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## ARTICLE 01

### TITLE AND APPLICABILITY

#### DIVISION 01.000 TITLE

This Ordinance shall be known as the "Paola Land Development Ordinance."

#### DIVISION 01.100 APPLICABILITY

All development within the City of Paola and unincorporated land within Paola's Community Growth Area established by intergovernmental agreement with Miami County specified in Section 01.110 shall fully comply with the terms of this Ordinance. Exempted developments are listed in Section 01.120.

#### SECTION 01.110 TYPES OF DEVELOPMENT

- A. **The use of any building, structure, land, or water.** Every use shall specifically require a zoning and occupancy permit for the construction, modification, use, or occupancy of any lot, parcel, building, or structure as specified in this Ordinance.
- B. **Any disturbance of land, soil, vegetation, or waterways.** Altering land for development or other purposes shall conform to this Ordinance's standards and require a permit prior to commencing work.
- C. **Any division of land or land development.** Whether by metes and bounds, subdivision, or land development, all development designs and layouts shall comply with this Ordinance's regulations.
- D. **Agricultural lands within the Community Growth Area.** This Ordinance's regulations treat the use of agricultural land within the Community Growth Area as a type of development distinguished from those set out in A, B, or C above. Section 01.122 establishes under which circumstances the use of agricultural land constitutes development subject to these regulations.

#### SECTION 01.120 EXEMPTIONS

- A. **Single-Family Development on Lots of Record.** Single-family development on a single lot of record with deed or certificate of survey recorded prior to this Ordinance's adoption date may occur within five years from the date of this Ordinance's adoption notwithstanding the limitation imposed by other provisions of these regulations. Such lot must be in separate ownership and not of continuous frontage with other lots under the same ownership, and shall meet the following conditions:
  - 1. This provision shall not apply if the lot of record is located in the BP or TA districts.
  - 2. For purposes of this provision, the minimum lot area may be reduced by no more than 30%.
  - 3. For purposes of this provision, the minimum lot width may be reduced by no more than 20%.

4. All front, rear, and side yard requirements shall be met unless a variance for such has been approved by the Board of Zoning Appeals.
5. The lot must meet access spacing requirements unless an exception is granted per Section 11.233 "Exceptions on Access Standards" (Ordinance 2783, 08/21/01).
6. if two or more lots or a combination of lots and portions of lots with a continuous frontage and single ownership are lots of record with deeds recorded prior to this Ordinance's adoption date and if all or part of the lots with no buildings do not meet the requirements established in the district for lot area and width, the land involved shall be considered an undivided parcel and lot of record for the purpose of these regulations and no portion of the parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by these regulations.
7. All other requirements of these regulations shall be met.

B. **Conditionally Approved Developments.** Any Planned Unit Development (PUD) approved prior to this Ordinance's adoption date, shall be governed by the regulations under which it was approved. If changes to the PUD are requested, approving such changes shall require revising the plan to conform to this Ordinance as closely as feasible, subject to a Conditional Use Permit.

C. **Vesting of Development Rights.** When a use does not fall into one of the exempted categories (A. or B. above), the following rules on the vesting of development rights shall apply:

1. Any single-family residential development shall be vested for five (5) years from the date of recording of a final plat of such land. If construction does not begin within five (5) years of the recording date of the plat, the development rights shall expire.
2. Projects other than single-family developments that have received all required building permits prior to this Ordinance's effective date shall have six (6) months from this Ordinance's effective date to begin construction and complete substantial amounts of work, in accordance with valid permits, in order to become vested. If construction is not commenced within six (6) months, the building permit shall expire and the development shall proceed only in compliance with the provisions of this Ordinance.
3. Surveyed lots with single family residential dwellings on them, or for which single-family dwelling building permits have been validly issued, as of the effective date of this Ordinance, shall comply with the land use regulations in effect at the time the building permit was issued. Surveyed lots with common or multiple ownership shall be subject to the provisions of Section 01.120A.

D. **Land Disturbance.** Land disturbances of less than one thousand (1,000) square feet, not involving any bufferyard, resource, or conservation area, are not regulated by this Ordinance.  
*Note: The Uniform Building Code or State Law may require permits.*

E. **Other Exemptions.** Other Sections of this Ordinance that specifically exempt a use from that Section shall apply only to the specific exemption.

F. **Lots Requiring No New Access.** A subdivision of lots larger than thirty-eight (38) acres, with one thousand (1,000) feet of frontage, and not requiring a new public right-of-way for access to any lot is not regulated by Article 14 of this Ordinance.

G. Any use approved under a valid Special Use Permit (SUP) approved by the City prior to effective date of this Ordinance shall be allowed to continue as a City-approved Conditional Use Permit (CUP), subject to the following:

1. Continued compliance with any conditions established by the City, unless expressly waived by the City.
2. A Conditional Use Permit will lapse upon a finding of discontinuance by the Planning Commission. A finding of discontinuance requires evidence of: (a) discontinuance of the use permitted under the Conditional Use Permit for at least six (6) consecutive months and (b) intent to discontinue the use permitted.
3. The use permitted under a Conditional Use Permit may be increased or expanded by no more than ten (10) percent without having to obtain a new Conditional Use Permit, following all the procedures of these regulations. Expansion shall be determined by the zoning administrator as follows: For a use which primarily or exclusively involves utilization of a structure, or structures, on the basis of floor area of such structures; and for all other uses, on the basis of land area. Expansion, whether of structures or land, for purposes of this Section shall be cumulative in their measure, relating back to the size of the use allowed under the Conditional Use Permit when first approved.

H. **County Approved Conditional Use Permits in Community Growth Area.** Any use approved under a valid Conditional Use Permit approved by Miami County prior to the subject property becoming subject to the City's regulations as part of the Community Growth Area shall be allowed to continue as a City-approved Conditional Use Permit, subject to the following:

1. Continued compliance with any conditions established by the County, unless expressly waived by the City.
2. A Conditional Use Permit will lapse upon a finding of discontinuance by the Planning Commission. A finding of discontinuance requires evidence of: (a) discontinuance of the use permitted under the Conditional Use Permit for at least six (6) consecutive months and (b) intent to discontinue the use permitted.
3. The use permitted under a Conditional Use Permit may be increased or expanded by no more than ten (10) percent without having to obtain a new Conditional Use Permit, following all the procedures of these regulations. Expansion shall be determined by the zoning administrator as follows: For a use which primarily or exclusively involves utilization of a structure, or structures, on the basis of floor area of such structures; and for all other uses, on the basis of land area. Expansion, whether of structures or land, for purposes of this Section shall be cumulative in their measure, relating back to the size of the use allowed under the Conditional Use Permit when first approved.
4. Notwithstanding any other provision of these regulations to the contrary, whenever a new Conditional Use Permit is issued as a result of an increase or expansion of a use per Subsection H.3. of this Section, the standards set out in these regulations which must be adhered to with respect to the land included within the new Conditional Use Permit shall

not be applicable to the land or structure subject to the Conditional Use Permit when first approved. It is the intent of this subsection to prevent the approval of a Conditional Use Permit under H.3. of this Section from resulting in the application of standards in these regulations to land or structures previously made subject to a Conditional Use Permit.

I. **Nonconforming Uses in the Community Growth Area as Conditional Uses.** Any legal nonconforming which results from the establishment of the Community Growth Area shall become a conditional use of the zoning district in which the use is located if the property owner applies for a Conditional Use Permit within six (6) months of the date of adoption of these regulations. Upon submission of the application within the six-month period and a determination of legal nonconforming use status, the City shall issue a Conditional Use Permit and shall not limit the term of the permit without the consent of the applicant. Unless otherwise provided in the Conditional Use Permit, the nonconforming use as a conditional use shall be subject to Subsection H of this Section.

## **SECTION 01.121 SPECIAL AGRICULTURAL LANDS.**

A. It is the intent of these regulations that certain land in agricultural production not be forced to convert to non-agricultural use, against the desires of the owner, as the result of assessments levied following the establishment of improvement districts created for sewer, water, street or other public improvements which provide little benefit, and no service, to such property so long as it continues to be used exclusively for agricultural purposes.

B. The provisions of this section are (a) supplemental to Resolution No. 3-14-95 "A Resolution Establishing the Development Policy for the Financing of Improvements within the City of Paola, Kansas" and (b) may be utilized only by the owner of any parcel of land meeting the following conditions: 150 or more contiguous acres in size, held in common ownership as of July 1, 1997; in agricultural use, as defined in these regulations; and located within the Community Growth Area. Such land is hereinafter referred to as "special agricultural lands".

C. When the City is requested to establish an improvement district whose boundaries may contain special agricultural lands, the owner of special agricultural land may either petition for or consent to inclusion of such land within the proposed improvement district, or may provide written notice to the City that: (1) the owner objects to such land being placed in the proposed improvement district, in which case the City shall proceed to create the proposed improvement district only in accordance with the provisions of subsection D of this section; or (2) the owner consents to inclusion of such land in the improvement district on the condition that assessments are deferred in accordance with K.S.A. 12-6,110 or K.S.A. 1996 Supp. 12-6a19.

D. Upon receiving a written objection from the owner of special agricultural lands, as provided in subsection C of this section, and upon finding that such special agricultural lands lie in close proximity to, or along the route of, the proposed public improvement, the City Council shall not create the requested improvement district unless:

(1) The City Council finds that the special agricultural lands will not be benefited by the project proposed to be financed by means of the proposed improvement district, and therefore will not be included within the proposed improvement district, because that

portion of the public improvement lying upon, or in the proximity of the special agricultural lands has been completed, or will be completed, without the necessity of the establishment of an improvement district or levy of special assessments; or

(2) The City Council finds that the special agricultural lands will not be benefited by the project proposed to be financed by means of the proposed improvement district, and therefore will not be included within the proposed improvement district, because: a. that portion of the improvement lying upon or in the proximity of the special agricultural lands has been completed, or will be completed, without the necessity of the improvement district or levy of special assessments, and b. the owner has conveyed to the City of Paola an agricultural easement which restricts the land to agricultural use only, restricts or prohibits utilization of the proposed public improvement, and establishes the terms and conditions for future connection to or utilization of the public improvement to be financed by the creation of the proposed improvement district. The terms and conditions of the agricultural easement shall include: setting benefit fees or connection fees; and provisions for the payment of the amount of the assessment, including principal and interest which would have been levied against the property had it been originally included in the improvement district. An agricultural easement must be granted to the City, in a form acceptable to the City, whenever City funds will be used to pay for any portion of the costs of public improvements lying upon or in the proximity of special agricultural lands.

E. The City Council shall not approve the establishment of an improvement district comprising any special agricultural lands except in accordance with the provisions of this section.

## **SECTION 01.122      AGRICULTURAL USES WITHIN THE COMMUNITY GROWTH AREA**

Applicability of the regulations to land used for agricultural purposes and lying within the Community Growth Area depends on the type of agricultural use, as detailed in this Section. Notwithstanding any other provision in these regulations, all land used for agricultural purposes shall be subject to the provisions of Article 5 of these regulations.

1. Agricultural uses not otherwise subject to this Ordinance's regulations include:
  - A. Any current agricultural use or farmstead, as defined in Section 21.230, existing prior to this Ordinance's adoption date; and
  - B. Land cultivated as cropland.
2. In order to protect public health, safety and welfare, all other agricultural uses within the Community Growth Area not expressly exempted in Section 01.122A are subject to this Ordinance's regulations.

## **DIVISION 01.200      REFERENCES TO MIAMI COUNTY'S COMPREHENSIVE PLAN**

No provision in these regulations which references documents, resolutions, reports, plans or other documents adopted by Miami County shall be construed as intending to preempt, restrict or limit in any

manner whatsoever the authority of Miami County to maintain or undertake planning for land within the Community Growth Area.

## ARTICLE 02

### ESTABLISHMENT OF ZONING DISTRICTS

#### **DIVISION 02.000 ESTABLISHMENT OF ZONING DISTRICTS**

The City of Paola and the Paola Community Growth Area is hereby divided into the minimum number of zoning districts necessary to achieve compatibility of uses and character within each district, to implement the adopted Paola Comprehensive Plan, and to achieve this Ordinance=s purposes.

#### **SECTION 02.010 ZONING DISTRICTS**

For this Ordinance=s purpose, all land and water areas in Paola are divided into community character types and zoning districts (Table 02.010). The purpose of each district is described in Division 02.200.

<b>Table 02.010</b> <b>CHARACTER TYPES OF ZONING DISTRICTS</b>	
<b>Character of Districts</b>	<b>Zoning District</b>
Downtown	Downtown (D)
Thoroughfare Access	Thoroughfare Access (TA)
	Business Park (BP)
	Industrial (I)
Suburban	Suburban (S)
	Suburban Commercial (SC)
Estate	Estate (E)
Special	Neighborhood Conservation (NC)

#### **DIVISION 02.100 ZONING MAP**

The boundaries of the zoning districts are hereby established as shown on the map entitles: AOfficial Copy of Zoning District Map= Incorporated into Zoning Regulations of the City of Paola. This map is on file in the office of the City Clerk. The map and all notation, references, data and other information shown thereon shall be and are hereby adopted and made part of these regulations. The Floodplain Overlay District Maps shall be read in conjunction with the zoning map for areas lying within the regulatory floodplain.

## **SECTION 02.110        INTERPRETING DISTRICT BOUNDARIES**

The following rules shall be used to determine the precise location of any zoning district boundary line shown on the Zoning Map:

- A.     Boundaries shown as following, or approximately following streets, alleys, or railroads shall be construed as following the centerline of such features.
- B.     Boundary lines shown as following, or approximately following, lot lines, section lines, survey or other property lines, or municipal boundaries shall be construed as following such lines.
- C.     Boundaries shown as following, or approximately following, the centerline of streams, rivers, other continuously flowing watercourses, or levees shall be construed as following the channel centerline of such watercourses. In the event of a natural change in the location of such streams, rivers, or other watercourses, the zoning district boundary shall be construed as moving with the channel centerline.
- D.     Boundaries shown as separated from, and parallel or approximately parallel to, any of the features listed in Section 02.110 A. through C. shall be construed to be parallel to such features and at such distances therefrom as are shown on the Zoning Map.

## **SECTION 02.111        NEW OR UNCLASSIFIED LAND**

Any land in the City, within Paola=s Community Growth Area, or added to the Community Growth Area which is not shown or labeled on the Zoning Map, shall be considered zoned Estate (E).

## **SECTION 02.112        REDUCTIONS TO COMMUNITY GROWTH AREA**

Any land removed from the Community Growth Area, for reasons other than as a result of annexation by the City of Paola, shall be governed by the following:

- A.     Vesting shall be in accordance with Section 01.120 C.
- B.     Such land shall be classified in accordance with the Miami County Zoning Regulations.

## **SECTION 02.120        DEVELOPMENTS IN MORE THAN ONE ZONING DISTRICT**

Where land is in more than one (1) zoning district, the development may be designed as if each district were a separate parcel, or designed and developed as a single project. The following rules govern developments in two (2) or more districts where developed as a single project:

- A.     A concept plan shall be required as a condition of approval to shift densities.
- B.     The acreage in both districts may be used to determine minimum site area in Table 04.110 A.
- C.     The required open space and maximum dwelling units shall be the sum of that required by separate calculations (see Division 05.100) for each district.

D. A development=s proportions need not be identical to that calculated for each district. However, the plan for allocating development shall be approved as a preliminary plan for the entire property. Approval shall be based on the following criteria:

1. Where the development is in both residential and nonresidential districts, the area allotted to each may not be changed. The nonresidential district may intrude into the residential district only where at least three hundred (300) feet exist between the intrusion and residential zoning on abutting properties.
2. The proportion of land used for development shall be increased only in the higher intensity district, except as provided in paragraph 3 below.
3. Where, for aesthetic or environmental reasons, the concept plan approval may permit the development to occur in the lower density zoning district resulting, in this case, in a better plan, the developer shall submit an environmental impact assessment report showing alternative siting options, as part of the concept plan approval process. These options must demonstrate the advantages of the proposed location as opposed to siting the development as required in 1. and 2. above. See Figure 02.120.

E. Where a unified development straddles a district boundary, bufferyards are not needed between the development's portions. Where the development is in two (2) separate parts, or changes use or density at the boundary, then the buffer requirements (Table 04.110 A.) shall be required.

## **DIVISION 02.200 STATEMENT OF PURPOSE AND INTENT OF ZONING DISTRICTS**

This Division specifies the purpose and intent of the zoning districts established by this Ordinance. All districts share the purpose of implementing the Comprehensive Plan.

### **SECTION 02.200 ESTATE-AGRICULTURE DISTRICT IN COMMUNITY GROWTH AREA**

For this Ordinance=s purposes, all land within the boundaries of the Estate (E) zoning district and lying within the Community Growth Area shall have the designation of Estate-Agriculture (E-A), and such designation shall be shown on the official zoning map. Whenever these regulations refer to the Estate zoning district with respect to such lands, such shall be interpreted as referring to the Estate-Agriculture zoning district.

