studies by other organizations and compile appropriate descriptions, facts, and photographs. All such materials shall be documented in accordance with the survey manual prepared by the SHPO.

9.10. Identification of Landmarks and Historic Districts

The commission shall identify the most significant resources with potential for designation as a local Landmark or historic district, devise and adopt procedures to initiate and consider their nomination to local, state and national registers and prepare and adopt a heritage conservation and promotion plan containing goals, objectives and policies to preserve the community's historic resource.

9.11. Leavenworth Landmarks Register

The commission shall establish a register of local historic places to be called the Leavenworth Landmarks Register. The register will contain a complete description of all buildings, structures, sites, and objects designated as landmarks and a description of boundaries of any area designated a historic district. All landmarks and districts shall be identified on the Landmarks Register Map, on file in the office of the City Clerk and the Community Development Department. Updated copies of the map will be provided to the reference section of the Leavenworth Public Library.

9.12. Nomination of Landmarks and Historic Districts

Using the required public hearing process nominations for landmark or historic district designation shall be made by application submitted by the owner of a landmark or by written consent signed and acknowledged by seventy-five percent of all property owners within the defined boundaries of a proposed historic district. Each owner or owners of any legal parcel of record shall have one vote in the district per parcel, regardless of parcel size to determine this threshold. Lots that have been historically combined to create one parcel or building site shall be considered one parcel for this purpose. The commission shall review each application and shall apply the following criteria to determine eligibility to the local register:

- A. Character, interest, or value as part of the development, site, or structure that contributes significantly to the heritage or cultural characteristics important to the development of the city, state, or nation.
- B. Identification with a person or persons who significantly contributed to the development of the city, state, or nation.
- C. Architectural style valuable to the study of a period, or to the type, method of construction, materials used, design elements, detailing materials, or craftsmanship embodied in the structure, or identification with a master builder, architect or craftsman whose work influenced the development of the city, state or nation.
- D. Location of a prehistoric or historic site, occupation, or activity possessing significant archeological value.
- E. The weight of any one criterion may be sufficient to accept the nomination and criteria not listed above may be contributed in the nomination, which may render the nomination sufficient for placement on the register. All applications shall be submitted to the Community Development Department, City Hall, 100 N. 5th Street, Leavenworth, KS (Department).

9.13. Report and Recommendation

Within thirty (30) days after close of the public hearing, the commission shall adopt and submit its recommendation to the City Commission that the nominated property does or does not meet the criteria for placement on the register with the following considerations: significance or lack of significance of the nominated property as it relates to the above stated criteria and integrity or lack of integrity of the nominated property as it relates to historical features. Recommendations will be accompanied by a locator map of the subject property and such other photographs or renderings deemed pertinent to the nomination process.

9.14. City Commission Designation

The City Commission shall consider the nomination at the next available regular commission meeting, after the protest petition period has elapsed. The City Commission shall approve acceptable nominations by Code approved by roll call vote. Denials may be by simple motion as recorded in

the minutes of the meeting. Any landmark or historic district nomination denied by the City Commission shall not be reconsidered for a period of one year. The Commission may take any of the following actions:

- A. Accept the recommendation of the commission, or reverse the recommendation of the commission.
- B. Amend by reduction or enlargement of the landmark or historic district.
- C. Amend or rescind previous placements on the register (after following the procedure for placement).

9.15. Designation

Within seven (7) days after approval, the City Commission shall forward notice of designation of any landmark or historic district to the SHPO, in the format necessary to request placement on the state and national registers of historic places. All appropriate state and local officials shall receive notice of the designation as well. Designation shall not alter the uses permitted by the existing zoning classification or district regulations affecting the property.

9.16. Procedure for Demolition, Alteration or Expansion

Upon receipt of an application for any demolition, alteration or expansion of a landmark, a property within an historic district, the commission and department shall initiate a process to determine if such permitted action is appropriate. All applications shall be reviewed, issued, or denied in accordance with the process outlined herein.

- A. **Determination of Appropriateness:** Department staff shall prepare a certificate of appropriateness before any alteration or demolition permit may be issued for any landmark or historic district property. Certificates shall be classified as either a minor certificate of appropriateness or a major certificate of appropriateness. All certificates shall include the Director's landmark impact determination.
- B. **Minor Certificates of Appropriateness:** Minor certificates shall be issued for any demolition or alteration work involving the following types of permits which can be demonstrated by the owner to have no adverse effect on a landmark or historic district: demolition of non-contributing structures, most interior improvements except those noted as pertinent to a landmark designation, changes to signs, fences, public walkways, public streets, public alleys, public retaining walls and public utilities that do not contribute to the historic character of a landmark or historic district property.
- C. **Monthly Reports:** Such certificates shall be authorized by the Director and reported monthly to the commission. Such certificates may use a standardized checklist of pre-stated reasons and will be issued within twenty-four (24) hours of receipt except on Fridays, Saturdays, Sundays and holidays observed by the City.
- D. **Major Certificate of Appropriateness:** Major certificates shall be subject to review and approval by the commission and may be authorized for the following types of permits:

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9.16 Procedure for Demolition, Alteration or Expansion

interior space rehabilitation when such space was an important component in approval of the landmark nomination; any exterior alteration or expansion of a landmark or historic district property; any proposed new construction on a landmark property or within a historic district; and demolition of part or all of a landmark or building or structure in a historic district.

- E. **Criteria to Determine Appropriateness:** The commission shall adopt principles and guidelines establishing criteria for new construction, alterations, additions, moving, and demolition of landmarks or properties in an historic district, including but not limited to, the following:
1. Non-binding conceptual reviews are encouraged and the Leavenworth Preservation Commission shall wherever possible provide written and graphical examples of similar suitable projects.
 2. Specific design criteria for exterior alterations of landmarks or historic district properties shall be based on the US Secretary of the Interior's Standards for Rehabilitation as published in Section 36, Code of Federal Regulations, Part 67 as revised from time to time, and by further reference to such specific design criteria as the commission may require;
 3. New construction and additions to existing structures shall be sensitive to and take into account the special historic district or landmark characteristics including height, scale, orientation, site coverage, spatial separations, facade and window patterns, entrance and porch size and general design, materials, texture, architectural detail, roof forms, vertical or horizontal elements, walls, fences, landscaping and other features;
- F. **Demolition Delay:** Demolition applications for landmarks or historic district properties shall be denied for a period not to exceed 180 days if a proposed public or private re-use of the property is unknown. The maximum period of delay may be reduced whenever the commission determines the owner will suffer extreme hardship or will be deprived of all beneficial use of the property by virtue of the delay. In either instance, the commission shall use the delay to negotiate with the owner and interested parties to find a means to preserve the landmark or historic district property. If the proposed re-use of the property is known, the use will be examined for relationship and compatibility with the landmark or historic district before demolition of a contributing or landmark structure may proceed. This section also applies to properties nominated or landmark or historic district designation. Once redevelopment plans are known, the commission will determine appropriateness.