### **SECTION 02.210 URBAN DISTRICTS**

URBAN character is exhibited in two different character types: DOWNTOWN and THOROUGHFARE ACCESS. In this Ordinance, four districts display URBAN character (one DOWNTOWN, and three THOROUGHFARE ACCESS).

### **SECTION 02.211 DOWNTOWN (D) DISTRICT**

- A. This district is a mixed use district, permitting a full range of uses. The residential, commercial, and office areas in this district that surround the City Square, the County Courthouse, and extend north from the Square along Pearl Street and Silver Street.
- B. This district provides an URBAN character. Buildings are to be built to the sidewalk line, maintaining the Square=s historic character. Design standards ensure the desired character.

Pedestrian activity is encouraged and the City may make allowances to encourage a desirable mix of buildings and uses to enhance the central area=s economic vitality.

- C. This district conforms to the general densities called for in the Comprehensive Plan. This district encourages City and County governmental functions. This Ordinance permits uses in this district to reduce required parking by counting on-street parking.

#### **SECTION 02.212      THOROUGHFARE ACCESS (TA) DISTRICT**

- A. This district provides for high quality, moderate density development with a full range of residential and nonresidential uses.
- B. The design requirements provide a Thoroughfare Access character while encouraging pedestrian and automobile access.
- C. This district's intensity accommodates most community commercial and business activities. These nonresidential uses shall be limited to parcels having access to arterial or collector streets. Interior areas are intended to be residential.
- D. This district is not intended to promote strip development along all arterials and collectors. In newly developing areas, the minimum parcel depth along an arterial or collector shall be six hundred (600) feet. The minimum area shall be twenty (20) acres. In the older built-up areas where there is in-fill development, this zoning shall not displace residential uses in areas where at least one block of residential exists. New zoning shall have depths and areas equal to or greater than similar uses for four hundred (400) feet on either side. This district shall be used in areas designated Thoroughfare Access in the Comprehensive Plan. Access standards and site plan review shall be used to ensure that adequate access and visibility are retained on regionally important land near interchanges to prevent premature development from foreclosing future development options.

#### **SECTION 02.213      BUSINESS PARK (BP) DISTRICT**

- A. This district permits office, manufacturing, industrial, warehousing, and uses that support them. These areas are located primarily at US 169 interchanges, at K-68, and the current industrial park. The land use restrictions ensure the land best suited for this use is available.
- B. Moderate to high intensities are permitted to achieve maximum land utilization. This development pattern provides an Thoroughfare Access character. The area is intended to attract business and industry. The designated areas are intended to be regional employment centers for the City and Miami County. The area's development (as seen from US 169 or other main roads) provides a high quality business park character. The interior land, screened from US 169 or other main roads, may develop at higher intensities with less landscaped area. Such practices will maximize land use. Exterior storage is limited to interior sites and must be screened.

#### **SECTION 02.214      INDUSTRIAL (I) DISTRICT**

- A. This district retains the older industrial areas, including some heavy industry that cannot meet the District standards. This district encourages retaining these uses and the continual use of the existing buildings for industrial uses.

B. The district provides an Thoroughfare Access character. This character is not attractive. Building types, exterior storage, scale, and other features are such that the City does not desire new industrial areas of this type. Therefore, expansion of Industrial Districts shall be limited to areas near the Missouri Pacific rail line and within a quarter (.25) mile north of the existing industrial area. New industrial areas with high visibility contradict the Comprehensive Plan.

## **SECTION 02.220 SUB-URBAN DISTRICTS**

Four districts comprise the SUB-URBAN character class. Three districts provide a SUBURBAN character type and one provides an ESTATE character type.

### **SECTION 2.221 SUBURBAN, LOW DENSITY (S-1) DISTRICT**

A. This district permits a wide range of residential uses. This district includes most of the newly developing areas designated Suburban in the Comprehensive Plan.

B. This district permits low density development and a full range of residential uses in a manner consistent with providing a high quality SUBURBAN character. Significant areas of open space and/or landscaping shall be provided to maintain the balance between green space and buildings that characterize SUBURBAN character.

C. This district is not intended to be used for fully developed areas -- those areas are zoned Neighborhood Conservation (NC) or in some instances Suburban, Moderate Density (S-2). The S-1 District would be used to infill tracts containing at least three (3) acres or where Paola seeks to redevelop the area to SUBURBAN character.

### **SECTION 2.221.1 SUBURBAN, MODERATE DENSITY (S-2) DISTRICT**

A. This district permits a wide range of residential uses, at densities somewhat greater than that in the Suburban, Low Density (S-1) District, but less than those in the Thoroughfare Access (TA) District. This district is intended primarily for those portions of the City's Community Growth Area which lie in close proximity to the City's boundary and to public infrastructure.

B. This district permits moderate density development and a full range of residential uses in a manner consistent with providing a high quality SUBURBAN character. Open space and landscaping shall be provided to maintain the balance between green space and buildings that characterize SUBURBAN character.

### **SECTION 02.222 SUBURBAN COMMERCIAL (SC) DISTRICT**

A. This mixed use district provides a small commercial center in a SUBURBAN character area, or provides a commercial and business center serving an ESTATE community. This district is intended to be the community's commercial center by providing convenience type services.

B. Development intensity is low. Uses are primarily retail, service, and office, but mixed use, including residential, is encouraged. This district's lower intensity commercial and high landscape surface ratio provide the desired SUBURBAN character and eliminate conflicts with surrounding residential land.

- C. This district serves mostly convenience and some neighborhood needs while avoiding creating commercial strips. No area greater than ten (10) acres shall be zoned for this district within one (1) mile of another SC district.

#### **SECTION 02.223 ESTATE (E) DISTRICT**

- A. This district provides a high quality residential area with a very low density (generally large individual lots). Some single-family lots are large enough for equestrian uses.
- B. The density provides a transition between rural areas outside the City's Community Growth Area and suburban areas. This district ensures an overall ESTATE character is retained. Landscaping, lot size, and open space provide a strong sense of the estate being in a rural area. Substantial areas of open space and/or landscaping shall be provided to ensure this character. Landscaping should promote rural and natural images. This district applies to areas in western Paola, of difficult terrain, and that have developed in this pattern.
- C. Paola's soils have poor absorption characteristics. Except on very large lots, individual wastewater systems are considered an unreliable and temporary solution to sewage disposal. Maximum density can be obtained only where the development is serviced by public utility systems. Standards provide for interim systems and the use of on-site systems.
- D. Water supply shall meet City standards except that E Districts shall not need systems capable of fire-fighting pressures.

#### **SECTION 02.230 SPECIAL DISTRICTS**

Special districts are applied to existing development areas. The Neighborhood Conservation (NC) District applies to neighborhoods or platted areas whose character is already set by existing uses and lotting and which should be protected or conserved.

#### **SECTION 02.231 NEIGHBORHOOD CONSERVATION (NC) DISTRICTS**

- A. These districts protect the residential character of existing neighborhoods or platted subdivisions that were or are being developed under previous zoning regulations.
- B. These districts recognize the lotting standards in effect when the community was developed and avoid making older developments nonconforming as development standards evolve. These districts permit minor infill consistent with the existing character, but are not otherwise intended for use of new development or rezoning.
- C. Different types of neighborhoods exist which receive an NC- designation. Distinctions between these neighborhoods are made by numbers or letters following the NC. For example, NC-R3 indicates a land that is zoned R3 multi-family. Each subcategory has lot size and setback standards (see Table 04.110 A.).

## ARTICLE 03

### USE REGULATIONS

#### DIVISION 03.000 PURPOSE

This Division's purpose is to regulate the land uses in each zoning district, including setting standards for limited and conditional uses, parking, loading, and signage related to specific uses.

#### DIVISION 03.100 USE REGULATIONS

All land uses or structures shall be permitted in districts only as indicated in this Division. No use prohibited in a district shall be permitted under any circumstances. The following symbols are used in Table 03.110.

1.     "**Y**" indicates a **permitted use**, where the use is permitted as a matter of right subject to all performance standards.
2.     "**N**" indicates a **prohibited use**.
3.     "**L**" indicates a use permitted subject to **limited review**. The limited review determines whether the location, design, or other criteria of Division 03.300 have been met for the proposed site. Not all properties may meet these requirements, thus limiting the sites upon which the use may be built.
4.     "**C**" indicates a use permitted only if a **conditional use** is approved per Section 21.220. The use must conform to the locational design, or other conditions of Division 03.200. Not all properties may meet these requirements, thus limiting the sites upon which the use may be built.

#### SECTION 03.110 USE TABLE

According to land use, Table 03.110 A. lists the type of permission in each district, parking requirements, and loading bay requirements. Table 03.110 B. lists the specific parking requirements for several general uses listed in Table 03.110 A. Limited and conditional use standards are contained in this Table and Division 03.300. Should a use not be identified in Table 03.110 or Article 23, refer to Section 21.320 interpretations. See Article 04 for additional standards.

Reserved for Page 3-2 – Use table

Reserved for page 3-3 Use Table

Reserved for page 3-4 Use Table

**Table 03.110 B.**  
**OFF-STREET PARKING AND LOADING STANDARDS FOR SPECIFIC USES**

Uses	Parking Spaces Required	
	per 1,000 sf. of Floor Area	Other Standard
<b>PARKING STANDARDS</b>		
<b>Institutional:</b> Community, Neighborhood, and Residential		
Auditorium, public	--	1 per 3 seats
Church	--	1 per 3 seats
Clubs & Associations (no food service)	8.0	--
Fire Station		4 per vehicle bay
Library or Museum	3.5	plus bus spaces, calculate auditorium separately at 0.75 rate
Nursing Homes	--	0.33 per room
Schools: Elementary & Junior High	--	2 per classroom
Schools: Senior High	--	0.25 per individual
Trade School	--	1.1 per student
Group Homes, Institutional, Residential, Monasteries & Convents	--	1 per bedroom
Rooming & Boarding Houses	--	1.5 per lodger
Police Station	4.0	--
Post Office	--	6 per 1,000 sf. service area and 1 per vehicle
<b>Commercial Uses:</b> Office		
General	3.5	--
Government offices	4.0	--
Medical	4.5	--
Bank/Financial	4.5	--
<b>Commercial Uses:</b> Commercial Retail		
General	4.0	--
Shopping Center	4.5	--
Retail, Freestanding	4.0	--
Furniture & Carpet Stores	2.5	--
Hardware, Paint & Home Improvement	4.0	--
<b>Commercial Uses:</b> Light Auto Service		

**Table 03.110 B.**  
**OFF-STREET PARKING AND LOADING STANDARDS FOR SPECIFIC USES**

Uses	Parking Spaces Required	
	per 1,000 sf. of Floor Area	Other Standard
General	1.5	or 4 per bay, whichever is greater
Carwashes (single car, automatic bay)	2.0	plus 6 stacking spaces per bay and 1 drying
Carwashes (multiple car, automatic bay)	4.0	plus 12 stacking spaces per bay and 2 drying
Carwash (self wash bay)	--	3 per bay
Gas Station		1 per pump station
<b>Commercial Uses: Services</b>		
Barber Shops	4.0	--
Beauty Shop	5.0	--
Commercial Laundry & Dry Cleaner	3.0	--
Funeral Homes	6.0	--
Laundromat	--	0.8 space per washer/dryer
Restaurants	9.0	
All Others	2.5	plus 1 per employee and 1 for each company vehicle
<b>Commercial Uses: Drive-in Facility</b>		
Restaurants w/Drive-in Window(s)	14.0	plus 5 stacking spaces per window
Banking Facilities w/Drive-in Window(s)	4.5	plus 5 stacking spaces per window
Other w/Drive-in Window(s)	5.0	plus 3 stacking spaces per window
<b>Commercial Uses: Commercial Lodging</b>		
Convention Center w/Lodging	--	1.2 per lodging room; if meeting space provided, 10 spaces/1000 sf.
Non-Convention Center Lodging	--	1 per guest room
Bed & Breakfast	--	1 per room including management spaces
Campgrounds	--	1 per travel trailer space
<b>Commercial Uses: Heavy Retail/Service</b>		
General	4.0	--
Auto Sales	15.0	--
Building Materials	2.0	--
Vehicle Repair/Service	1.0	5 per bay
<b>Recreation and Amusement Uses: Outdoor Recreational</b>		
Camps, Day or Youth	--	1 per employee, plus bus

**Table 03.110 B.**  
**OFF-STREET PARKING AND LOADING STANDARDS FOR SPECIFIC USES**

Uses	Parking Spaces Required	
	per 1,000 sf. of Floor Area	Other Standard
Golf Course	--	3 per hole
Golf Driving Range or Rifle Range	--	1.25 per station
Parks, Playground	--	1 per 4,000 sf. of area
Equestrian Facilities	--	1 per 4 stalls, plus 1 per 2,000 sf. of riding area
Swimming Pool	--	1 per 400 sf. pool surface area
Tennis Courts	--	3 per court
Athletic Fields	--	1 per 4 feet of bleacher area or 30 per field, whichever is greater
All Other Active	--	1 per 10,000 sf.
All Other Passive	--	1 per acre; areas more than 50 acres: 1 per 3 acres over 50
<b>Recreation and Amusement Uses: Indoor Recreational</b>		
Swimming Pool	--	2 per 200 sf. pool, plus 1 per employee
Tennis/Racquetball/Handball	1.0	--
Community Center	4.0	--
All Others	4.5	--
<b>Recreation and Amusement Uses: Outdoor Commercial Amusement</b>		
General	--	1 per 3 seats or 1.25 per playing station, whichever is greater
Campgrounds	--	1 per space, plus 3 per 50 spaces at office
Outdoor Arenas	--	1 per 3 seats or per 6 ft of bench length
<b>Recreation and Amusement Uses: Indoor Commercial Amusement</b>		
General	6.0	--
Amusement Parks	--	special study
Bowling Alley/Pool Rooms	--	5 per lane, 2 per pool/billiard table
Indoor Arenas	--	1 per 3 seats, or 1 per 30 sf. of floor area used for seating, or 1 per 6 ft of bench length, whichever is appropriate
Skating Rinks	--	1 per 100 ft. surface
Theaters/Assembly Rooms	--	1 per 3 seats
<b>Industrial Uses: Heavy Industry</b>		
Heavy Industry	2.5	plus 1 per vehicle
Trucking (no loading or warehousing)	3.0	plus 1 per vehicle operated from site

**Table 03.110 B.**  
**OFF-STREET PARKING AND LOADING STANDARDS FOR SPECIFIC USES**

Uses	Parking Spaces Required	
	per 1,000 sf. of Floor Area	Other Standard
Junkyard	--	1 per 2,000 sf. storage plus 1 per vehicle
<b>LOADING STANDARDS</b>		
<b>Commercial Uses: Commercial Retail</b>		
Paint, Glass, Wallpaper, Hardware	--	1 per 25,000
General Merchandise	--	1 per 25,000
Food	--	1 per 15,000
Apparel and Accessory	--	1 per 25,000
Home Furnishings	--	1 per 25,000
Consumer Electronics	--	1 per 15,000
<b>Miscellaneous Retail</b>		
Art	--	1 per 25,000
Gifts	--	1 per 25,000
Sporting Goods	--	1 per 25,000
Drug	--	1 per 25,000
Liquor	--	1 per 5,000
Books	--	1 per 25,000
Toys	--	1 per 25,000
Camera	--	none
Garden Center	--	1 per 25,000
Video Rental	--	none
Movie Theater	--	none

## **DIVISION 03.200 INDIVIDUAL USE STANDARDS**

This Division contains standards that apply to uses in all districts.

## **SECTION 03.205 ACCESSORY USES, AGRICULTURAL**

All agricultural accessory uses shall be used exclusively for agricultural purposes.

### **A. General.**

1. Agricultural accessory uses shall be allowed on property comprised of 20 or more acres used exclusively for agricultural purposes.
2. Accessory structures must meet the building setback of the applicable zoning district.
3. Street yard plantings (1 plant unit per 100 lineal feet of street frontage) shall be required where an accessory structure is built within 200 feet of any roadway.
4. Corrals shall be exempt from yard requirements.

**B. Outdoor Storage.** Outdoor storage is prohibited in all required yards (setbacks).

**C. Fences.** Fences, including barbed wire, shall be permitted along all streets.

## **SECTION 03.210 ACCESSORY USES, RESIDENTIAL**

Residential uses may have accessory buildings provided they conform to the following standards.