9.17. Signs

The commission shall review and approve or deny all requests for signs to be located on a landmark or within an historic district in accordance with the following criteria:

- A. Signs shall be designed and placed to be an integral part of the property design, in proportion to the landmark and compatible with the environment in historic districts.

- B. Signs should be relative to the services and shall not block, obscure or distract from the landmark's or historic district's significant design elements.
- C. Wherever possible, actual historic signage should be maintained and restored to original significance regarding design, materials, craftsmanship, or placement.
- D. In Commercial and Industrial Zoning Districts, illuminated signs shall be designed to reduce glare and shall not detract from the landmark's or district's historic character.
- E. Freestanding signs and monument placards explaining the landmark's or district's significance or age shall be compatible with the landmark or district, but are otherwise encouraged. Signs shall be regulated for a distance of not more than 300 feet from a landmark or historic district.
- F. Signs to be placed upon a National Register Landmark property shall not be subject to the public hearing process and may be approved as a minor certificate of appropriateness if the terms of Section 11.19 are met. Landmark signs which do not meet all of the stated terms shall be set for review by the Leavenworth Preservation Commission at its next regular meeting with appeal to the City Commission if denied.
- G. Signs within Commercial or Industrial Historic Districts shall not be subject to the public hearing process and may be processed as a minor certificate of appropriateness if the terms of Section 11.19 are met. Signs within Commercial or Industrial Historic Districts which do not meet all of the terms of this Section shall be set for review by the Leavenworth Preservation Commission at its next regular commission meeting with appeal to the City Commission if denied.
- H. Signs within Residential Historic Districts shall be subject to the following procedure:
 - 1. Any sign larger than two square feet proposed to be located within a Residential Historic District or within 300 feet of such District shall require a review by the Leavenworth Preservation Commission prior to issuance of any sign permit.
 - 2. The commission shall review the sign for compliance with the terms of this subsection and shall modify, approve or deny the permit following a scheduled informal hearing set for its next regular meeting. Such informal hearing shall be preceded by written notice to each of the properties within the affected historic district.
 - 3. This is not a formal public hearing process as described elsewhere in this Code for appeals. No notice is required to be advertised. Letters shall be sent by regular mail. Failure to receive notice of such informal hearing shall in no way void the hearing process. The letter mail distribution shall be based upon the addresses of the properties within the district as filed with the nomination for the district in records kept and maintained by the Planning and Zoning Department, City of Leavenworth, Kansas. Such notice shall be mailed at least five workdays prior to the date set for the informal hearing. It shall state the date, time and place of the informal hearing and that the Leavenworth Preservation Commission will meet to discuss a sign permit request and shall give the address where the sign may be located.
 - 4. Should a legal, non-historic commercial or industrial zoned property be located within 300 feet of a Residential Historic District, then the Leavenworth Sign Code shall be used to issue sign permits and no further Historic review shall be required.

5. During the informal hearing the chair may elect to hear public testimony in favor of or opposed to the sign as designed. The commission may encourage modification of the sign to assure historic integrity and compatibility with the character of the historic landmark or district, or the commission may grant or deny the sign permit as presented. The owner of the sign may appeal the decision of the commission to the City Commission, if denied.
6. Appeals shall be in writing received by City staff within seven days of the date of denial.

9.18. Retention of Accessory Structures and Landscaping

- A. Existing characteristics such as trees, walls, stairs, paving materials, fencing, walkways, and other site features that reflect the landmark or district's significance shall be retained and protected from demolition or alteration.
- B. Landscaping shall be appropriate to the scale and feature of the landmark or historic district.
- C. Accessory structures shall be appropriate to and compatible with the architectural features of the primary structure. Non-contributory structures shall not distract or detract from the landmark or historic district properties.
- D. Design criteria shall be applied more stringently to projects of greater significance than those of lesser impact. Accessory facilities are not subject to the public hearing process and will be reviewed at the next regular commission meeting with appeal to the City Commission if denied. Appeals must be submitted in writing within seven days of date of denial.

9.19. Public Properties

Existing historically or architecturally significant public properties shall be nominated to local, state, and federal registers upon authorization by the City Commission after review and approval by the commission of appropriate nominating materials. Unless specifically required elsewhere, normal nomination procedures may be waived.

- A. Normal property maintenance shall be exempt from the provisions of this Code unless or until a permit for work to be done is required by other City development regulations
- B. Demolition, exterior alteration, or expansion of landmark properties owned by such entities shall follow the procedures enumerated in these Development Regulations.

9.20. Promotion of Other Functions

To further the purposes of this Code and to assure maximum public knowledge and involvement in the preservation of Leavenworth's history, the City may enter into agreements with other units of government, other agencies and private corporations. Specifically, the City shall negotiate an agreement with the SHPO whereby the state may delegate certain responsibilities to the City,

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9.18 Retention of Accessory Structures and Landscaping

including, but not limited to, the review of building and/or demolition permit applications for compliance with the above stated historical regulations and objectives.

- A. **Types and purposes of grants, or other agreements:** The commission may recommend and the City Commission may authorize such agreements which address:
1. Designation of landmarks and historic districts;
 2. Administration and use of preservation fund resources;
 3. Improvements to landmarks and historic districts;
 4. Maintenance of landmarks and historic district properties;
 5. Other mutually acceptable provisions such as contracts with public or private consultants and acceptance of grants or other resources to further the objectives and functions of the commission.

9.21. Promotion

The commission shall be the City's point of contact for all historic associations and organizations within the City, state and nation and shall provide such assistance as practical to promote and develop historical, archeological, or prehistoric interest in Leavenworth within the established budget for the operation of the commission. Activities such as submitting pass-through grants on behalf of these agencies, providing assistance with tax credit and other financial incentives directed toward historic property preservation, and providing basic research materials to interested parties will be conducted by the department as directed by the commission and as authorized by the City Commission through the various agreements. The commission is expected to provide accurate information to news media when appropriate to further the objectives of historic property preservation.

9.22. Public Hearing Process

Except where otherwise specifically excepted, the following process shall be used whenever historic landmarks or districts are proposed.

- A. Landmark nomination as additionally described above shall be processed as follows:
1. The commission or department generates or receives a nomination and determines the appropriateness of the nomination based on age and character of the property being nominated.
 2. The department advertises the date, time, place and purpose of a public hearing at least 20 days prior to the date set and sends notice to all property owners within 200 feet of such proposed nomination [allow 30-45 days for this process].
 3. The commission conducts the hearing and after a 14-day protest period elapses, recommends approval or denial of the nomination to the City Commission [allow 20-30 days for this process].

4. The City Commission accepts or reverses the recommendation and approves or denies the nomination.
5. If approved, proper notifications are made and the property or district is declared a landmark or historic district [allow 10-14 days for designation notification].
6. If denied, reasons therefore are presented to the owner, in writing, with remedies which the owner may address and resubmit in a future nomination of the same property [requires one-year delay before a future nomination may be submitted].

9.23. Alteration, Expansion or Demolition - Major

Alteration, expansion, or demolition applications requiring a Major Certificate of Appropriateness shall be processed as follows:

- A. The department receives application for a permit which triggers the determination warranting a major certificate of appropriateness and notifies the applicant within 24 hours that a formal review is required before a certificate of appropriateness can be issued [allow one-two days for this process].
- B. Applicant submits request for review in writing within seven days [allow one-seven days for this process].
- C. Department prepares and publishes notice of time, date, place and purpose of public hearing, such notice to be published at least twenty days prior to the date of the hearing [allow 30-45 days for this process]. Notice is also sent by regular mail to all property owners within an affected historic district.
- D. The commission conducts the public hearing and determines if the certificate of appropriateness can be issued and submits its decision, in writing with appropriate documentation to the applicant within 10 days. If the certificate of appropriateness can be issued, the permit may be granted by building inspector or other regulating department as appropriate [allow 1-5 days for this process for residential projects, allow 30-60 days for major residential (more than four units per building), commercial or industrial projects]. If the requested action is determined inappropriate in order to protect the historic character or integrity of the property, then the applicant may file an appeal, in writing, within seven days asking that the application be reconsidered by the City Commission [allow 5-10 days for this process]. A protest period of at least 14 days must elapse from the date of the public hearing until the appeal may be heard by the City Commission [this time runs concurrently with the notification process, allow an additional 5-10 days for scheduling]
- E. The City Commission holds a regularly scheduled meeting and upholds or reverses the decision of the commission.
- F. The decision of the City Commission is conveyed, in writing, to the applicant [allow 5-10 days for this process]. If the certificate of appropriateness is issued, the permit may be granted by the building inspector or other regulating department as appropriate [allow 1-5 days for residential or 30-60 days for major residential (more than four units per building), commercial or industrial projects].

ARTICLE 10. SUPPLEMENTAL STANDARDS

10.01 Solar Energy

The following provisions regulate the use of renewable (alternative) energy systems where the use of an alternative energy system is requested by a property owner. This section does not permit or regulate renewable energy production facilities owned or operated by private firms or public utilities, which generate energy beyond that needed by a single dwelling or commercial operation with less than 10,000 square feet of floor space.

- A. **Solar Array Defined:** A “solar array” shall mean a freestanding, ground-mounted solar collection system consisting of a linked series of photovoltaic modules, the primary purpose of which is to provide for the collection, inversion, storage, and distribution of solar energy for electricity generation, space heating, space cooling, or water heating.
- B. **Solar Array Standards:** All solar arrays shall comply with the following requirements:
1. *Setbacks, Location, and Height:*
 - a. Solar array shall not be located in the front yard between the principal structure and the public right-of-way.
 - b. A solar array shall be located a minimum of six feet from all property lines and other structures.
 - c. An accessory solar array in any residential district shall not exceed the greater of one-half the footprint of the principal structure or 600 square feet, whichever is greater. The size of accessory arrays in mixed-use and nonresidential districts shall not exceed one-half of the footprint of the principal structure. Any proposed solar array in excess of the stated size limits shall require approval of a Special Use Permit.
 - d. There shall be no size limits on solar arrays as a primary use on a site. However, the maximum lot coverage of any solar array shall not exceed 80 percent.
 - e. A solar array shall not exceed 20 feet in height and shall not create any solar reflectivity that measurably impacts surrounding properties.
 2. *Code Compliance:* Solar arrays shall comply with all applicable building and electrical codes contained in the adopted building code. The solar collection system shall be maintained and in productive use or removed within 90 days of notice from the city that the system is not in compliance with city regulations.

- C. **Solar Collection System Defined:** A “solar collection system” shall mean a roof-mounted or wall-mounted panel or other solar energy device, the primary purpose of which is to provide for the collection, inversion, storage, and distribution of solar energy for electricity generation, space heating, space cooling, or water heating.
- D. **Solar Collection System Standards:** All solar collection systems shall comply with the following requirements:
1. **Setbacks, Location, and Height:**
 - a. A solar collection system shall not extend more than five feet above the roofline or the maximum height permitted in the zoning district in which it is located, whichever is less.
 - b. A solar collection system may be located on an accessory structure.
 - c. A development that is proposed to have a solar collection system located on the roof or attached to a structure, or an application to establish a system on an existing structure, shall provide a structural certification as part of the building permit application.
 2. **Solar Collection Code Compliance:** Solar collection systems shall comply with all applicable building and electrical codes contained in the city’s adopted building code. The solar collection system shall be maintained and in productive use or removed within 90 days of notice from the city that the system is not in compliance with city regulations.