**A. General.** Unless specified in Subsections B. and C., all accessory structures shall meet the following:

1. Freestanding accessory structures shall not be permitted in front of the principal structure or within the front yard.
2. Freestanding structures shall not be located in side yards.
3. Freestanding structures may be located in the rear yard provided:
  - a. A single-family lot less than ten thousand (10,000) square feet shall have a setback from the rear and side property lines of at least five (5) feet. For lotline and village house types, the Planning Commission may waive the side yard setback. (Ordinance 2734, 1/11/00)
  - b. A single-family lot between ten thousand (10,000) square feet and one (1) acre shall have a setback from the rear and side property lines of at least ten (10) feet. (Ordinance 2734, 1/11/00)
  - c. A single-family lot one (1) acre or more shall have a setback from the rear and side property lines of at least twenty-five (25) feet. (Ordinance 2734, 1/11/00) The Zoning Administrator may approve unique setbacks to blend with existing nearby structures but shall not reduce the setbacks to less than ten (10) feet. (Ordinance 2884, 7/26/05)
  - d. For attached units, freestanding accessory structures shall be permitted only as provided in 4. below. Walled units, patio houses, and atrium houses shall contain all accessory structures within their walls.
4. For multi-family or attached housing, where freestanding structures must be accessible from private roads and fire lanes, their location shall be approved in the site plan review process to ensure essential access is safe and the structures do not create a nuisance to adjoining properties.
5. Except as may be specifically permitted in B. and G. below, no freestanding structure shall exceed thirty (30) percent of the floor area of the principle structure.

B. **Detached Garages and Storage/Utility Sheds.**

1. Setbacks and size.

	<b>Minimum Setback</b>	<b>Maximum Size and Height</b>
<p><b>(1) Lots 12,000 sq. ft. or smaller</b></p> <p><b>(2) Lots from 12,001 sq. ft. to 3 acres</b></p>	Must comply with Section 03.210 A.	<p>(1) Maximum size shall be 8.5% of the total lot area for lots 12,000 sq. ft. or less.</p> <p>(2) Maximum size is 1020 sq. ft. plus 0.75% of the total lot area for lots from 12,000 sq. ft to 3 acres.</p> <p>Combined square footage of all structures on the property shall not cover more than 70% of the lot area. The structure shall be equal or less in height than the principle structure. (Ordinance 2893 08/23/05)</p>
<b>Lots greater than 3 acres</b>	Must comply with Table 4.110A	No limit

2. Building materials. For structures new greater than 120 square feet, the following standards apply (Ordinance 2824, 01/28/03):

	<b>Building Materials</b>
<b>Lots 1 acre or smaller</b>	Shall be similar to or compatible with the design and construction of the main building. The exterior building materials and colors shall be similar to the main building or shall be commonly associated with residential construction.
<b>Lots greater than 1 acre</b>	Shall not be constructed of scrap materials.

(Ordinance 2799, 06/11/02)

3. Existing accessory structures. Existing structures may be repaired or remodeled as long as the repairs do not exceed 50% of the fair market value of the structure. Existing stick built structures are exempt from the building material requirements in section 03.210 B.2., except no building shall be repaired or remodeled with scrap materials. (Ordinance 2824, 01/28/03).

C. **Fences.** Fences, except for walls on patio and atrium units (Table 08.141) may be permitted to enclose rear yards subject to the following.

1. **General.** All fences shall be constructed of materials expressly designed for fences. No hog-wire fences or fences made of discarded material shall be permitted. Fences in the front yard shall not exceed four (4) feet in height and shall be constructed of decorative materials (i.e. picket, wrought iron, split rail, etc.). Chain link is not considered decorative material. No fence shall exceed six (6) feet in height.
2. **Developments platted after November 18, 1997.** Fences along streets (front, rear, or side yards - see Figure 03.210) shall be permitted only if specified in the landscaping plan and final plat. The fence design along street frontages shall ensure uniform appearance.
3. **Chain link fences.** No chain link fence shall exceed four (4) feet in height. Chain link fences are prohibited in the front yard. For street yards on corner lots, chain link fence setbacks are as shown in Figure 03.210 D.1. Chain link fences with inserts for opacity are prohibited.

(Ordinance 2714, 12/8/98)

D. **Satellite Dish or Antenna.** Satellite dishes or antennas over three (3) feet in diameter shall be mounted on the ground in the rear yard. These dishes shall be screened from view with an evergreen hedge or shrubs, and understory trees to their rear. The dish shall be located so that the screening protects neighboring homes. Evergreen trees shall be used to block other views from neighboring homes to the dish's front where plantings cannot be placed close to the dish. Figure 03.210 E. illustrates the type of planting required. Staff shall, upon submission of a site plan, approve the landscaping that meets this requirement.

E. **Storage of Boats, Recreational Vehicles, or Trucks.** No boats, recreational vehicles (RVs), trailers with cars or other vehicles, or commercial trucks shall be stored in the driveway or in front of the house. Such vehicles shall only be permitted in rear yards provided they meet the setback requirements for a storage shed. No vehicle greater than thirty (30) feet shall be permitted on lots of less than two (2) acres. Boats or RVs of up to forty-five (45) feet shall be permitted on lots greater than two (2) acres.

F. **Private Stables.** Stables are permitted on lots over three (3) acres, in equestrian subdivisions, and on lots of record existing as of this Ordinance's adoption date which legally had stables located on them. All stables shall conform to the following.

1. The stable shall be for the owner's private use only. No horses owned by others shall be permitted to be boarded. Such a use would become a commercial stable.
2. Stables shall not exceed three thousand five hundred (3,500) square feet. Larger stables may be permitted as a Conditional Use of the property.
3. Stables shall have a setback of one hundred (100) feet from property lines. No corral or riding area shall be permitted within twenty-five (25) feet of a property line, except that a trail may connect to an off-lot riding trail.

(Ordinance 2734, 01/11/00)

## **SECTION 03.211 ACCESSORY USES, NONRESIDENTIAL**

Nonresidential uses may have a variety of accessory uses within the principle structure or in separate structures, provided they meet the following standards.

A. **Uses.** All uses not permitted in the district shall be prohibited, except where:

1. They constitute less than fifteen (15) percent of the total floor area; and
2. The use is essential to (excluding crematories), or traditionally conducted in association with (excluding crematories), the principal use which is a permitted, limited, or approved conditional use; and
3. Except in the BP District, industrial uses shall not be permitted under any condition.

B. **General.** No uses or structures shall be within the required yards. Except for loading and storage, the accessory uses' organization or placement shall be at the landowner's discretion.

C. **Fences.** Hazardous utilities or other uses requiring fencing, for safety or liability reasons or to prevent access, shall meet the following additional standards.

1. A hedge shall be required around the fenced area where a metal mesh fence is used. The amount of shrubs required shall be installed at four (4) feet on center.
2. If barbed wire is necessary, a double row of shrubs shall be planted, each row at three (3) foot on center and maintained at the fence height.
3. If razor wire or concertina wire is to be used, a metal and/or masonry decorative fence (with approval by the Planning Commission) shall be erected fifteen (15) feet outside the wire fence and surrounded by a two-tenths (0.2) opacity bufferyard.
4. Chain link fences are prohibited except in the I district and for school and day care center playgrounds. Opacity inserts are permitted only in the I district. Location of fences for playgrounds in residential areas shall comply as nearly as practical to Figure 03.210 D.1. The Planning Commission shall approve the location of chain link fences.

D. **Loading and Truck Access.** Where loading and truck access is in a street yard, in a yard between residential uses or vacant land that can only be residentially used, the area shall be enclosed as indicated in Figure 03.211 D.

E. **Outdoor storage.** Outdoor storage shall be prohibited except as indicated in Table 03.110A. All exterior or outdoor storage shall be enclosed by a wall or opaque fence of sufficient height to screen the stored materials from view. If a fence rather than a wall is used then shrubs shall be planted at three (3) foot on center around the periphery. Where one industrial district abuts another industrial district, no wall or fence shall be required.

F. **Heating, Ventilation, Air Conditioning, Utility Meters and Vaults, and other similar appurtenances.** Where HVAC, utility meters and vaults, and other similar appurtenances are located, the area shall be fully enclosed architecturally or with a wood or masonry fence or a buffer with an opacity of 1.00.

## **SECTION 03.212 ACCESSORY WASTE OR TRASH STORAGE**

Where dumpsters or common waste storage facilities are used in residential developments or nonresidential developments, the area where a dumpster and/or garbage can is stored shall be fully enclosed with a wood or masonry fence (or other durable low maintenance materials approved by the Planning Commission) or berms. The gates shall be kept closed. The area shall be landscaped as indicated in Figure 03.212.

TABLE 3.110 A. GENERAL USE TABLE

Land Use	Permitted Land Use									Parking	Loading	Exterior Storage (% of Building Area)
	E	S	NC	SC	TA	D	BP	I				
<b>Agricultural</b>												
Agriculture	Y	Y	N	N	C	N	L	N	3 / du.	none	na.	
Farmstead	Y	Y	N	N	N	N	N	N	3 / du.	none	na.	
Intensive Agriculture	C	N	N	N	N	N	N	N	3 / du.	3 / ag. unit	na.	
Clearing	L	L	L	L	L	L	L		none	none	na.	
Nursery	Y	C	N	Y	Y	Y	C	N	1 / 250 sf sales space only	1 / 2 ac.	na.	
Kennels and Commercial Stables	L	N	N	N	Y	N	N	N	1 / 333 sf. plus 1 per 3 stalls	1 / 40 stalls	na.	
<b>Residential</b>												
Single-Family Detached	Y	Y	A1	N	Y	Y	C	N	3 / du.	none	na.	
Equestrian	Y	N	A1	N	N	N	N	N	3 / du.	none	na.	
Single-Family Cluster	Y	Y	A1	N	N	N	C	N	3 / du.	none	na.	
Single-Family Attached	N	N	A1	N	Y	Y	N	N	2.25 / du.	none	na.	
Guest House	C	C	A1	N	C	C	C	N				
Planned	Y	Y	A1	N	Y	Y	N	N	2.25 / du.	none	na.	
Multi-Family	N	N	A1	L	L	L	N	N	2.25 / du.	none	na.	
Commercial Apartment	N	N	A1	Y	Y	Y	N	N	1 / du.	none	na.	
Manufactured Home Park	N	L	A1	N	L	N	N	N	3 / du.	none	na.	
Group Home	Y	Y	A1	Y	Y	Y	N	N	3 / du.	none	na.	
<b>Institutional</b>												
Assembly and Worship	N	L	C	Y	Y	Y	C	N	1 / 3 seats	1 / 40,000 sf.	na.	
Institutional, Community	N	C	N	N	Y	C	N	N	See Table 03.110 B.	1	na.	
Institutional, Neighborhood	C	C	C	Y	Y	C	N	N	See Table 03.110 B.	1 / 60,000 sf.	na.	
Hospital	N	N	N	N	Y	N	Y	N	1 / bed	1 / 33,000 sf.	na.	
College	N	N	N	N	Y	Y	Y	N	1 / 2 students	1 / 40,000 sf.	na.	
Institutional, Residential	Y	Y	Y	Y	Y	Y	C	N	See Table 03.110 B.	1 / 25,000 sf.	na.	
Protective Care	N	N	N	N	N	C	N	C	1 / 2 rooms	2 sf.	na.	
Public Service	N	Y	C	Y	Y	Y	Y	Y	1 / employee + 1 stored vehicle	1 per loading bay	10%	
Utilities, Local	L	Y	Y	Y	Y	Y	Y	Y	1 / 1,000 sf.	1 / 2,000 sf.	100%	
<b>Commercial</b>												
Office	N	N	C	Y	Y	Y	Y	Y	See Table 03.110 B.	1 / 33,000	not permitted	
Shopping Center	N	N	N	Y	Y	Y	N	N	1 / 200 sf.	1 / 25,000	5%	
Commercial Retail	N	N	C	Y	Y	Y	L	N	See Table 03.110 B.	See Table 03.110 B.	5%	
Home Furnishing & Appliances	N	N	C	N	Y	Y	Y	N	1 / 400 sf.	1 / 10,000	not permitted	
Light Auto Services	N	N	C	Y	C	C	L	Y	See Table 03.110 B.	1 / 20,000	10% enclosed by 100% opaque fence	
Services	N	N	C	Y	Y	Y	L	N	See Table 03.110 B.	1 / 33,000	not permitted	
Drive-in Facility	N	N	N	L	L	L	L	N	See Table 03.110 B.	1 / 25,000	not permitted	
Hotels and Motels	N	N	N	Y	Y	Y	Y	N	1 / room plus accessory use	2 / 40,000	not permitted	
Boarding House	N	N	N	N	L	L	N	N	1 / room plus 1	none	not permitted	

TABLE 3.110 A. GENERAL USE TABLE

Land Use	Permitted Land Use									Parking	Loading	Exterior Storage (% of Building Area)
	E	S	NC	SC	TA	D	BP	I				
Bed and Breakfast	C	C	C	Y	Y	C	N	N	1 / room	none	not permitted	
Heavy Retail and Service	N	N	C	N	C	C	L	Y	See Table 03.110 B.	1.5 per bay	sales 200% repair 40%; See Section 3.312	
Agricultural Support Services	N	N	N	N	L	L	L	Y	1 / 250	1.5 per bay		
Mixed Use	N	N	N	Y	Y	Y	N	N	See Section 06.322.	1 / 25,000	not permitted	
<b>Recreation and Amusement</b>												
Outdoor Recreation	Y	Y	L	Y	Y	Y	N	N	See Table 03.110 B.	1	not permitted	
Indoor Recreation	N	L	N	Y	Y	Y	N	N	See Table 03.110 B.	1	not permitted	
Commercial Amusement, Outdoor	N	N	N	L	C	C	N	N	1 per player	none	not permitted	
Commercial Amusement, Indoor	N	N	N	Y	Y	Y	N	N	See Table 03.110 B.	1	not permitted	
Campgrounds	C	C	N	N	N	N	N	N	1 space + 3 / 50 spaces at office	1	not permitted	
Resort	N	N	N	N	Y	N	Y	N	1.25 / room	1 / 33,000	not permitted	
<b>Home Uses</b>												
Home Occupation	Y	Y	Y	N	Y	Y	N	N	See Residential.	None	not permitted	
Day Care, Family	Y	Y	Y	N	Y	Y	N	N	4 / du.	None	not permitted	
<b>Industrial Uses</b>												
Light Industry	C	N	N	N	C	C	Y	Y	1 / 500 + 1 vehicle	1 / 20,000 or 1 / bay	30% or more I district & up to 5,000 sq. ft. see Section 03.312	
Heavy Industry	C	N	N	N	N	N	L	Y	See Table 03.110 B.	1 / 15,000 or 1.25 / bay	50%	
Warehousing	C	N	N	N	C	N	Y	Y	1 / 2,000	1.5 / bay	20% I district only	
Utilities, Community/Region	C	N	N	N	N	N	Y	Y	1 / 1,000	conditional	150% I district only	
Extraction	N	N	N	N	N	N	C	N	1 vehicle + accessory	1 vehicle		
Recycling or Storage	C	N	N	N	N	N	N	C	2 / 1,000	1.25 / bay	20% metals only enclosed	
Disposal	C	N	N	N	N	N	N	N	1 vehicle	1 vehicle	equipment only	
<b>Conditional/Miscellaneous Uses</b>												
Airports	N	N	N	N	N	N	C	N	Special study, see Section 06.321.	special study	10% excluding aircraft	
Crematories	N	N	C	N	C	N	C	C				
Commercial Communications Towers	L	L	L	L	L	L	L	L	2 per tower	1	not permitted	
Dangerous Animals (includes zoos)	C	N	N	N	N	N	N	N				
Pet Grooming Services	L	N	N	N	Y	C	N	N	4 spaces/1000 sq. ft.	none	not permitted	
Domestic Exotic/Farm Animals as Pets	L	L	L	N	N	N	L	N				
<b>Temporary Uses</b>												
Christmas Tree Sales	L	L	L	Y	Y	Y	N	N	site review	none	na.	
Contractors Office	Y	Y	Y	Y	Y	Y	Y	Y	1 / 200 sf.	none	not permitted	
Outdoor Sales	N	N	N	N	L	L	N	N	none	none	not permitted	
Public Interest Events	L	L	L	L	L	L	L	L	1 / 3 attendee	1 / vehicle	not permitted	
Special Events	L	L	L	L	L	L	L	L	1 / 3 attendee	1 / vehicle	not permitted	
Model Homes/Sale Office	Y	Y	Y	Y	Y	Y	Y	Y	4 / model	none	not permitted	
Farmstand	Y	Y	Y	N	Y	Y	N	N	8 spaces	none	na.	

TABLE 3.110 A. GENERAL USE TABLE

Land Use	Permitted Land Use								Parking	Loading	Exterior Storage (% of Building Area)
	E	S	NC	SC	TA	D	BP	I			
Concrete/Asphalt Batch Plant	L	L	N	N	L	N	L	L	Special study, see Section 06.321.	1 / vehicle	na.
Truck Load Sale	N	N	N	N	L	N	N	N	Special study, see Section 06.321.	1/truck	na.