10.02 Wind Energy

The following provisions regulate the use of renewable (alternative) energy systems where the use of an alternative energy system is requested by a property owner. This section does not permit or regulate renewable energy production facilities owned or operated by private firms or public utilities, which generate energy beyond that needed by a single dwelling or commercial operation with less than 10,000 square feet of floor space.

This section is intended to promote the compatible use of small wind energy systems. Wind energy is an abundant, renewable, and nonpolluting energy resource. When converted to electricity, it reduces our dependence on nonrenewable energy resources and reduces air and water pollution that result from conventional sources. Distributed wind energy structures also enhance the reliability and power quality of the power grid, reduce peak power demands, and increase local electricity generation.

- A. **Special Use Permit Required:** All wind energy systems shall be a Special Use Permitted accessory use allowed in all zoning districts except the CBD; where they are prohibited.
- B. **Small Wind Energy Standards:** All wind energy systems are subject to the following requirements:

1. **Setbacks:** A wind tower for a small wind energy system shall be set back a distance of 1.05 times its total height from:
 - a. Any public road right of way, unless written permission is granted by the governmental entity with jurisdiction over the road;
 - b. Any overhead utility lines, unless written permission is granted by the affected utility;
 - c. All property lines, unless written permission is granted from the affected landowner or neighbor.
 2. **Access:** All ground-mounted electrical and control equipment shall be locked or secured to prevent unauthorized access. The wind tower shall be designed and installed without step bolts or a ladder readily accessible to the public for a minimum height of eight feet above the ground.
 3. **Height:** The maximum height of a small wind energy system shall be 75 feet.
- C. **Vertical Axis Wind Turbine Standards:** A vertical axis wind turbine (VAWT) using vertical wind turbine technology shall be permitted in all zoning districts, except the CBD, as an accessory use subject to the following requirements:
1. **Residential District Requirements:**
 - a. A maximum of one VAWT is permitted per lot or one per acre, whichever is greater.
 - b. Building mounted VAWTs shall not exceed 40 feet in height measured from the base attached to the structure to the highest point on the VAWT.
 - c. The maximum height for a freestanding VAWT shall not exceed 75 feet measured from the base of the tower to the highest point on the VAWT.
 - d. A VAWT shall be setback a distance of 1.05 times its total height from:
 - e. Any public road right of way, unless written permission is granted by the governmental entity with jurisdiction over the road;
 - f. Any overhead utility lines, unless written permission is granted by the affected utility;
 - g. All property lines, unless written permission is granted from the affected landowner or neighbor.
 2. **Non-Residential District Requirements:** Multiple VAWTs are permitted on any nonresidential lot subject to the following requirements:
 - a. Building mounted VAWTs shall not exceed 40 feet in height measured from the base attached to the structure to the highest point on the VAWT.

- b. Lightpole mounted VAWTs shall not exceed 25 feet in height measured from the top of the lightpole to the highest point on the VAWT.
- c. The maximum height for a freestanding VAWT shall not exceed 75 feet measured from the base of the tower to the highest point on the VAWT.
- d. A VAWT shall be setback a distance of 1.05 times its total height from:
 - (1) Any public road right of way, unless written permission is granted by the governmental entity with jurisdiction over the road;
 - (2) Any overhead utility lines, unless written permission is granted by the affected utility;
 - (3) All property lines, unless written permission is granted from the affected neighbor.

D. General Standards for Small Wind and VAWT:

- 1. *Lighting:* A small wind energy system or VAWT shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration. A light temporarily used to inspect a turbine, tower, and associated equipment is permissible, providing the light is only used for inspection purposes and not left on for an extended period.
- 2. *Decibel Levels:* Decibel levels for a small wind energy system or VAWT shall not exceed the lesser of 60 decibels (Dba) as measured at the closest neighboring inhabited dwelling, except during short-term events such as utility outages and severe windstorms.
- 3. *Signs:* All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a small wind energy system or VAWT visible from any public road shall be prohibited.
- 4. *Code Compliance:* A wind energy structure, including tower, shall comply with all applicable state construction and electrical codes, and the electrical code as adopted by the city.
- 5. *Screening:* Ground-level mechanical equipment associated with the wind energy system shall be screened.
- 6. *Other Standards:*
 - a. The structure shall comply with all applicable Federal Aviation Administration requirements, including but not limited to Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations in excess of 200 feet in height and, installations close to airports. The system shall also comply with all Kansas aeronautics regulations.
 - b. All electrical wires associated with a wind energy system, other than wires necessary to connect the wind generator to the tower wiring, the tower wiring to

- the disconnect junction box, and the grounding wires shall be located underground.
- c. A VAWT tower shall be designed and installed without step bolts or a ladder readily accessible to the public for a minimum height of eight feet above the ground.
 - d. No part of the system, including guy wire anchors, may be closer than five feet from any property boundary,
 - e. Temporary meteorological (Met) towers shall be permitted under the same standards as a small wind energy system, except that the requirements shall be the same as those for a temporary structure. A permit for a temporary MET tower shall be valid for a maximum of three years after which an extension may be granted. Permanent Met towers may be permitted under the same standards as a small wind energy system.
- E. **New Technology:** The Director may waive the provisions of these requirements through the alternative equivalent compliance process in Article VI – Redevelopment Overlay District where the availability of proven new technology alleviates the issues addressed by these regulations.
- F. **Private Restrictions Prohibited:** Any person(s) or association(s): regardless of date of establishment - is prohibited from imposing private covenants, conditions, restrictions, deed clauses, or other agreements between the parties, that prevent person(s) from installing and using alternative energy systems.