A1 - See Table 3.3110 A1

**Chart Amendments:**

Ordinance 2688, 10/28/97  
 Ordinance 2724, 06/02/99  
 Ordinance 2764, 01/23/01  
 Ordinance 2772, 02/27/02  
 Ordinance 2783, 08/21/01  
 Ordinance 2789, 11/27/01  
 Ordinance 2799, 06/11/02  
 Ordinance 2845, 03/10/04  
 Ordinance 2884, 07/26/05  
 Ordinance 2918, 05/23/06  
 Ordinance 2969, 03/27/07

**Table 3.110 A. General Use Table -- Limited and Conditional Use Standards**

**Table 3.110 A. General Use Table -- Limited and Conditional Use Standards**

**Table 3.110 A. General Use Table -- Limited and Conditional Use Standards**

Land Use	Bufferyards			Separation		Minimum			Maximum		Other
	Location	Increase Opacity	Fence	Use Protected	Distance from Use	Spacing	Site Area	Road Access	Lot Area	Height	
Heavy Industry											See Section 03.331.
Warehousing											
Utilities, Community/Regional											
Extraction	yes	0.8 (150 ft)	15 ft. berm	R	500 ft.		50 ac.				See Section 03.332.
Recycling/Storage	all exterior storage	0.2	8 ft.					interior ring			See Section 03.333.
Disposal											
<b>Special Uses</b>											
Airports				R,S	1,500 ft.		300 ac.				
Commercial Com. Towers											See Section 03.334.
<b>Temporary Uses</b>											
Christmas Tree Sales											Permitted only in conjunction with & located at an institutional use.
Contractor's Office											
Outdoor Sales											See Section 03.335.
Public Interest Events											See Section 03.336.
Special Events											See Section 03.337.
Model Home/Sales Office											
Farmstand											Permitted by City permit in Town Square only.
Concrete/Asphalt Batch Plant											See Section 03.338.
Truck Load Sales	residential	0.4					3 ac.				See Section 03.339.

**Table 3.3110 A1. NC-R District Residential Uses**

<b>Residential</b>	<b>NC-R1</b>	<b>NC-R2</b>	<b>NC-R3</b>	<b>Parking</b>	<b>Loading</b>	<b>Exterior Storage (% of Building Area)</b>
Single-Family Detached	Y	Y	Y	3/du.	none	na.
Equestrian	N	N	N	3/du.	none	na.
Single-Family Cluster	N	N	N	3/du.	none	na.
Single-Family Attached	N	C	C	2.25/du.	none	na.
Guest House	C	C	C			
Planned	N	N	N	2.25/du.	none	na.
Multi-Family	N	N	C	2.25/du.	none	na.
Commercial Apartment	N	N	N	1/du.	none	na.
Manufactured Home Park	N	N	N	3/du.	none	na.
Group Home	Y	Y	Y	3/du.	none	na.

## **SECTION 03.213 MIXED USES**

All mixed uses shall meet the following requirements

- A. Except as provided in B. below, mixed use buildings shall have a minimum of twenty-five (25) percent residential floor area.
- B. A mixed use building, or a group of buildings in a mixed use development, oriented to a pedestrian precinct, may have the minimum residential component reduced to fifteen (15) percent where a major portion of the floor area is a large public structure, such as a museum or a hotel and convention center, that occupies at least forty (40) percent of the total floor area.
- C. Residential uses shall provide outdoor areas greater than or equal to one hundred twenty (120) square feet per unit, or the equivalent using one or a combination of the following methods:
  1. Balconies or roof gardens; and/or
  2. Parks or parkways with a minimum of twenty thousand (20,000) square feet of lawn area located within the development; and/or
  3. Paved pedestrian precincts, which may count for no more than twenty-five (25) percent of the requirement.

## **DIVISION 03.300 LIMITED AND CONDITIONAL USES**

This Division describes the standards governing individual limited and conditional uses, including: common standards for buffering, location, bulk, and scale; standards of an environmental nature that apply to open space uses; and standards not easily incorporated into Table 03.110 A. Section 03.310 describes the different categories used in Table 03.110 A. Sections 03.311 through 03.340 describe individual limited or conditional uses, or standards that vary from district to district, that could not be summarized in Table 03.110 A. All limited or conditional uses shall complete a site plan review process so that the manner by which the standards of this Division are met can be reviewed. If the use is contained in a subdivision, the lots for such uses shall be so designated.

## **SECTION 03.310 BUFFERING, LOCATION, BULK, AND SCALE STANDARDS**

Table 03.110 A. provides standards that increase the degree of buffering, govern the locations, and reduce the bulk or scale of limited or conditional uses. The meaning of the different categories contained in the Table is established as follows:

- A. **Location.** This column refers to the bufferyard location if it is different than normal district boundary bufferyards. "All" indicates the entire property is surrounded. Other designations set specific locations on site or uses to be buffered.
- B. **Increased Width/Opacity.** This column refers to the amount the bufferyard opacity required in Table 04.110 A. shall be increased. The use is responsible for the increased bufferyard. In some cases, a distance is to be added to the bufferyard width regardless of the options selected in Section 13.140 or 13.141.

- C. **Fence.** The use shall provide a fence of certain height within the bufferyard. The fence is to be added to the buffer option in Section 13.140 or 13.141. Where a fence is already required, the developer shall use an option that does not require a fence and add the fence.
- D. **Uses Separated.** This column lists uses from which the limited or conditional use is to be separated. Residential, religious institutions, and schools are typical protected uses.
- E. **Spacing.** The use shall be separated from protected uses by a minimum distance.
- F. **Minimum Spacing.** This requires a minimum distance between the next similar use. This requirement prohibits certain uses from concentrating in any given area. The distance includes uses located outside the zoning district boundary. Some uses tend to cluster at intersections. This marketing practice is appropriate; therefore, a provision has been made to permit such clustering. Where "int" is found after the spacing distance in the column, uses may locate at any of the intersection corners. However, the intersection where these uses exist must be separated by the specified distance.
- G. **Minimum Site Area.** The use must have a certain minimum site area. In several cases, this column has also been used to indicate a maximum site size or a range of minimum and maximum sizes.
- H. **Minimum Access.** The use may be built only where it has adequate frontage on a street of a certain type -- arterial, collector, or nonresidential local street.
- I. **Maximum Size.** This standard limits the use's size to less than that permitted in Table 04.110 A.
- J. **Maximum Height.** This standard sets a limit relative to the building's maximum height. An exception is granted for chimneys, steeples, cupolas, and antennas, provided they occupy no more than seven (7) percent of the roof area.
- K. **Other.** This column contains short requirements and/or references to other Sections where specific standards are found.

### SECTION 03.311 DAY CARE CENTERS

The standards for conditional use of day care centers are as follows:

- A. Outside play areas shall be fenced.
- B. The day care provider shall be licensed by the State of Kansas.
- C. The maximum number of children or adults allowed will be determined as part of the CUP. Any increase in the number of children or adults shall require a new CUP.
- D. Prior to the approval of a day care center, location for the center shall be inspected for compliance with any applicable building and/or fire codes. If any deficiencies are found, they shall be corrected prior to the Planning Commission's recommendation to the City Council.

- E. The first conditional use permit shall be valid for a maximum of one year from the date of approval. The first renewal of the conditional use permit may be approved for three years. Subsequent renewals may be approved for up to five years. Renewals are subject to the publication, notification, and public hearing requirements of the initial approval.
- F. Such other conditions, as determined by the Planning Commission, to be necessary to protect the public health, safety, and welfare.

#### **SECTION 03.312 HEAVY RETAIL AND SERVICE & LIGHT INDUSTRIAL USES**

An increase in the maximum area for outdoor sales for Heavy Retail and Service or for the storage for Light Industrial in the TA district may be approved by the Planning Commission based upon the following (Ordinance 2845, 03/10/04):

- A. Compatibility with neighboring uses.
- B. Lighting shall be cut-off fixtures.
- C. Buffering and screening that will lessen the visual impact of large lot sales.
- D. A bufferyard of 0.4 opacity shall be provided for all storage areas. The fence height shall screen activities or be 8' in height, whichever is less. (Ordinance 2824, 01/28/03)
- E. In the BP district, this use shall take access from interior roads. (Ordinance 2824, 01/28/03)

#### **SECTION 03.313 SINGLE FAMILY RESIDENTIAL**

- A. Single family residential uses in the Business Park district shall meet one of the following standards:
  1. The single-family residence shall have been constructed on or before January 1, 1998.
  2. The owner shall hold a valid building permit for new construction that was issued prior to January 1, 1998.
- B. Single family residences in the BP district that qualify for a conditional use permit shall not be considered nonconformities under Article 9 of the Land Development Ordinance.

(Ordinance 2724, 6/22/99)

- C. Single family attached residential uses in the NC-R2 and NC-R3 district shall only be permitted provided:
  1. A site plan is submitted and approved by the Planning Commission and the City Council.
  2. Any conditions which the Planning Commission and the City Council deem necessary to ensure the compatibility with the surrounding uses in terms of scale and adherence to the traditional character of Paola are met. (Ordinance 2957, 10/23/07)

### **SECTION 03.314 GUEST HOUSE**

- A. The guest house shall have a minimum living area of 500 square feet. The guest house shall not exceed 30% the floor area of the principal structure.
- B. The primary structure shall be owner occupied.
- C. The area where the guest house is located shall not be divided off into a new lot of record.
- D. A minimum of one off-street parking space is required. The Planning Commission may permit on-street parking to be substituted upon determining that the street can accommodate the parking and the provision of off street parking would be detrimental to the area's appearance.
- E. The guest house shall comply with building code requirements.
- F. The combined square footage of the principal structure, guest house, detached garage, and storage/utility shed shall not exceed the maximum building coverage in Table 04.110A Use and Lot Standards. Where no maximum building coverage is provided, the combined structures shall not cover more than 70% of the lot area.

The Planning Commission may establish other conditions that protect the public health, safety, and welfare.

(Ordinance 2789, 11/27/01)

### **SECTION 03.315 AGRICULTURAL SUPPORT SERVICES**

- A. The applicant must provide a plan showing where outdoor sales and storage will be located.
- B. Equipment may be stored or displayed outside a building, but shall not encroach on parking setbacks. All equipment on display shall be in working condition.
- C. Open space and parking requirements shall be met.
- D. Merchandise other than equipment shall be stored behind a fully opaque fence, except for special outdoor sales. Special outdoor sales, including garden materials sales, are subject to Section 03.335 "Outdoor Sales".
- E. Service and maintenance activities shall be contained inside the building.

(Ordinance 2799, 06/11/02)

- F. The maximum building height allowed is 25'. (Ordinance 2824, 01/28/03)
- G. No grain or other product storage is allowed. (Ordinance 2824, 01/28/03)
- H. Minimum lot size for a large animal clinic in the TA and BP districts is three acres (Ordinance 2824, 01/28/03)

I. In the D district, this use is limited to small animals with no outdoor activities (Ordinance 2824, 01/28/03)

#### **SECTION 03.316 KENNELS AND STABLES**

A. A bufferyard shall be required when located within 1000 feet of a residential use. When adjacent to a residential use, the bufferyard opacity shall be increased by 15 feet and a 6' fence provided.

B. Dogs shall be in an enclosed building at night.

(Ordinance 2824, 01/28/03)

#### **SECTION 03.317 PET GROOMING SERVICES**

Pet Grooming Services shall meet the following standards:

A. Adequate ventilation shall be provided between adjoining structures.

B. Prior to receiving a permit, the applicant must submit copies of approvals from all regulatory agencies having jurisdiction over pet grooming services.

C. All pet waste shall be disposed of in an approved manner.

D. Noise levels shall be limited so as not to disturb surrounding properties.

E. All chemicals used in the grooming process shall be non-destructive to the public sanitary sewer system. (Ordinance 2918, 05/23/06)

#### **SECTION 03.319 MANUFACTURED HOME PARK**

A. 0.4 opacity bufferyard shall be required on all property borders.

B. 2,640 feet spacing must be provided between manufactured home park communities.

C. The minimum site area in any district is 15 acres. Minimum site area may be increased in some zoning districts (see Table 4.110 A.).

(Ordinance 2824, 01/28/03)

#### **SECTION 03.320 CLEARING**

Clearing includes earth movement, mining, clear cutting or selective harvest for lumber purposes, or burning and shall require a zoning permit. Such permits shall be issued only under one of the following conditions.

A. As part of a site plan or subdivision with an approved resource protection plan; or

B. When a resource analysis is submitted along with a resource protection plan demonstrating that this Ordinance's standards are met, and a record of the property's original conditions is filed with the Zoning Officer.

#### **SECTION 03.321 MULTI-FAMILY RESIDENTIAL**

Multi-family residential uses shall meet the following standards.

- A. In the TA District, multi-family residential uses shall only be permitted with a minimum spacing of 1,000 feet between multi-family buildings. No more than 40 dwelling units shall be constructed in any development and shall be no more than two (2) stories tall.
- B. In the D District, multi-family residential uses shall only be permitted with a minimum spacing of 200 feet between multi-family buildings. No more than 20 dwelling units shall be constructed in any development.
- C. In the TA District, multi-family residential buildings that exist prior to January 1, 1998, may be reconstructed if damaged more than 50% of fair market value through fire, explosion, act of God or the public enemy. The intent is to allow the reconstruction of the same number of units that existed on January 1, 1998 notwithstanding any limits on the maximum number of units in a multi-family residential development or with respect to the minimum spacing required between multi-family residential developments. However, the reconstructed units shall conform with all other regulations for buildings in the district in which it is located. (Ordinance 2725, 7/27/99)
- D. In the NC-R3 districts, multi-family uses shall only be permitted provided:
  - 1. A site plan is submitted and approved by the Planning Commission and the City Council.
  - 2. Any conditions which the Planning Commission or the City Council deem necessary to ensure the compatibility with the surrounding uses in terms of scale and adherence to the traditional character of Paola are met. (Ordinance 2957, 10/23/07)

### **SECTION 03.322 ASSEMBLY AND WORSHIP**

The standards for conditional use and limited uses vary by district.

- A. Estate (E) District. The intent of the estate district is to insure that lots used for assembly and worship are large enough to maintain the desired community character.
- B. Neighborhood Conservation (NC) District. The conditional use should be evaluated based upon whether the use is compatible with the site given its location in an established part of town where traffic is strongly correlated with existing land use patterns. The degree to which activities associated with the use significantly increase traffic should be considered in determining whether the proposed use is suitable for the site.
- C. Business Park (BP) District. This use should not be allowed in high visibility areas of the business park, since the purpose of the district is provide jobs in high access locations. In general, this use should be limited to temporary occupancy until a permanent facility can be built. A maximum of two (2) percent of a BP development should be permitted for this use.
- D. Access shall be taken from a collector or arterial street. (Ordinance 2824, 01/28/03)

### **SECTION 03.323 INSTITUTIONAL, COMMUNITY**

The lot size varies with the proposed use. Schools shall have a minimum of 10 acres. A library would require a minimum of two acres.

### **SECTION 03.324      PROTECTIVE CARE**

All protective care facilities shall have an emergency plan filed with the police, emergency services, and disaster and emergency agency indicating that these facilities have plans ensuring against any form of emergency to protect the adjoining communities. The following standards shall apply to protective care facilities.

- A. In the D District, this use shall only be permitted as an accessory to a building containing government offices or police offices.
- B. In the I District, this use shall be permitted provided it is separated from residential by at least three hundred (300) feet.
- C. A 0.3 opacity bufferyard, including a 10' fence, shall be provided when adjacent to a residential use.
- D. At least 300 feet of separation must be provided between a protective care use and any day care, residential, school, or institutional residential use.
- E. The minimum site area in any district is one (1) acre.
- F. No more than 25 residents per acre allowed.

(Items C-F, Ordinance 2824, 01/28/03)

### **SECTION 03.325      UTILITIES, LOCAL**

- A. In the E District, utility agencies shall submit service radii or other locational criteria that demonstrate the need to place facilities in this district. The facilities shall be designed to serve that district and surrounding, more rural zoning districts but not adjoining, more intensely zoned districts.
- B. All boundaries shall have a 0.3 opacity bufferyard. (Ordinance 2824, 01/28/03)

### **SECTION 03.326      COMMERCIAL RETAIL**

Such lots shall be designated in the plat of subdivision for these uses. A site plan review shall be required to ensure such uses do not create strip development on major roads.

- A. In the BP district, this use shall take access from the entrance road to the business park. The use shall be located along the entrance and prior to the first road intersection in the business park.
- B. This use is limited to the ground floor of multi-story office buildings.

(Items A and B, Ordinance 2824, 01/28/03)

### **SECTION 03.327      LIGHT AUTO SERVICES**

This use has different standards in the TA, D, and BP Districts.

- A. Thoroughfare Access (TA) District: The intent is to protect residential areas, to insure that the use cannot locate on minor streets, and to buffer adjoining streets and land uses from the Light Auto Service.
  - 1. Lighting shall be all cut-off fixtures located to minimize impact on adjoining residential areas.
  - 2. A parking buffer shall be required as defined in Table 13.140.  
(Ordinance 2764, 01/23/01)
  - 3. An 8' fence shall be provided as a buffer between this use and any residential use.
  - 4. This use shall take access off of a street classified as a collector or arterial.  
(Items 3 and 4, Ordinance 2824, 01/28/03)
- B. Downtown (D) District: The suitability of the site for this use shall be determined by examining the degree to which the site plan protects the urban character of the streetscape. The building must be built to the front setback lines, as are other buildings in the urban area. The landscaping and other design features shall be determined to provide a continued pedestrian precinct that is attractive and safe.
- C. Business Park (BP) District: The intent is to permit this use only at the entrance to a business park and preserve the park for business or industrial uses.
  - 1. A bufferyard of 0.2 opacity, including a 6' fence, shall be provided along all street yards.
  - 2. The minimum site area in the BP district is one (1) acre.
  - 3. No more than 4% of the business park area shall be this use.  
(Items 1-3, Ordinance 2824, 01/28/03)

### **SECTION 03.317 SERVICES**

No more than 25% of the lot area shall be comprised of service floor area. (Ordinance 2824, 01/28/03)

### **SECTION 03.328 DRIVE-IN FACILITY**

- A. In the SC and TA Districts, talk boxes must be screened by a sound barrier, such as a fence or masonry wall.
- B. In the D District, drive-in facility uses shall take access from an alley.
- C. In the BP District, drive-in facility uses shall take access from the entrance road to the business park. Further, these uses shall be located along the entrance road and prior to the first road intersection within the business park.
- D. A 0.4 opacity bufferyard shall be provided along all property lines adjacent to any residential use.
- E. In the BP district, this use shall take access from the entrance road to the business park. The use shall be located along the entrance and prior to the first road intersection in the business park.

(Items D and E, Ordinance 2824, 01/28/03)

### **SECTION 03.329 BED AND BREAKFAST**

In the D and NC Districts Bed and Breakfasts shall be a reuse of an existing single-family building having a minimum floor area of 3,000 square feet. This use is limited to structures constructed prior to and including 1939 with an identifiable architectural style. While additions are permitted, they shall amount to no more than 25% of the total floor area. Off-street parking areas shall be screened from adjoining land uses by hedges and canopy trees.

In the E and S districts Bed and Breakfasts shall be the reuse of an existing single-family building or new construction with a minimum floor area of 3,000 square feet and located on a minimum of three acres.

Bed and Breakfasts in all districts shall meet the following:

- A. The owner/proprietor is required to occupy the residence.
- B. The number of bedrooms used for a Bed and Breakfast shall not exceed five (5).
- C. Bed and Breakfasts shall comply with County and State requirements/licenses as a food service or lodging facility.
- D. Short-term overnight lodging shall be permitted. Monthly rentals or leasing shall be prohibited.
- E. A minimum of one off-street parking space is required. The Planning Commission may permit on-street parking to be substituted upon determining that the street can accommodate the parking and the provision of off street parking would be detrimental to the area's appearance.

The Planning Commission may establish hours of operation, maximum number of guests, and other conditions that protect the public health, safety, and welfare.

### **SECTION 03.330        OUTDOOR AMUSEMENT**

Commercial amusement uses shall meet the following.

- A. The use shall have only one (1) lot line facing residential.
- B. Closing hours and lighting shall be limited to 10 p.m. Facilities seeking to remain open after this time must apply for and receive approval of a conditional use permit.
- C. The Planning Commission shall review the facility and may prohibit landscaping or design that is unnatural or a problem for suburban residential neighbors in terms of the materials or other design features.
- D. A 0.4 opacity bufferyard shall be provided on all property boundaries, including a 3' berm.
- E. Access shall be taken from an arterial or collector street.

(Items D and E, Ordinance 2824, 01/28/03)

### **SECTION 03.331        HEAVY INDUSTRY**

A wastewater study shall be conducted. Pre-treatment may be required as a condition of approval. A registered engineer shall submit the effluent data in a signed and sealed report. The following additional standards shall apply to the BP District.

- A. The use shall locate in the inner ring.
- B. No use's floor area shall be greater than ten thousand (10,000) square feet.
- C. The respective business park cannot devote more than fifteen (15) percent of the total developable land area to such uses.

### **SECTION 03.332 EXTRACTION**

Extraction uses shall meet the following requirements.

- A. The Planning Commission shall determine if having the extraction facility inside the City limits is in the City's best interest and it will not adversely affect land designated for economic development.
- B. An end use plan shall be submitted providing the following.
  - 1. The ground surface shall be restored to a condition permitting one of the following uses: agriculture, residential, recreational (see 2. below), or nonresidential. Either an escrow account or a yearly fee shall be required as approved by the City Attorney and City Council to insure that there are sufficient funds set aside for the restoration.
  - 2. If future recreational use is identified, management of such use shall be established. Risks from any subsurface materials to future uses shall be identified.
  - 3. The quantity and quality of run-off reaching any surface water, on-site or discharging off-site shall be controlled.
  - 4. If surface water is present, the report shall indicate likely chemical water quality. The plan shall provide safe edges to prevent accidents. Safe edges require a long shelf with a slope of less than one to five (1:5) to a depth of six (6) feet.
  - 5. Special management and/or landscaping shall be used for depressional areas having slopes exceeding thirty (30) percent or depths greater than fifty (50) feet. Special management and/or landscaping shall prevent erosion, ensure rapid ground cover growth, and manage water to prevent ground cover loss.
- C. If ground water will be encountered, the plan must indicate the following.
  - 1. Probable maximum pumping rates and cone of depression impacts on surrounding public and private wells and long-term water table.
  - 2. Disposal method for pumped water and its effect on water quality and flooding.
- D. Along the district boundary or any district permitting adjoining residential uses, the required buffer width shall be increased by one hundred (100) feet. The buffer planting requirements shall be increased until the landscaping has a 1.0 opacity rating.

- E. Noise studies shall be conducted to determine the berm's exact height based on the equipment operated at the site and the blasting potential. The berm shall ensure the DNL does not exceed 55 at the property line or any building with a line of site to the property.
- F. Where surface water features remain, or a depressional area is created, a final excavation plan matched to a proposed end use plan shall be submitted. The final excavation plan shall demonstrate that sufficient land is to remain unexcavated and/or that the excavation will be done in a manner permitting the development to conform to this Ordinance's regulations without any variances.
- G. The minimum site area is 50 acres. (Ordinance 2824, 01/28/03)
- H. There shall be at least 500 feet between an extraction use and any residential use. (Ordinance 2824, 01/28/03)
- I. A 0.8 opacity (150 feet) bufferyard shall be installed on all perimeters, including a 15' berm (Ordinance 2824, 01/28/03)

#### **SECTION 03.333      IMPOUNDMENT AND AUTO STORAGE**

- A. All impoundment/auto storage uses shall be surrounded on all sides by a fence or wall at least 8' in height. The fence shall be maintained to ensure maximum safety to the public and preserve the general welfare of the neighborhood.
- B. An 8' fence with a .30 opacity landscaped bufferyard is required between the auto storage/impoundment lot and any adjacent residential use.
- C. Impoundment/auto storage uses shall not be located on arterial or collector streets.
- D. The fence shall be installed in such a manner to retain all impounded/stored vehicles within the yard.
- E. The property line of this use must be separated from residential structures by at least 50 feet.
- F. No vehicle shall be stored/impounded for more than twelve (12) months.

(Ordinance 2783, 08/21/01)

#### **SECTION 03.334      COMMERCIAL COMMUNICATION TOWERS**

- A. Applicants must provide documentation acceptable to the Planning Commission that existing structures within an appropriate one-mile radius of the proposed location are not available for co-location.
- B. All proposed towers 150 feet or less, not including lightning rod, shall be designed to accommodate at least one additional PCs/Cellular platform. All proposed towers in excess of 150 feet shall be designated to accommodate at least two additional PCs/Cellular platforms.
- C. Any application for a tower in excess of 150 feet in height shall include testimony of an

RF Engineer, or other Licensed Professional Engineer, substantiating the need for the requested height.

- D. The minimum setback from adjoining property lines shall be the height of the tower plus 20 feet. Setbacks may, on a case-by-case basis, be considered for a variance.
- E. The tower and accessory equipment must meet all requirements of the Federal Communications Commission and the Federal Aviation Administration.
- F. Any tower that is not operated for a continuous period of two years shall be considered abandoned and the owner of such tower shall remove the same within 90 days of a receipt of notice from the City Council notifying the owner of such abandonment. If such tower is not removed within 90 days, the City may remove the tower at the owner's expense.
- G. The City shall have the authority to require the applicant to file and maintain a surety bond, letter of credit or other security acceptable to the City. The security shall be equal to 20% of the cost of construction of the tower as disclosed by the applicant. The security shall be used to pay for removal of the tower if the owner fails to remove the tower as provided in (F.) above. The security shall be returned to the applicant upon proper removal of the tower.
- H. Pad sites and guy wire location must be surrounded by a minimum of a six-foot tall fence which has an opacity of 1.00

### **SECTION 03.335        OUTDOOR SALES**

See Table 3.110A.

- A. In the D District, the following standards shall apply.
  - 1. Sales in the Paola Square shall be by permit from the City and controlled by regulations governing use of the Square.
  - 2. Sidewalk sales displays shall be arranged to leave at least six (6) feet of clear walkway for pedestrian circulation.
- B. In the TA District, the following standards shall apply.
  - 1. Garden Materials Sales
    - a. Limited Staff Review: Garden materials sales areas shall be permitted, provided they do not occupy required parking spaces, or are located on an area designated on the site plan for that purpose. Garden material sales areas exceeding 2,000 square feet shall be designated on the face of the site plan. Garden supplies, plant material, and garden furniture are permitted to be sold in these areas. Garden sales areas may be in parking areas for a maximum of five months, but not more than three consecutive months, each year.
    - b. Conditional Use Permit: Garden material sales that exceed the provisions of 1(a) above may be permitted as a Conditional Use provided:

1. All garden supplies and furniture displayed for more than three consecutive months must be screened as provided for outdoor storage (see Section 03.211 Accessory Uses, Nonresidential). Live plant materials may be displayed without being screened.
2. The Conditional Use Permit shall specify the time limits that temporary or portable greenhouses or other similar structures may be used. Such structures shall be maintained in good appearance and condition.
3. The minimum required parking spaces must be provided.
4. The requirements of Section 21.220 Conditional Uses shall be considered.
5. The Conditional Use Permit shall be issued for a period not to exceed one year.

(Ordinance 2735, 01/11/00)

2. Other sales are permitted up to four (4) times a year; owners may obtain a permit for exterior sales of merchandise related to the principal business.
  - a. The store shall have an exterior pedestrian area or sidewalk that is a minimum of twelve (12) feet wide. Sales displays shall be arranged to leave at least six (6) feet of clear walkway for pedestrian circulation.
  - b. The sales displays shall be on racks or display counters that are of similar quality to those used in the store. All displays shall be taken in at closing time.
  - c. No signage other than normal price markers shall be permitted.
  - d. The permit shall be good for no more than seven (7) consecutive days.

#### **SECTION 03.336 PUBLIC INTEREST EVENTS**

All such uses shall be held on land occupied by the organization benefiting from the proposed activity. The activity shall be permitted only during hours when the facility's parking would not be used for the primary use's high traffic generation activities. Events in stadiums or public parks shall be regulated by the City and are not limited by this Section.

#### **SECTION 03.337 SPECIAL EVENTS**

Special events in stadiums or public parks may be regulated by the City and are not limited by this Section. Events held on fairgrounds are exempt from these regulations (see §23.250(G)). All other special events shall meet the following standards:

- A. The special event shall be limited to four (4) successive days.
- B. If deemed necessary by the Police Department, property access shall be controlled by special traffic personnel. Prior to receiving a permit, the applicant must provide a written communication from the Police Department indicating adequate provisions have been made.

- C. The Community Development Department shall approve the sanitary provisions. Prior to receiving a permit, the applicant must provide a written communication from the Community Department indicating adequate provisions have been made.
- D. The Building Inspector shall approve all electric and lighting facilities. Prior to receiving a permit, the applicant must provide a written communication from the Building Inspector indicating adequate provisions have been made.
- E. Maximum noise levels may be established. The levels shall be based on the distance of the site to adjoining residential uses and any history of complaints about similar events.
- F. The applicant shall provide surety for complete site restoration upon the event's conclusion or should the permit be revoked. (Ord. 2990 05/26/09)

#### **SECTION 03.338      TEMPORARY CONCRETE/ASPHALT BATCH PLANT**

Temporary asphalt or concrete plants may be allowed by permit for City and County road projects or State or Federal highway projects in certain zoning districts (see Table 3.110 A). All standards within this section shall be complied with to qualify as a temporary asphalt or concrete plant. If any one of these standards cannot be met, the plant shall be considered a Heavy Industrial use and shall comply with applicable regulations.

- A. The temporary asphalt or concrete plant permit shall be renewed annually and shall be limited to a total of three consecutive years.
- B. The temporary asphalt or concrete plant and related materials and equipment shall be located no closer than 1,000 feet to any residence other than the residence of the land upon which the limited plant is to be located.
- C. The temporary asphalt or concrete plant shall comply with State air pollution regulations and the applicant shall obtain a permit from the Kansas Department of Health and Environment prior to operating the plant.
- D. The applicant shall comply with State and County sanitation codes and obtain a permit from the Miami County Environmental Health Department.
- E. No contaminated soils shall be stockpiled on the site, used for remediation, or used in the operation of the temporary concrete or asphalt batch plant.
- F. All fuel tanks shall include fuel/spill containment systems as approved by the Kansas Department of Health and Environment and/or the Miami County Environmental Health Department.
- G. Any spills of materials capable contaminating ground water shall be clean immediately to the satisfaction of the Kansas Department of Health and Environment.
- H. No washing or cleaning of trucks or truck beds shall be allowed on site unless a wastewater containment system is installed and used to the satisfaction of the Kansas Department of Health and Environment.

- I. No waste, production materials, discarded equipment or other such items shall be buried on the site.
- J. All equipment and materials utilized in the operation of the temporary asphalt or concrete plant shall be removed from the site and the site shall be returned to its original condition, or better, within 30 days following completion of the construction project for which the plant was established.
- K. A surety in the form of a performance bond and/or letter of credit in the amount of 125% of the estimated road restoration/replacement costs along anticipated principal truck routes must be provided to the City Clerk. The Director of Public Works will determine this amount. This surety ensures that roads will be reconstructed to their original or better condition as the use concludes or the permit is revoked.
- L. A surety in the form of a performance bond and/or letter of credit in the amount of 125% of the estimated site restoration costs must be provided to the City Clerk. The surety ensures that the site will be returned to its original or improved condition as the use concludes or the permit is revoked.
- M. If deemed necessary by the Police Department, special traffic personnel shall control the property access. Such instances warranting traffic personnel may include locations at busy intersections or other extensive interference with primary traffic from trucks.
- N. An approved site plan as outlined in the "Procedures for Application for Permit for a Temporary Asphalt/Concrete Plant" shall be submitted with the permit application.
- O. A temporary entrance permit is required for access on to any City or County right-of-way.
- P. If the site is within  $\frac{1}{4}$  mile of a water body, the applicant shall comply with Kansas Department of Transportation Special Provision #90M-37-R1, regarding environmental concerns.
- Q. A map of the designated haul roads shall be submitted with the permit application and the operation shall comply with Kansas Department of Transportation Special Provision #90M-6006. If the project is not a KDOT project, an agreement must be drawn between the City, County, and Special Provision #90M-6006).

(Ordinance 2783, 08/21/01)

### **SECTION 03.339 TRUCK LOAD SALES**

Such uses shall meet the following standards:

- A. No such use shall be closer than 150 feet from any public road frontage.
- B. Each company and all associated franchises and/or divisions are permitted three (3) limited use permits per year. Each permit shall terminate after seventy-two (72) hours from initiation of the use.