10.03 Commercial Communication Towers and Antennae

- A. Any tower erected for the purpose of the commercial wireless communications, either transmitting or receiving antenna shall be subject to the following requirements in addition to the special considerations listed elsewhere in these Development Regulations. Applicants for this special use permit shall submit the following:
- 1. Evidence of its effort to co-locate the proposed tower on an existing tower or structure. Tower height, strength and location shall be considered in determining the feasibility of such co-location,
 - 2. A site plan in accordance with Article 2 – Site Plans.
 - 3. A property ownership list prepared by a title company, Leavenworth County GIS, an Attorney or recognized professional which is complete and in accordance with the applicable Kansas Statutes.
 - 4. A written agreement stating that all equipment shall be removed within one year following termination of service at the applicant's expense, and
 - 5. Evidence of compliance with current ANSI, IEEE, FAA, FCC and such other industry standards or federal regulations as may be adopted and enforced by agencies outside of the city's jurisdiction. Such evidence may include licenses, engineer's

seal, or letters of approvals from the respective regulator or inspection service. Such approvals shall be received prior to application for a special use permit.

- B. **Additional Restrictions:** Commercial communication towers shall be further restricted as follows:
1. The maximum height of a tower and antenna to be owned or leased for a single antenna installation shall not exceed 150 feet in any zoning district;
 2. The maximum height of a tower and antenna when two or more antennas are co-located by two or more companies on a single tower shall not exceed 170 feet in any zoning district;
 3. In the General Business and Industrial zoning districts, whenever applicants are able to demonstrate a significant public benefit to be achieved by a taller structure, the Planning Commission may consider an exception to the height requirement. The exception and its justification shall be submitted as part of the application for the Special Use Permit and shall be valid when incorporated into the language of the ordinance granting the Special Use Permit adopted by the City Commission;
 4. In all zoning districts, for each foot of tower height there shall be a minimum of 1.05 foot of setback from any property line;
 5. In the General Business and Industrial zoning districts, the required setback may be reduced if written permission is granted by the affected neighbor.
 6. Such commercial communication towers shall be constructed of galvanized material as monopoles; and
 7. Accessory structures associated with the towers shall be constructed in such a manner as to blend with the character of surrounding uses.
 8. All towers and appurtenances shall be properly screened and shall provide a paved driveway and such other off-street parking areas as deemed necessary by the nature of the tower area's use.
- C. **Collocation:** Applicants shall make one tower space available for governmental communications equipment upon request without cost to the government except for installation.

ARTICLE 11. BOARD OF ZONING APPEALS

11.01. Creation

A Board of Zoning Appeals is created for the City of Leavenworth. Such Board shall consist of five members, all of whom shall be residents of the City of Leavenworth. Members shall be appointed by the Mayor with the consent of the City Commission. One of the members shall be a member of the Planning Commission. Appointments shall be made for three-year terms. Vacancies shall be filled by appointment for the unexpired term. Members of the Board shall serve without compensation.

11.02. General

The word "Board" when used in this article shall mean Board of Zoning Appeals. The Board shall adopt rules of procedure as may be necessary and proper to govern its own proceedings; such rules shall not be in conflict with other laws, regulations, or resolutions. The Board shall keep minutes of its proceedings, showing the description of evidence presented, the findings of facts by the Board, the decision of the Board, and the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Board immediately and shall be of public record.

- A. **Secretary:** The Secretary of the Board of Zoning Appeals shall be a member of the city staff appointed by the Director.
- B. **Meetings:** Unless notified otherwise the members of the Board of Zoning Appeals will meet regularly once each month, at such time and place as is fixed by resolution. They shall select one of their members as chairman and one as vice-chairman, who shall serve one year or until their successors have been selected. Special meetings may be called at any time by the chair or in his absence, by the vice-chairman. A majority of the Board shall constitute quorum for the transaction of business. The Board shall cause a proper record to be kept of its proceedings.
- C. **Quorum:** A majority of the Board shall constitute a quorum for the transaction of business, and a concurring vote of a majority of the entire Board shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector, or to decide in favor of the applicant upon any matter which it is required to pass under these regulations, or to affect any variation in such regulation.

11.03. Powers and Jurisdiction

The Board shall have those powers and duties authorized by this ordinance and by KSA 12-759 and any amendments thereto.

- A. **Appeals:** After proper hearing to decide appeals where it is alleged there is an error in an order, requirement, decision, or determination made by an administrative official in the enforcement of these regulations, except where the City Commission is specifically empowered to hear an appeal.

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11.03 Power and Jurisdiction

1. Appeals to the Board may be taken by the person aggrieved, or by any officer or department of the city government affected by the rigid enforcement of these Development Regulations. Such appeal shall be filed with the Secretary of the Board, as shall be herein prescribed. The administrative official shall forthwith transmit to the Secretary of the Board all papers constituting the record upon which the action appealed from is taken.
 2. An appeal stays all proceedings in furtherance of the action appealed from, unless the Secretary of the Board certifies to the Board, after the Notice of Appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by a court of record.
- B. ***Variances:*** To authorize in specific cases a variance from the specific terms of these Development Regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these Development Regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these Development Regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the Development Regulations of the City of Leavenworth, Kansas in such district. Rather, variances shall only be granted for the detailed requirements of the district such as area, bulk, yard, parking or screening requirements.
1. The applicant must show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the Zoning Ordinance, or where by reason of exceptional topographical conditions or other extra-ordinary or exceptional circumstances that the strict application of the terms of the Development Regulations of the City of Leavenworth, Kansas actually prohibits the use of his property in the manner similar to that of other property in the zoning district where it is located.
 2. A request for a variance may be granted, upon a finding of the Board that all of the following conditions have been met:
 - a. The Board shall make a determination on each condition, and the finding shall be entered in the record.
 - b. That the variance requested arises from such condition which is unique to the property in question and is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.
 - c. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
 - d. That the strict application of the provisions of the Development Regulations from which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
 - e. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;

- f. That granting of the variance desired will not be opposed to the general spirit and intent of the Development Regulations.
 3. In granting a variance, the Board may impose such conditions, safeguards, and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these Development Regulations.
- C. **Exceptions:** To grant exceptions which are specifically listed as permitted in these Development Regulations. In no event shall exceptions to the provisions of the Development Regulations be granted where the exception contemplated is not specifically listed as in the Development Regulations of the City of Leavenworth, Kansas. An exception is not a variance. Further, under no conditions shall the Board have the power to grant an exception when the conditions of this exception, as established by these Development Regulations, are not found to be present.
- D. **Conditions of Determination:** In exercising the foregoing powers, the Board, in conformity with the provisions of these Development Regulations, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, and to that end shall have all the powers of the administrative official and may attach appropriate conditions, restrictions or safeguards necessary to protect public interest and welfare.