- C. Each property meeting the locational requirements of this Ordinance is permitted three (3) limited use permits per year. Each permit shall terminate after seventy-two (72) hours from initiation of the use.
- D. The minimum site area is 3 acres. (Ordinance 2824, 01/28/03)
- E. A 0.4 opacity bufferyard shall be required between this use and any residential use (Ordinance 2824, 01/28/03)

#### **SECTION 03.340 INTENSIVE AGRICULTURE**

A Conditional Use Permit under this section shall be approved and issued in accordance with the following:

- A. Permits may be issued only for land in the Estate (E) zoning district.
- B. No permit shall be issued for land within the Lake Miola watershed or Bull Creek watershed above the City of Paola water intake.
- C. A finding is made that the subject property and its environs, as determined by the Planning Commission, will not be adversely affected by the number of animal units requested to be permitted. Specifically, that the applicant has clearly demonstrated that: (1) there is not credible evidence of increased water pollution, soil erosion or harm to other natural resources resulting from the issuance of the permit, and (2) the applicant has adequate facilities to handle the proposed number of animal units. In making such a finding, the carrying capacity of the property and likelihood of adverse impact shall be examined not only with respect to present conditions but also with respect to reasonable expectation as to change conditions during the entire period of time the permit is to be in effect.
- D. When issuing a Conditional Use Permit an expiration date shall be attached thereto. In establishing such date the Planning Commission and Governing Body shall consider the request of the applicant; size of the tract, parcel or lot; type of livestock; number of animal units; and the nature and character of the livestock operation. Expiration of a permit shall not in any way prevent application for new permit.

#### **SECTION 03.345 DANGEROUS ANIMALS**

- A. No person shall keep or be permitted to keep any dangerous animal as a pet.
- B. The dangerous animal(s) shall be kept in a zoo, an accredited educational or medical institution, museum or other place where they are kept as live specimens for the public to view, in a circus or carnival, or in a licensed veterinary hospital for treatment.
- C. Applicants must provide documentation acceptable to the Planning Commission identifying:
  - a. The number and general description of all animals for which the permit is sought.
  - b. Any information known to the applicant concerning the vicious or dangerous propensities of all such animals.
  - c. The housing arrangements for all such animals with particular details as to safety of structure, locks, and fencing.

- d. Proposed safety precautions.
- e. Noises or odors anticipated in the keeping of such animals.
- f. Prior history of incidents involved the public health or safety involving any of said animals.

D. Applicants must provide proof of insurance to cover those who may be injured or killed by said animals.

E. Applicants must provide a signed statement indemnifying the City and its agents and employees for any and all injuries resulting from said animals.

F. The Police Chief or his/her designated representative shall review all applications to keep dangerous animals and provide a recommendation to the Planning Commission. The applicant shall provide any additional information required by the Police Chief or his/her designee.

G. Animals may be replaced with others of the same kind, but the number of each shall not be in excess of the number allowed by the terms of the Conditional Use Permit. The owner shall notify the Zoning Administrator immediately upon the acquisition of any animal having a prior history of any incident involving the public health or safety, or resulting in any bodily injury or property damage.

H. Upon the sale of any dangerous animal, the owner shall immediately send notification of the sale along with the name and address of the buyer, the method of transporting the animal, the path of travel of such transportation, and the destination to the Zoning Administrator or his/her designated representative.

I. No conditional use permit shall be granted for more than one year.

(Ordinance 2799, 06/11/02)

#### **SECTION 03.350 DOMESTIC EXOTIC ANIMALS/FARM ANIMALS AS PETS**

- A. This section applies only to farm animals and exotic animals kept as pets and not commercial purposes.
- B. Minimum lot area is 3 acres.
- C. Maximum of 2 animals or 10 adult fowl/exotic cage birds or 1 animal and 5 adult fowl/exotic cage birds are allowed.
- D. A fence or cage of sufficient size, based on the carrying capacity of the land as defined by the Stockman's Handbook, must be provided. If not identified in the Stockman's Handbook, the zoning administration shall make a determination based on similar size/type animals identified in the handbook or by consulting a veterinarian.
- E. Proof of state permits (if applicable).
- F. The shed, yard, pen or other place which any animals or fowl are kept shall be maintained in a manner that is not offensive to those residing in the vicinity or annoying to the public.

(Ordinance 2799, 06/11/02)

**SECTION 03.356 OUTDOOR RECREATION**

- A. 0.2 opacity bufferyard shall be provided on all property boundaries.
- B. The minimum site area is five acres.

(Ordinance 2824, 01/24/03)

**SECTION 03.357 INDOOR RECREATION**

- A. The minimum site area is five acres.
- B. Access shall be taken from a collector or arterial street.

(Ordinance 2824, 01/28/03)

**SECTION 03.358 CAMPGROUNDS**

A 0.6 bufferyard shall be provided. (Ordinance 2824, 01/28/03)

**SECTION 03.360 AIRPORTS**

- A. The minimum site area is 300 acres.
- B. There shall be 1,500 feet separation between this use and any residential or school use.

(Ordinance 2824, 01/28/03)

**SECTION 03.361 CHRISTMAS TREE SALES**

Christmas tree sales shall be permitted only in conjunction with and located at an institutional use. (Ordinance 2824, 01/28/03)

**SECTION 03.362 Repealed (Ord. 2989 05/26/09)**

# ARTICLE 04

## DISTRICT INTENSITY AND BULK STANDARDS

### **DIVISION 04.000 PURPOSE**

The purpose of Article 04 is to establish the basic intensity, bulk performance, bufferyard, and landscaping standards for each zoning district. Site specific standards shall require each development to conduct a carrying capacity analysis. This analysis regulates the maximum intensity based on actual site conditions (see Article 05).

### **DIVISION 04.100 DISTRICT PERFORMANCE STANDARDS**

District performance are the minimum requirements for each use and shall apply to each district.

### **SECTION 04.110 PERFORMANCE STANDARDS**

This Section contains the basic district standards applicable to all uses. Table 04.110 A. contains intensity, lot, bulk, bufferyard, and landscaping standards that vary from district to district. Lot and bulk standards for residential units in planned and attached housing types are in Table 04.110 B. Housing types and lot configurations are illustrated in Figure 04.110. Also, see Article 06 for uses not listed.

### **SECTION 04.115 MINIMUM LOT SIZE – NON RESIDENTIAL USES**

Where a lot exists with one or more structures on it, constructed prior to the adoption of this ordinance, the minimum lot size may be reduced with approval of the Planning Commission providing the following standards shall be met:

- A. Under no circumstances shall the minimum lot size be reduced for a use that is not permitted in the district.
- B. The minimum lot size shall not be reduced by more than 50% unless the Board of Zoning Appeals approves a variance.
- C. The proposed use does not involve any enlargement of a structure if it will increase the degree of any nonconformity.
- D. The parking and loading for the use meet the minimum requirements of this ordinance or the Planning Commission must find that the available parking/loading area for the proposed use and will not create traffic and safety issues for the surrounding properties or traveling public.
- E. The Planning Commission must find that the intensity of the proposed use will not have a detrimental impact on the neighborhood, public health or safety, or create nuisances (e.g. noise and emissions) due to an increase in the volume, frequency, or type of use of the property.
- F. That all other provisions of this ordinance shall be met to the greatest extent practical for the site.

(Ordinance 2808, 08/27/02)

**Table 04.110 A. USE AND LOT STANDARDS (See also Section 06.120 and Table 13.140)**

Zoning District & Development Type	Min. OSR/ LSR	District Standards					Site, Lot, and Building Standards										
		Density		Floor Area Ratio		Sewer	Minimum**							Maximum			
		Max. Gross	Max. Net	Max. Gross	Max. Net		Site Area	Lot Area***	Lot Width (ft)	Street Yard (ft)	Side Yard (ft)	Rear Yard (ft)	Parking street/other	Height (feet)	Bldg. Cvr. (Sq. Ft.)		
<b>Estate (E)</b>																	
Single-Family Conventional	0	0.09	0.09	na.	na.	OS/P	10 ac.	10 ac.	400	150	50	150	na.	32	12,500		
Single-Family Conventional - Rural Subdivision	0.05	0.2	0.2	na.	na.	OS/P	3 ac.	3 ac.	280	100	40	100	na.	32	8,000		
Equestrian	0.2	0.22	0.29	na.	na.	OS/P	20 ac.	3 ac.	150	50	25	75	na.	32	5,000		
Single-Family Cluster	0.35	0.52	0.81	na.	na.	P	10 ac.	1 ac.	150	35	12	40	na.	32	4,000		
Planned	0.6	0.63	2.5	na.	na.	P	40 ac.	See Table 04.110 B.									
Institutional Residential	0	0.25 rms.	0.25 rms.	na.	na.	P	20 ac.	20 ac.	500	100	100	100	75/50	32	10,000		
All Other Uses	0.8	na.	na.	0.09	0.45	P	10 ac.	10 ac.	400	150	50	150	75/50	32	12,500		
<b>Suburban (S)</b>																	
Single-Family Conventional	0.1	1.98	2.16	na.	na.	P	12,000 sf.	12,000 sf.	90	30	10	35	na.	32	3,200		
Single-Family Cluster	0.25	2.16	3.13	na.	na.	P	5 ac.	10,500 sf.	80	25	8	35	na.	32	2,600		
Planned	0.35	2.7	5.2	na.	na.	P	6 ac.	See Table 04.110 B.									
Manufactured Home Park	0.45	2.7	6	na.	na.	P	15 ac.	See Table 04.110 B.									
Institutional Residential	0	2.0 rms.	2.0 rms.	na.	na.	P	5 ac.	5 ac.	300	75	40	75	50/30	32	10,000		
All Other Uses	0	na.	na.	0.1	0.45	P	4 ac.	4 ac.	280	100	40	100	75/40	32	8,000		
<b>Suburban Commercial (SC)</b>																	
Planned	0.3	3	6.8	na.	na.	P	10 ac.	See Table 04.110 B.									
Institutional Residential	0.3	2.00 rms.	2.00 rms.	na.	na.	P	5 ac.	5 ac.	300	75	40	75	50/30	32	5,000		
Shopping Center	0.3	na.	na.	0.13	0.35	P	5 ac.	5 ac.	300	30 bt.	10	20	30/10	25			
Retail	0.3	na.	na.	0.13	0.35	P	1 ac.	1 ac.	150	30 bt.	10	20	30/10	25			
Office and All Other Uses	0.3	na.	na.	0.17	0.58	P	1 ac.	1 ac.	150	30 bt.	10	20	30/10	40			
<b>Thoroughfare Access (TA)</b>																	
Single-Family Conventional	0.12	4.15	6.16	na.	na.	P	8,500 sf.	8,500 sf.	Use Village House Table 04.110 B.								
Single-Family Attached	0.2	6.75	9	na.	na.	P	12,750 sf.	12,750 sf.	Use Twin, Atrium, Weak-link, or Town houses Table 04.110 B.								
Planned	0.25	8.25	12	na.	na.	P	4 ac.	See Table 04.110 B.									
Multi-Family	0.2	12	18	na.	na.	P	15,000 sf.	15,000 sf.	100	25	12	25	20/8	32	na.		
Manufactured Home Park	0.25	5	7.45	na.	na.	P	15 ac.	See Table 04.110 B.									
Institutional Residential	0.2	15 rms	15 rms	na.	na.	P	2 ac.	2 ac.	180	75	30	100	40/15	32	5,000		
Retail	0.2	na.	na.	0.26	0.33	P	20,000 sf.	20,000 sf.	100	25	10	20	15/5	30	na.		
Office	0.2	na.	na.	0.38	0.58	P	10,000 sf.	10,000 sf.	80	25	10	20	15/5	30	na.		
Commercial Lodging	0.2	na.	na.	0.38	0.58	P	20,000 sf.	20,000 sf.	100	25	20	20	15/5	55	na.		
All Other	0.2	na.	na.	0.3	0.41	P	1 ac.	1 ac.	150	25	20	20	15/5	32	na.		
<b>Neighborhood Conservation* 1, 2</b>																	
NC-R3, Single Family	0	na.	na.	na.	na.	P	6,000 sf.	6,000 sf.	50	25	5	25	na.	45	1,500		
NC-R3, Duplex	0	na.	na.	na.	na.	P	3,000 sf./du	3,000 sf./du	50	25	5	25	na.	45	na.		
NC-R3, Multi-Family	0	na.	na.	na.	na.	P	1,500 sf./du (6,000 sf. min.)	1,500 sf./du (6,000 sf. min.)	50	25	5	25	na.	45	na.		

**Table 04.110 A. USE AND LOT STANDARDS (See also Section 06.120 and Table 13.140)**

Zoning District & Development Type	Min. OSR/ LSR	District Standards					Site, Lot, and Building Standards									
		Density		Floor Area Ratio		Sewer	Minimum**							Maximum		
		Max. Gross	Max. Net	Max. Gross	Max. Net		Site Area	Lot Area***	Lot Width (ft)	Street Yard (ft)	Side Yard (ft)	Rear Yard (ft)	Parking street/other	Height (feet)	Bldg. Cvr. (Sq. Ft.)	
NC-R3, Other	0	na.	na.	na.	na.	P	7,500 sf.	7,500 sf.	50	25	5	25	na.	45	na.	
NC-R2, Single Family	0	na.	na.	na.	na.	P	6,000 sf.	6,000 sf.	50	25	5	25	na.	35	na.	
NC-R2, Duplex	0	na.	na.	na.	na.	P	5,000 sf.	5,000 sf	50	25	5	25	na.	35	na.	
NC-R2 Other	0	na.	na.	na.	na.	P	7,500 sf.	7,500 sf.	50	25	5	25	na.	35	na.	
NC-R1	0	na.	na.	na.	na.	P	6,000 sf.	6,000 sf.	50	25	6	25	na.	35	na.	
<b>Downtown (D)</b>																
Single-Family Conventional	0	5.95	5.95	na.	na.	P	5,000 sf.							Use Patio Table 04.110 B.		
Single-Family Attached	0.1	7.5	12	na.	na.	P	1 ac.							Use Duplex, Weaklink, Atrium, Town Houses Table 04.110 B.		
Planned	0.15	11.25	25	na.	na.	P	2 ac.							See Table 04.110 B.		
Multi-Family	0.1	22	30	na.	na.	P	10,000 sf.	10,000 sf.	75	25	8	25	20/8	45	na.	
Institutional Residential	0	40 rms	40 rms	na.	na.	P	20,000 sf.	20,000 sf.	100	12	5	20	12/5	45	na.	
Retail	0	na.	na.	0.39	0.39	P	10,000 sf.	10,000 sf.	100	0 bt.	0	5	8/0	45	na.	
Office/Service/Commercial Lodging	0	na.	na.	0.64	0.64	P	10,000 sf.	10,000 sf.	100	0 bt.	0	5	8/0	45	na.	
All Other Uses	0	na.	na.	0.51	0.51	P	10,000 sf.	10,000 sf.	100	0 bt.	0	5	8/0	45	na.	
<b>Business Park (BP)</b>																
Office - exterior ring	0.25	na.	na.	0.42	0.64	P	2 ac.	2 ac.	200	30	10/30	10	30/10	45	na.	
Industry - exterior ring	0.25	na.	na.	0.38	0.59	P	2 ac.	2 ac.	200	30	10/30	10	30/10	45	na.	
All Other Uses - exterior ring	0.25	na.	na.	0.23	0.32	P	1 ac.	1 ac.	150	30	10/30	10	30/10	45	na.	
Office - interior ring	0.25	na.	na.	0.51	0.64	P	10 ac..	10,000	80	15	0/15	5	30/10	45	na.	
Industry - interior ring	0.25	na.	na.	0.5	0.59	P	10 ac.	10,000	80	15	0/15	5	30/10	45	na.	
All other Uses - interior	0.25	na.	na.	0.28	0.32	P	10 ac.	10,000	80	15	0/15	5	30/10	45	na.	
<b>Industry (I)</b>																
Industry	0.2	na.	na.	0.51	0.64	P	5 ac.	1 ac.	150	25	15	20	20/10	45	na.	
All Other Uses	0.2	na.	na.	0.42	0.53	P	5 ac.	1 ac.	150	25	15	20	20/10	45	na.	

OS = On-site

P = Public

bt = Build To

\* Lots platted prior to 1983 shall have a minimum lot area of 6000 square feet; lots platted after the year 1983 shall have a minimum lot area of 8500 square feet.

1. All street yards 25' except on collector streets where the minimum street yard shall be 65' from the road's centerline. On arterial streets, the minimum street yard shall be 75' from the road's centerline.

2. On all lots of record prior to this Ordinance's Adoption with widths less than 50', the side yard setbacks shall be 10% of the lot width, not less than 3'

3. If the height exceeds 35', the minimum side yard shall be 8'.

\*\* When expressed in a ratio, the ratio = minimum yard setback/total minimum yard setback

\*\*\* The minimum lot size for commercial uses shall be waived if all other requirements of the Land Development Ordinance are met and an additional 5% open space is provided.

Ordinance 2824, 01/28/03

**Table 04.110 A. USE AND LOT STANDARDS (Continued)**

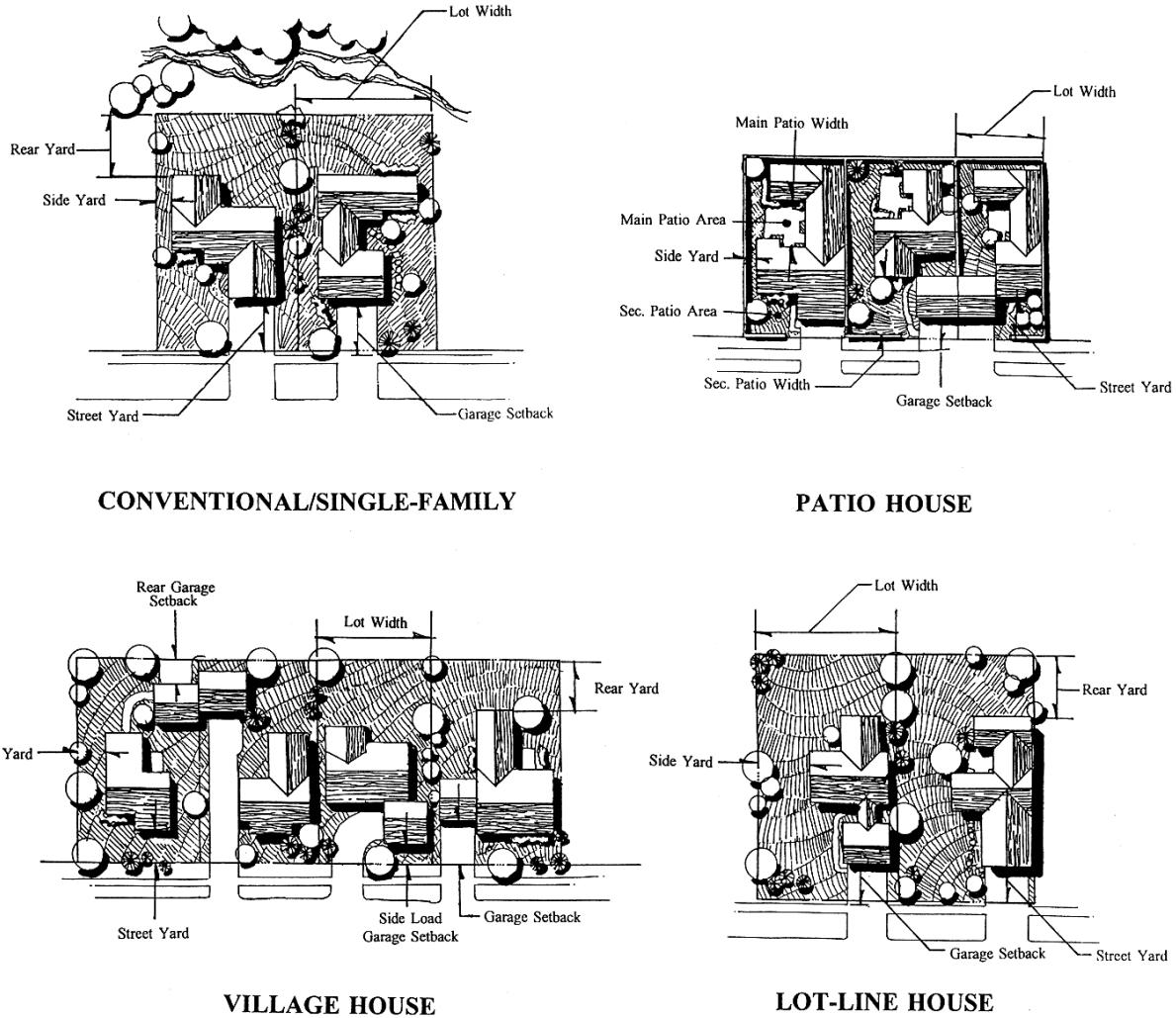
Zoning District & Development Type	Landscaping Plant Units per (See Section 06.120)			Bufferyard Opacity Standards (See Table 13.140)											
				Adjoining District							Adjoining Streets				
Lot	Acre Open Space	Parking Spaces	E	S	SC	NC	TA	D	BP	I	Arterial	Collector	Minor		
<b>Estate (E)</b>															
Single-Family Conventional (OS)	4/du	4	none	N1	0.1	0.1	0.2	0.2	0.2	0.2	0.2	0.4	st1	st1	
Single-Family Conventional (P)	4/du	4	none	N1	0.1	0.1	0.2	0.2	0.2	0.2	0.2	0.4	st1	st1	
Equestrian	4/du	4	none	N1	0.1	0.1	0.2	0.2	0.2	0.2	0.2	0.4	st1	st1	
Single-Family Cluster	2/du	4	none	N1	0.1	0.1	0.2	0.2	0.2	0.2	0.2	0.4	st1	st1	
Planned	2/du	4	none	0.1	0.1	0.1	0.2	0.2	0.2	0.2	0.2	0.4	st1	st1	
Institutional Residential	3/ac	4	1/18	0.1	0.1	0.1	0.2	0.2	0.2	0.2	0.2	0.4	st1	st1	
<b>Suburban (S)</b>															
Single-Family Conventional	2/du	4	none	0.2	N1	0.1	0.2	0.2	0.2	0.2	0.2	0.4	st1	st1	
Single-Family Cluster	1/du	4	none	0.2	N1	0.1	0.2	0.2	0.2	0.2	0.2	0.4	st1	st1	
Planned	1/du	4	1/18	0.2	N1	0.1	0.2	0.2	0.2	0.2	0.2	0.4	st1	st1	
Manufactured Home Park	1/du	4	1/18	0.4	0.4	0.4	0.4	0.4	0.4	0.2	0.2	0.4	0.4	0.4	
Institutional Residential	3/du	4	1/18	0.2	N1	0.1	0.2	0.2	0.2	0.2	0.2	0.4	st1	st1	
<b>Suburban Commercial (SC)</b>															
Planned	1/du	5	none	0.4	0.4	N1	0.5	0.1	N1	N1	0.1	st1	st1	st1	
Institutional Residential	3/du	5	none	0.4	0.4	N1	0.5	0.1	N1	N1	0.1	st1	st1	st1	
Shopping Center	8/ac	5	1/18	0.4	0.4	N1	0.5	0.1	N1	N1	0.1	st1	st1	st1	
Retail	8/ac	5	1/18	0.4	0.4	N1	0.5	0.1	N1	N1	0.1	st1	st1	st1	
Office and All Other Uses	8/ac	5	1/18	0.4	0.4	N1	0.5	0.1	N1	N1	0.1	st1	st1	st1	
<b>Thoroughfare Access (TA)</b>															
Single-Family Conventional	1/du	5	none	0.5	0.5	0.2	0.6	N1	0.1	0.1	0.3	st1	st1	st1	
Single-Family Attached	1/du	5	1/18	0.5	0.5	0.2	0.6	N1	0.1	0.1	0.3	st1	st1	st1	
Planned	1/du	5	1/18	0.5	0.5	0.2	0.6	N1	0.1	0.1	0.3	st1	st1	st1	
Multi-Family	1/du	5	1/18	0.5	0.5	0.2	0.4	N1	0.1	0.1	0.3	st1	st1	st1	
Manufactured Home Park	1/du	5	1/18	0.5	0.5	0.2	0.6	0.4	0.2	0.2	0.3	st1	st1	st1	
Institutional Residential	3/ac.	5	1/18	0.5	0.5	0.2	0.6	N1	0.1	0.1	0.3	st1	st1	st1	
Retail	6/ac.	5	1/18	0.6	0.6	0.4	0.6	N1	0.1	0.1	0.3	st1	st1	st1	
Office	8/ac.	5	1/18	0.6	0.6	0.4	0.6	N1	0.1	0.1	0.3	st1	st1	st1	
Commercial Lodging	8/ac.	5	1/18	0.6	0.6	0.4	0.6	N1	0.1	0.1	0.3	st1	st1	st1	
All Other Uses	6/ac.	5	1/18	0.6	0.6	0.4	0.6	N1	0.1	0.1	0.3	st1	st1	st1	
<b>Neighborhood Conservation</b>															
NC-R3 Single Family	1/du	4	none	0.2	0.2	0.2	0.2	N1	N1	N1	0.3	st1	st1	st1	
NC-R2, Single Family	1/du	4	none	0.2	0.2	0.2	0.2	N1	N1	N1	0.3	st1	st1	st1	
NC-R1	1/du	4	none	0.2	0.2	0.2	0.2	N1	N1	N1	0.3	st1	st1	st1	
<b>Downtown (D)</b>															
Single-Family Conventional	1/du	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
Single-Family Attached	1/du	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
Planned	0.5/du	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
Multi-Family	0.5/du	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
Institutional Residential	3/ac.	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
Retail	4/ac.	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
Office/Service/Commercial Lodging	4/ac.	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
All Other Uses	4/ac.	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
<b>Business Park (BP)</b>															
Office - exterior ring	6/ac.	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
Industry - exterior ring	6/ac.	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
All Other Uses - exterior ring	6/ac.	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
Office - interior ring	10/ac.	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
Industry - interior ring	10/ac.	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
All other Uses - interior ring	10/ac.	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
<b>Industry (I)</b>															
Industry	6/ac.	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	
All Other Uses	6/ac.	6	1/18	0.6	0.6	0.2	0.6	N1	N1	N1	0.3	st1	st1	st1	

N1 - Special buffer defined in Section 6.230 (Ordinance 2893 08/23/05)

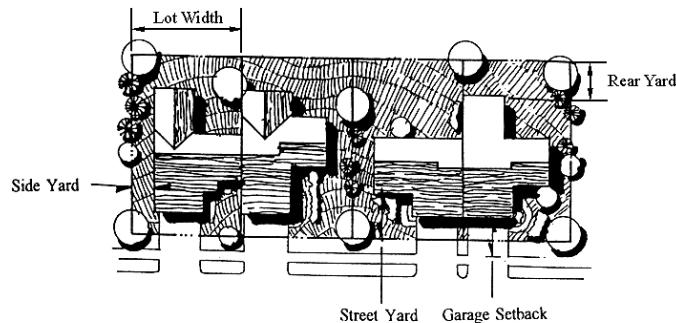
**Table 04.110 B LOT STANDARDS FOR ATTACHED AND PLANNED HOUSING TYPES**

Development Type	Minimum							Maximum		Patio Minimums		Side Load Garage Setback	Max. Units in a Row
	Site Area	Lot Area	Lot Width	Street Yard	Side Yard	Bldg Spacing	Rear Yard	Height	Bldg Cvrge.	Area	Width		
<b>Single-Family</b>													
Conventional		8,500	80	25/20*	7/15	na.	35	32	2,700				
Lot Line		8,500	75	20/20*	1@20	20	30	28	2,500			8	
Lot Line (NC-R2, NC-R3 only)		6,000	50	25	1@10	na.	25	28	2,400			8	
Village		6,000	60	12/20*	5	na.	25**	32	2,400			6	
Patio		5,000	55	8/20*	patio	8	patio	26	1,900	1,000/48	20/6		
Single-Wide Manufactured		4,000	40	15	8	na.	15	15	1,100				
Double-Wide Manufactured		6,600	66	15	8	na.	15	18	1,960				
<b>Single-Family Attached</b>													
Twin	9,600	4,800	48	20/20*	1@8	12	25	28	2,100			2	
Atrium	9,000	3,000	45	0/20*	0	8	0	15		800/48	24/6	8	
Weak-link Town House	10,800	3,600	36	15/20*	0	10	25	32	1,900			8	
Town House	7,200	2,400	24	15/20*	0	10	20	32	1,300			10	
<b>Multi-Family</b>													
Multiplex	8,000	2,000	80	20	6	12	15	32				5	
Apartment 2-story	8,000	1,800	100	25/15***	12	30	20	35					
Apartment 4-story	8,000	1,500	100	25/15***	12	30	20	45					
Notes:													
* Setback to garage from sidewalk.													
** Rear garage may have 5' rear yard setback provided access to alley.													
*** Setback to parking.													

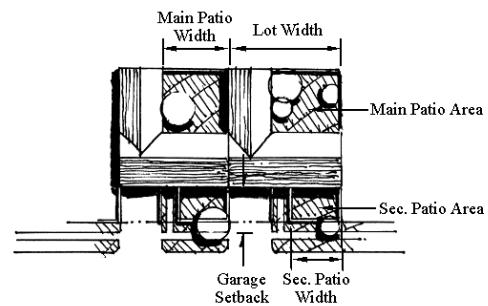
**Figure 04.110**  
**HOUSING TYPES AND LOT CONFIGURATIONS**



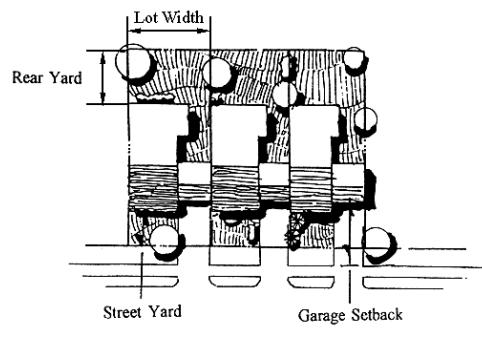
**Figure 04.110**  
**HOUSING TYPES AND LOT CONFIGURATIONS (Continued)**



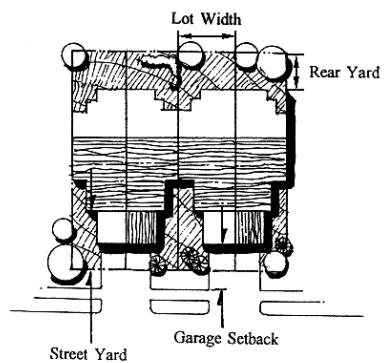
**TWIN HOUSE**



**atrium house**

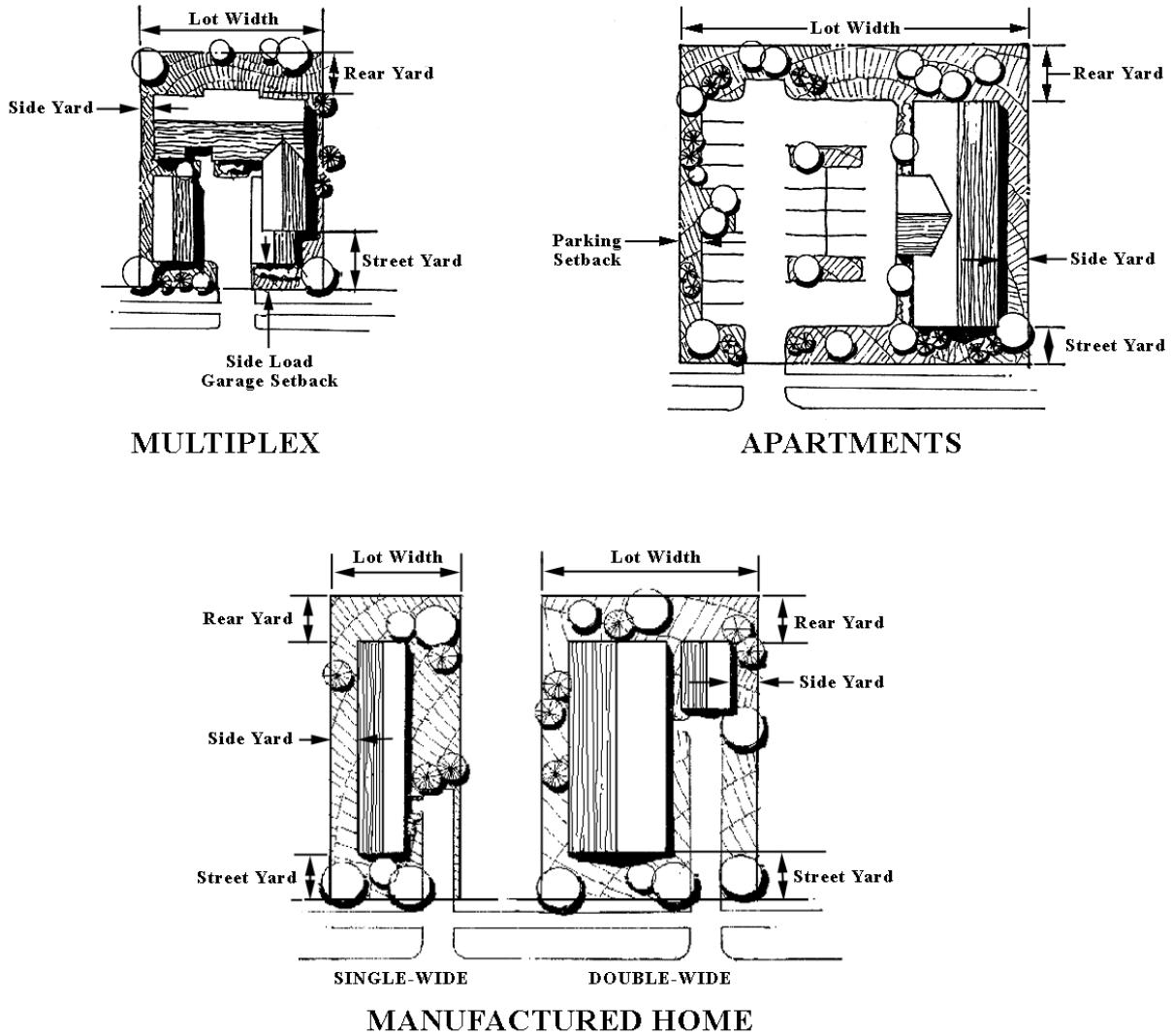


**WEAK-LINK TOWNHOUSE**



**TOWN HOUSE**

**Figure 04.110**  
**HOUSING TYPES AND LOT CONFIGURATIONS (Continued)**



## SECTION 04.120 DWELLING UNIT MIX REQUIREMENTS

All planned developments shall meet the mix requirements (Table 04.120) regarding the number of different dwelling unit types that must be provided. The mix provides a variety of housing types to meet all residents= needs. The largest percent of dwelling unit type used must be allowed by right in the subject zoning district (Table 3.110A). If the development is to be phased, each phase shall contain a share of the smallest unit types generally proportional to the percentage of the total dwelling units. (Ordinance 2835, 08/26/03)