11.04. Applications

- A. The procedure for requesting a hearing before the Board shall be as follows:
1. *Application Submission:* All applications to the Board shall be in writing on forms provided by the Secretary of the Board. Said application shall be completed in its entirety and filed in the office of the City Clerk with all supporting data.
 2. *Notification of Nearby Property Owners:* All applications shall be accompanied by an ownership list certified by an attorney, a title company or a list and map prepared by the Leavenworth County GIS Department listing the names and addresses of all property owners located within 200 feet, excluding streets and alleys, of the boundaries of the property included in the application. If the property is adjacent to the city limits, the area shall be expanded to 1,000 feet of property owners outside the city limits.
 3. *Public Notification:* The Board shall fix a reasonable time for the hearing of an application, and notice of the time, place and subject of each hearing shall be published in the official newspaper (as designated by the City Commission) at least 20 days prior to the date fixed for the public hearing. A copy of the notice of public hearing shall be sent to each party of interest, each person on the ownership list, and the chair of the Planning Commission.
- B. In addition to the above requirements, certain applications require additional information as follows:
1. *Appeals:*

- a. An application for an appeal shall be filed within 10 days after a ruling has been made by an Administrative Official and furnished to the appellant in writing.
 - b. A copy of the written ruling of the Administrative Official which the applicant believes to be in error shall be submitted.
 - c. A clear and accurate written description of the proposed use, work or action in which the appeal is involved and a statement justifying the appellant's position.
 - d. Where necessary, a plot plan, drawn to scale, showing existing and proposed plans for the area in question shall be submitted.
2. *Variances:*
- a. The applicant shall submit a statement, in writing, justifying the variance requested, indicating the enforcement provisions of the specific regulations from which the variance is requested, and outlining in detail the manner in which it is believed that this application will meet each of the five conditions as set out in herein.
 - b. The applicant shall submit six (6) copies of a sketch drawn to scale and showing the lot or lots included in the application; the structures existing thereon; and the structures contemplated necessitating the variance requested. All appropriate dimensions and any other information which would be helpful to the Board in consideration of the application should be included.
3. *Exceptions:*
- a. The applicant shall submit a statement in writing justifying the exception applied for and indicating under which article and section of the Development Regulations the Board of Zoning Appeals is believed to have jurisdiction.
 - b. The applicant shall prepare and submit at the time of filing, the application, six copies of a detailed plot plan drawn to scale, showing all existing and proposed structures, property lines with dimensions, parking spaces, points of ingress and egress, driveways, and any other information which would be helpful to the Board in consideration of the application.
- C. **Conditions of Approval:** In making any decision varying or modifying any provisions of the Development Regulations, or in granting an exception to the district regulations, the Board shall impose such restrictions, terms, time limitations, landscaping, screening and other appropriate safeguards as needed to protect adjoining property.
- D. **Performance Bonds:** The Board may require a performance bond to guarantee the installation of improvements such as parking lot surfacing, landscaping, etc. The amount of the bond shall be based on a general estimate of cost for the improvements as determined by the Board for 125% of necessary improvements, and shall be enforceable by or payable to the City Commission in the sum equal to the cost of constructing the required improvement. In lieu of the performance bond requirements, the Board may specify a time limit for the completion of such
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required improvements and in the event the improvements are not completed within the specified time, the Board may declare the granting of the application null and void after reconsideration.

11.05. Appeal of the Board Decision

Any person, persons, department, or departments of the government, jointly or separately aggrieved by any decision of the Board may present to the District Court having jurisdiction, a petition, as provided by Kansas Statutes.

DEVELOPMENT REGULATIONS
APPENDIX A. USE TABLE

- A. **Table Organization.** Table A1-1 Table of Permitted Uses classifies land uses and activities into general “use categories” and specific “use types” based on common functional or physical characteristics, such as the type and amount of activity, the type of customers or residents, types of products, how goods or services are sold or delivered, and site conditions. Regardless of whether a use is allowed by right or permitted as a special use, there may be additional standards that are applicable to the use. Uses are allowed as follows:
1. *Permitted By-Right Uses.* “P” in a cell indicates that the use is permitted by right in the respective zoning district and overlay district. Permitted uses are subject to all other applicable regulations in this document, including the use-specific standards in this section.
 2. *Special Uses.* “S” in a cell indicates that the use is allowed only if reviewed and approved as a special use in accordance with the procedures of Article II - Administration regarding Special Use Permits. Special uses are subject to all other applicable regulations of this document including the use-specific standards in this section and the requirements of Article IV – Supplementary District Regulations.
 3. *Prohibited Uses:* A blank cell indicates that the use is prohibited in the respective zoning district.
- B. **Classification by Interpretation.** This classification does not list every use or activity that may appropriately exist within the categories and specific uses may be listed in one category when they may reasonably have been listed in one or more other categories. The categories are intended merely as an indexing tool for the specific use type and are not regulatory. When application is made for a use type that is not specifically listed in Table A1-1, Table of Permitted Uses but that appears similar to uses in that table, the Director shall make a determination as to the appropriate classification of any new or unlisted form of land use in the following manner:
1. The Director shall consider the nature of the use and whether it involves dwelling activity; sales; processing; type of product, storage and amount, and nature thereof; enclosed or open storage; anticipated employment; transportation requirements; the amount of noise, odor, fumes, dust, toxic material, and vibration likely to be generated; and the general requirements for public utilities such as water and sanitary sewer.
 2. Standards for new and unlisted uses may be interpreted as those applicable to a similar use.
 3. The Director may choose to send a proposed use to the City Commission for interpretation where classification options are unclear or where the potential impact must be considered in the interpretation process.
 4. When the Director determines that a new or unanticipated use is so similar in impact to a specific use type, or uses generally within the use category the Director may:
 - a. Make the interpretation the use type is generally broad enough to include the use in question; or
 - b. For ease of future application and interpretation add the use to the appropriate category in the table. Such administrative adjustment to the table shall not be considered an amendment to this ordinance provided the criteria above are clearly met, and provided notice and comment of the adjustment is placed on the agenda of both the Planning Commission and Governing Body for review and consent.
 5. Appeal of the Director’s decision shall be made to the City Commission.
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DEVELOPMENT REGULATIONS
APPENDIX A. USE TABLE

Table A1-1, TABLE OF PERMITTED USES																		
P = Permitted, S = Special Use Permit Required																		
Use Category	Residential								Non-Residential							Overlay		
Subcategory	R1-25	R1-9	R1-7.5	R1-6	R-MF	R4-16	MP	RMX	NBD	OBD	CBD	GBD	I-1	I-2	FP	NN	DT	NG
Specific Use Type																		
RESIDENTIAL USES																		
Household Living																		
Dwelling, Single-Family Detached	P	P	P	P		P	S	P	P		S					P	S	
Dwelling, Two-Family	S	S	S	S	P	P		P	P							P	S	
Dwelling, Townhouse				S	P	P		P	P							P	P	
Dwelling, Multi-Family					P	P		P								P	P	
Dwelling in Mixed-Use Structure Note [1]								P	P	P	P	P				P	P	P
Dwelling, Live/Work								P	P	P	P	P				P	P	P
Dwelling, Manufactured	P	P	P	P			P											
Dwelling, Mobile Home							P											
Group Living																		
Assisted Living Facility	S	S	S	S	S	S		S			P	P				S	S	S
Convent/Monastery	P	P	P	P	P	P	P	P										
Dormitory	S	S	S	S	S	S		S										
Fraternity/Sorority Home	S	S	S	S	S													
Group Home: Disabled (K.S.A. 12-736)	P	P	P	P	P	P	P	P								S	S	S
Nursing Home/Hospice	S	S	S	S	P	S						P				S	S	S
Senior Housing	S	S	S	S	P	P		S			P	P				S	S	S
Shelter, Domestic Violence	P	P	P	P					P	P	P	P				P	P	P
Student Housing	S	S	S	S	P	P		P			P	P						
PUBLIC AND INSTITUTIONAL USES																		
Community Services																		
Adult Day Center	S	S	S	S					P	P	P	P				S	P	P
Cemetery	S	S	S	S														
Mausoleum	S	S	S	S							P	P						

DEVELOPMENT REGULATIONS
APPENDIX A. USE TABLE

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Specific Use Type																		
Civic, Social, and Fraternal Organizations	S	S	S	S				S		P	P	P				P	S	P
Community Centers											P	P				P		P
Government Offices and Facilities	S	S	S	S	S	S	S	S	P	P	P	P	P	P	P	P	P	P
Historic and Monument Sites	P	P	P	P	P	P	P	P	P	P	P	P				P	P	P
Jails and Prisons													S	S				
Library	S	S	S	S				S	P	P	P	P				P	P	P
Post Office Branches								P	P	P	P	P				P	P	P
Religious Assembly	P	P	P	P	P	P	P	P	P	P	P	P				P	P	P
Safety Services	P	P	P	P				P	P	P	P	P				P	P	P
Day Care																		
Day Care Center/Preschool	S	S	S	S	S	S	S	S	P	P	P	P				P	P	P
Day Care, Home (6 or less children)	P	P	P	P	P	P	P	P	P	P	P	P				P	P	P
Day Care, Home (7 or more children)	S	S	S	S	S	S	S	S	P	P	P	P				S	P	P
Educational Facilities																		
College or University	S	S	S	S						P	P	P				S	S	S
School, Elementary and Middle (Public and Private)	S	S	S	S	S	S	S	S	S	S	S	S				S	S	S
School, Senior High	S	S	S	S	S	S	S	S	S	S	S	S				S	S	S
School, Vocational-Technical and Trade									S	P	P	P						S
Health Care Facilities																		
Hospitals									S	S	P	P						S
Medical and dental clinics and offices								P	P	P	P	P				P	P	P
Parks and Open Space																		
Arboretum or botanical garden	S											P				P	P	P
Campground	S																	
Community playfields, playgrounds, and parks	P	P	P	P				P	P	P	P	P				P	P	P

DEVELOPMENT REGULATIONS
APPENDIX A. USE TABLE

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Specific Use Type																			
Golf course, public	S	S	S	S												S			S
Golf course, private	S	S	S	S												S			S
Zoo												P							
Transportation																			
Airport												S	S	S					S
Bus Garage and Equipment Maintenance												P	P	P					
Bus Terminal									S	S	P	P	P	P	P				
Heliport											S	S	S	S					
Railroad Terminal												P							
Taxi Dispatch									S	S	P	P							
Truck Terminal, Freight, Air Courier Services													P	P					
Utility																			
Private Wind Energy Systems	P	P	P	P	P	P	P	P	P	P		P	P	P		P	P	P	
Private Solar Collection Systems	P	P	P	P	P	P	P	S	P	P	P	P	P	P		P	P	P	
Commercial Wind Energy Systems	S	S	S	S	S	S	S	S	S	S		S	S	S	S	S	S	S	S
Commercial Solar Collection Systems	S	S	S	S	S	S	S	S	S	S		S	S	S	S	S	S	S	S
Communication Tower	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Communication Tower – Alternative Structure	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Communication Facility on Existing Structure	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Water Storage	P	S	S	S	S	S	S	S	S	S	P	P				S	S	S	
COMMERCIAL USES																			
Animal Sales and Service																			
Kennel												P	P	P					
Pet Shops									P		P	P				P	P		
Pet Grooming	S	S	S	S				S	P		P	P				S	S	S	
Veterinary Clinic with Boarding									S	S	P	P	P	P		S	S	P	

DEVELOPMENT REGULATIONS
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Specific Use Type																		
Veterinary Clinic without Boarding									S	S	P	P	P	P	P	P	P	P
Assembly																		
Assembly Hall								S	S	P	P	P						
Auction Establishment									S	P	P	P	P					S
Membership Clubs									S	P	P	P				S	S	S
Event Venue									S	P	P	P					P	P
Financial Service																		
Financial Institution, with Drive-thru								P	P	P	P	P				S	S	P
Financial Institution, without Drive-thru								P	P	P	P	P				P	P	P
Food and Beverage Services																		
Food and Beverage General								S	P	S	P	P				P	P	P
Bars or Taverns								S	S	S	P	P				S	P	P
Restaurant, with Drive-in or Drive-thru								S	P	S	P	P					S	P
Restaurant, without Drive-in or Drive-thru								S	P	S	P	P				S	S	S
Office																		
Administrative and Professional Offices								P	P	P	P	P				P	P	P
Offices for Nonprofit, Community Health, and Welfare Service Organizations								P	P	P	P	P				P	P	P
Recreation and Entertainment, Outdoor																		
Arena and Field House											S	P					S	S
Country Club	S	S	S	S								P						
Marina	S										S	S	S					
Outdoor Commercial Recreation and Entertainment	S										S	P	S				S	P
Racing Facilities	S											S	S	S	S			
Riding Academies/Stables	S												S	S	S			

DEVELOPMENT REGULATIONS
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Specific Use Type																		
Sports/Entertainment Arena or Stadium									S	S	S	P	S					P
Athletic Facilities	S	S	S	S				P	P	P	P	P	S					
Non- Residential Swimming Pools Public or Private Membership	S	S	S	S							P	P				P		P
Recreation and Entertainment, Indoor																		
Art Gallery or Museum								P	P	P	P	P				P	P	P
Auditorium/Exhibition Hall/Convention Center											S	P					S	P
Indoor Commercial Recreation/ Entertainment											P	P	P			P	P	P
Commercial Services																		
Sexually Oriented Business													S					
Building Services										P	P	P				S	S	P
Business Support								P	P	P	P	P				P	P	P
Contracting Services, no storage or yard											P	P	P	P				P
Funeral, Mortuary, Crematory	S	S	S	S						S	P	P				S	S	S
General Personal Services								P	P	P	P	P				P	P	P
Gun Sales and Service								S	P	P	P	P						
Indoor Shooting Ranges											S	S	P	P				
Maintenance and Repair									P	S	P	P					S	S
Tattoo Parlor/Body Art								P	P		P	P						
Radio, Television, and Recording Services										S	P	P					P	P
Studio, Music/Movie/TV								P	P	P	P	P						
Retail (Sales)																		
Building Supplies and Equipment											P	P	P				S	P
Consumer Goods								P	P	P	P	P				P	P	P
Sundries, Pharmaceuticals, Convenience Store								P	P	P	P	P				P	P	P
Food, Beverage, and Groceries								P	P	P	P	P				P	P	P

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APPENDIX A. USE TABLE

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Specific Use Type																		
Vehicles and Equipment																		
Automobile Repair Shop											P	P	P					
Automobile, Boat, Truck, Motorcycle, RV Sales, Rental, and Service											P	P	S					
Car Wash/Truck Wash									S		S	P	P					
Gas Station									S		P	P	P			S	P	P
Heavy Vehicle/Equipment Sales, Rentals and Service												P	P	P				
Parking Lot or Garage (Commercial, Non-Accessory)	S	S	S	S				S	S	S	P	P	S	S		S	S	S
Visitor Accommodation																		
Bed and Breakfast Inns	S	S	S	S	S	S	S	P	P	P	P	P	P			S	S	S
Bed and Breakfast Guest House	S	S	S	S	S	S	S	P	P	P	P	P	P			S	S	
Bed and Breakfast Home Stay	S	S	S	S	S	S	S	P	P	P	P	P	P			S	S	
Residential Home Stay	S	S	S	S	S	S	S	P	P	P	P	P	P			S	S	
Boarding and Rooming Houses	S	S	S	S	S	S	S	P	S	S	P	P				S	S	
Camp, Private, Overnight	S																	
Health Resort/Spa										P	P	P						
Hotel										P	P	P				P	P	P
Hotel – Limited Service										P	P	P				P	P	P
Residence Hotels								S	S	P	P	P				P	P	P
Retreat House	S	S	S	S														
INDUSTRIAL USES																		
Industrial Service																		
Animal Research Facilities													S					

DEVELOPMENT REGULATIONS
APPENDIX A. USE TABLE

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Specific Use Type																		
Builders Supply Yards and Lumberyards (except when indoors as part of a hardware store)												P	P					
Construction Industry Related Businesses (such as general contractors, electrical contractors, plumbing contractors) /Accessory and Incidental uses												P	P	P				
Educational and Scientific Research, Development, and Testing Services										P	P	P	P	P			P	P
Heavy Industrial														P	S			
Light Industrial													P	P	S			
Petroleum Pipeline and Pressure Control Stations	S	S	S	S	S	S	S	S	S	S	S	S	S	S				
Manufacturing and Production																		
Manufacturing, Fabrication, and Assembly: Custom												S	P	P				
Manufacturing, Fabrication, and Assembly: Light												P	P	P				
Manufacturing, Fabrication, and Assembly: Heavy												S	S	P				
Wholesale, Storage, Warehouse, and Distribution																		
Automobile Towing Service Storage Yard; Impound Lot											S	S	P	P				
Mini-Storage											S	P	P					
Moving and Storage Facilities												P	P					
Warehousing											S	P	P	P				
Wholesale Trade or Storage, General												P	P	P				

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Specific Use Type											P	P	P					
Wholesale Trade or Storage, Light											P	P	P					
Waste and Salvage																		
Automobile Parts Recycling Business												S	P	P				
Junkyard, Salvage Yard												S	P	P				
Neighborhood Recycling Center	S	S	S	S	S	S	S	S	S	S	S	S	S	S		P	P	P
Recycling Collection Station													P	P				
Solid Waste Facility													S	S				
AGRICULTURE																		
Agriculture/Aquaculture																		
Animal Husbandry (other than dairy)	P																	
Apiary	P	P	P	P	P	P	P	P										
Farming	P																	
Fish Farm/Hatchery	S																	
Ranching	S																	
Greenhouse/Nursery	S	S							S	S	P	P	S	S				P
Urban Agriculture/Community Garden	P	P	P	P	P	P	P	P								P	S	P
NOTE 1: In the CBD, Residential is not permitted within the front half or front 30' of space, whichever is greater, on the 1 st floor (Sec 1.17 A,B)																		

DEVELOPMENT REGULATIONS
APPENDIX A. USE TABLE