**Table 04.120  
DWELLING UNIT MIX REQUIREMENTS**

Total Units in Project E, S, or SC Districts	Total Units in Project TA or D Districts	Min. Number of Types	Max. % Any Type	Min. % Any Type
1-25	1-40	1	100	20
26-50	41-100	2	70	20
51-150	101-200	3	60	20
151 or more	201 or more	4	40	10

## ARTICLE 05

### SITE CAPACITY AND ENVIRONMENTAL STANDARDS

#### DIVISION 05.000 PURPOSE

This Article establishes the basic performance standards to protect natural resources. Developments are required to conduct a carrying capacity analysis which regulates the maximum intensity based on actual site conditions. The site carrying capacity analysis ensures the public health, safety, and welfare are protected by preventing development from exceeding the site resources= capacity to sustain the development. Resource areas exist in which constructing a building is hazardous to life and property; these areas should be avoided. The City obtains its water supply from Lake Miola. Water supply lakes in Miami County have been adversely impacted by land uses in their watershed. Specific standards protecting Lake Miola are essential to the public health, safety, and welfare of the City and its residents. Destroying some resources and certain development practices lead to air, ground water, or surface water pollution to the detriment of the public health. Natural systems are self-balancing, provided enough of the system is left in a functioning condition. A system's health or function can be measured by its habitat quality and species diversity. Preserving habitats and resources is also important to the community's character. Therefore, preservation enhances property value and the quality of life for residents and businesses.

Flood losses resulting from periodic inundation of special flood hazard areas should be avoided. Flooding could have a number of negative impacts on the community including: loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base.

These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

One purpose of this Article is to minimize losses due to flooding and to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) by applying the provisions of this article to:

1. restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
2. require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
3. protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

## **DIVISION 05.100 SITE CAPACITY**

The site capacity analysis requires measuring the resources on each site; the site capacity calculation ensures the development does not exceed the site resources' ability to sustain the use.

## **SECTION 05.110 APPLICABILITY**

Each property proposed for development shall, at the time of rezoning, site plan approval, or subdivision, submit a site capacity analysis based on the site's physical conditions, hazards, and natural resources except for the following:

- A. Any site not containing natural resources listed within Section 05.210.
- B. Single-family developments or farmsteads in the E District. While exempt from the calculation, these uses shall demonstrate they meet the Section 05.210 protection standards.
- C. Any lot of record as of this Ordinance's adoption date proposed for residential use which cannot be further subdivided, or which is buildable after floodplains or wetlands are taken into account but would not be buildable after other resource standards are applied. Such lots will be permitted one (1) dwelling unit.
- D. Any lot of record as of this Ordinance's adoption date proposed for a nonresidential use less than twenty thousand (20,000) square feet in area, and which is buildable after floodplains or wetlands are taken into account but would not be buildable after other resource standards are applied. Such lots shall conduct the site capacity calculation without the other resources.
- E. Individual lots in subdivisions or land developments approved subject to this Ordinance's provisions, since protection is achieved in the subdivision approval process.
- F. Where a parcel is to be subdivided into a series of no more than six (6) lots taking direct access to an existing street, and where the depth does not permit constructing streets to serve the development. All resources shall be mapped and protected under conservation easements as required by Table 05.210. All lots shall meet the minimum lot area requirements, excluding the area attributed to any protected resource.
- G. Planned Development Districts. Such districts shall be required to comply with this Article only if the developer seeks a major plan amendment.

## **SECTION 05.120 CALCULATION FOR TOTAL PROTECTED LAND**

Table 05.120 provides the procedure for calculating a site's total protected land. Step 1 determines the base site area. Steps 2-6 determine the land to be protected in accordance with Section 05.210. All uses -- residential and nonresidential -- must begin by completing this calculation. Where the site is in more than one zoning class, or where the site is to be divided into residential and nonresidential uses, separate calculations are required.

**Table 05.120 CALCULATION FOR TOTAL PROTECTED LAND**

<b>Step 1</b>	Enter <b>gross site area as determined by actual survey.</b>			ac.
	Subtract land within existing roads' ultimate rights-of-way; or land within major utilities' rights-of-way (minimum 50-foot width).		-	ac.
	Subtract land cut off from use by railroad, highway, or waterbody.		-	ac.
	Subtract all waterbodies.		-	ac.
	Subtract land previously dedicated as open space.		-	ac.
	Equals <b>base site area.</b>		=	ac.
<b>Step 2</b>	Measure all natural resources in the base site area. If resources overlap, measure only that resource with the highest resource protection ratio. These numbers provide each resource's area of land.			
<b>Steps 3 &amp; 4</b>	<b>Natural Resource</b>	<b>Step 3 Enter acres measured in Step 2.</b>	<b>Step 4 Multiply Land in Resource by Resource Protection Ratio.</b>	<b>Equals Protected Land.</b>
	Floodway		1.00	
	Floodplain		1.00	
	Wetland		1.00	
	Waterbody buffer		0.90	
	Drainageways		0.40	
	Steep slopes (> 30%)		0.85	
	Steep slopes (20-30%)		0.40	
	Forests, mature		0.60	
	Forests, young		0.30	
<b>Lake Miola Watershed (only)<sup>1</sup></b>				
	Waterbody buffer		0.95	
	Steep slopes (>30%)		0.95	
	Steep slopes (20-30%)		0.50	
	Forests, mature		0.70	
	Forests, young		0.40	
	All other watershed land		0.30	
<b>Step 5</b>	Sum of Step 3 column equals <b>Total Resource Land.</b>			
<b>Step 6</b>	<b>Total Protected Land</b> equals sum of Protected Land column.			
<sup>1</sup> All other Natural Resource Protection Ratios apply.				

## SECTION 05.121 RESIDENTIAL CAPACITY CALCULATION

Table 05.121 provides the procedure for calculating residential uses' capacity. Note that nonresidential uses should use Table 05.122.

Table 05.121 RESIDENTIAL CAPACITY CALCULATION		
Step 1	Enter <b>Base Site Area</b> (Table 05.120 Step 1).	ac.
	Multiply by <b>Minimum Open Space Ratio</b> (Table 04.110 A.).	x ac.
	Equals <b>Minimum District Required Open Space</b> .	= ac.
Step 2	Enter <b>Base Site Area</b> (Table 05.120 Step 1).	ac.
	Subtract <b>Protected Land</b> (Step 1 or Table 05.120 Step 6, whichever is greater).	- ac.
	Equals <b>Net Buildable Site Area</b> .	= ac.
	Multiply by <b>Maximum Net Density</b> (Table 04.110 A.).	x ac.
	Equals <b>Site Specific Maximum Density Yield</b> .	= du's
Step 3	Enter <b>Base Site Area</b> (Table 05.120 Step 1).	ac.
	Multiply by <b>Maximum Gross Density</b> (Table 04.110 A.).	x
	Equals <b>District Maximum Density Yield</b> .	= du's
Step 4	<b>Maximum Yield for Site</b> (Step 2 or 3, whichever is less).	= du's

## SECTION 05.122 NONRESIDENTIAL CAPACITY CALCULATION

Table 05.122 provides the procedure for calculating nonresidential uses' capacity.

Table 05.122 NONRESIDENTIAL CAPACITY CALCULATION		
Step 1	Enter <b>Base Site Area</b> (Table 05.120 Step 1).	ac.
	Subtract <b>Total Protected Land</b> (Table 05.120, Step 6).	- ac.
	Equals <b>Buildable Land, Site</b> .	= ac.
Step 2	Enter <b>Base Site Area</b> (Table 05.120 Step 1).	
	Multiply by <b>Minimum Landscape Surface Ratio</b> (Table 04.110 A.)	
	Equals <b>Minimum Landscaped Area</b> .	
Step 3	Enter <b>Base Site Area</b> (Table 05.120 Step 1).	
	Subtract <b>Minimum Landscaped Area</b> (Step 2).	
	Equals <b>Buildable Land, District</b> .	
Step 4	Enter Step 1 or 3, whichever is less.	ac.
	Multiply by <b>Maximum Net Floor Area Ratio</b> (Table 04.110 A.).	x
	Equals <b>Maximum Floor Area</b> .	= ac.
Step 5	<b>Minimum Landscaped Surface or Total Protection Land</b> (Step 2), whichever is greater.	= ac.

## DIVISION 05.200 NATURAL RESOURCE STANDARDS

Section 05.210 provides the protection levels for natural resources measured in the site capacity calculation. Section 05.220 indicates the uses for which open space may be used. This Division also contains additional performance standards and mitigation requirements.

## **SECTION 05.210 RESOURCE PROTECTION STANDARDS**

Natural resources are protected by requiring preserving a minimum amount of the resource as open space. Such open space shall be part of the open space ratio in residential developments and part of the landscape surface ratio in nonresidential developments. Unless otherwise permitted in this Division or Table 05.220, the open space shall remain undisturbed. Resource protection levels are specified in Table 05.210 and must be met within any development. The development intensity may be modified by the site capacity calculations in Division 05.100.

<b>Table 05.210 RESOURCE PROTECTION LEVELS</b>	
<b>Natural Resource</b>	<b>Resource Protection Level</b>
Waterbodies	1.00
Floodway	1.00
Floodplains	1.00
Wetlands	1.00
Waterbody buffer	0.90
Drainageways	0.40
Steep slopes (>30%)	0.85
Steep slopes (20-30%)	0.40
Forest, mature	0.60
Forest, young	0.30
<b>Lake Miola Watershed (only)</b>	
Waterbody buffer	0.95
Steep slopes (>30%)	0.95
Steep slopes (20-30%)	0.50
Forest, mature	0.70
Forest, young	0.40
All other watershed land	0.30

## **SECTION 05.220 USES IN OPEN SPACE**

Table 05.220 lists uses that may be permitted in open space when required elsewhere in this Ordinance. The uses listed are narrower subsets of the use categories used listed in Table 03.110 A. In so doing, a

closer match of the permitted uses to the resources' tolerance is provided. Any use not listed shall be considered prohibited.

<b>Table 05.220</b> <b>USES IN OPEN SPACE</b>							
Use	General Open Space*	Water- body Buffers	Flood- way	Flood- plain	Wetland	Steep Slopes	Forest
<b>Agricultural</b>							
Apiaries	Y	N	N	Y	N	Y	Y
Field Crops	Y	N	N	Y	N	N	N
Orchards	Y	N	N	Y	N	Y	N
Pasture	Y	N	Y	Y	Y	Y	N
Kennels and Stables	Y	N	N	L	N	L	L
Nursery	Y	N	C	L	N	Y	N
<b>Recreation and Amusement: Outdoor Recreation</b>							
Ball Fields	Y	N	N	Y	N	N	N
Golf Course	Y	N	N	L	L	L	L
Nature Area	Y	Y	Y	Y	Y	Y	Y
Nature Center	Y	N	N	N	N	Y	Y
Picnic Area	Y	N	Y	Y	N	Y	Y
Pools/Courts	Y	N	N	L	N	N	N
Trails	Y	N	Y	Y	L	Y	Y
<b>Industrial Uses: Utilities, Community/Region</b>							
Public/Private Roads	Y	CI	CI	L	N	L	Y
Essential Access	Y	CI	CI	Y	L	Y	Y
Sewer/Water	Y	CI	CI	Y	N	Y	Y
<b>Temporary Uses</b>							
Public Interest Event	Y	N	N	L	N	N	N
Special Event	Y	N	N	L	N	N	N

\* General Open Space is that land required by Table 04.110 A. as Min. OSR/LSR and not containing any specific natural resource.

Y = Permitted

N = Prohibited

C = Conditional Use CI = Conditional Use, with Environmental Impact Assessment Report

L = Limited Use

## **SECTION 05.230 ADDITIONAL RESOURCE STANDARDS**

The following Sections set forth additional standards that protect natural resources or permit mitigation.

## **SECTION 05.231 FLOODPLAIN MANAGEMENT REGULATIONS**

### **A. STATUTORY AUTHORIZATION**

#### *1. Approval of Draft Regulations by Kansas Chief Engineer Prior to Adoption*

The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on \_\_\_\_\_, 20\_\_\_\_.

#### *2. Kansas Statutory Authorization*

The Legislature of the State of Kansas has in K.S.A. 12-741 *et seq.*, and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare. Therefore, the Governing Body of the **City of Paola**, Kansas, ordains as follows:

### **B. FINDINGS OF FACT**

#### *1. Flood Losses Resulting from Periodic Inundation*

The special flood hazard areas of **Paola, Kansas, and the Community Growth Area** are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

#### *2. General Causes of the Flood Losses*

These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

#### *3. Methods Used To Analyze Flood Hazards*

The Flood Insurance Study (FIS) that is the basis of this ordinance uses a standard engineering method of analyzing flood hazards, which consist of a series of interrelated steps.a. Selection of a base flood that is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this ordinance is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one percent chance of occurrence in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated **August 19, 2008** as amended, and any future revisions thereto.

- b. Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.
- c. Computation of a floodway required to convey this flood without increasing flood heights more than **0.001 feet** at any point.
- d. Delineation of floodway encroachment lines within which no development is permitted that would cause **any** increase in flood height.
- e. Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

#### C. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare; to minimize those losses described in Section 05.231 B(1); to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) 59.22(a)(3); and to meet the requirements of 44 CFR 60.3(d) and K.A.R. 5-44-4 by applying the provisions of this ordinance to:

- 1. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
- 2. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
- 3. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

#### D. LANDS TO WHICH THESE REGULATIONS APPLIES

This section shall apply to all lands within the jurisdiction of the City of Paola, KS, identified as A zones, AE, AO and AH Zones, on the Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM) **dated August 19, 2008**. In all defined flood areas no development shall be permitted except through the issuance of a floodplain development permit, granted by the Governing Body under such safeguards and restrictions may reasonably be imposed to provide for beneficial use of a property and promote and maintain the general welfare, safety, and health of the inhabitants of the community. The Legislature of the State of Kansas has in KSA 12-707, 12-734 and 12-735 delegated the responsibility to local government units to adopt floodplain management regulations designed to protect the health, safety, and general welfare. Therefore, the City Council of the City of Paola, has enacted the floodplain management regulations as part of this zoning ordinance.

#### E. COMPLIANCE

No development located within the special flood hazard areas of this community shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

#### **F. ABROGATION AND GREATER RESTRICTIONS**

It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

#### **G. INTERPRETATION**

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, shall be liberally construed in favor of the governing body, and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.

#### **H. WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create a liability on the part of the **City of Paola** any officer or employee thereof, for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made there under.

#### **I. SEVERABILITY**

If any section; clause; provision; or portion of this ordinance is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this ordinance shall not be affected thereby.

#### **J. MAPPING**

1. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this ordinance. If Flood Insurance Study data is not available, the City shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.
2. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any numbered A zone or AE zone on the FIRM. The developer may be required to conduct a flood study using a method approved by the Public Works director and conducted by a licensed engineer. That study shall then be used to determine the elevational requirements to be met.

## K. GENERAL STANDARDS

1. The uses permitted are listed in Table 05.220. All other uses are expressly prohibited in both the floodway and all floodplains. A beneficial use provision that requires the land owner to prove that they have been prohibited from any beneficial use of the property has been provided. Other uses may be permitted only upon receiving approval of a beneficial use application. All uses are subject to the following requirements.
  2. Except for piers needed to support bridges, erosion control structures, dams for flood control or water supply, and utility crossings, no structure shall intrude into the floodway.
  3. Only structures essential to the permitted uses shall be permitted. Roads and other essential crossings shall be permitted only where the location is the best available from an environmental standpoint.
  4. No structures designed for human habitation are permitted except where approved under the beneficial use provisions of Section 05.231 and Division 21.400. This prohibition also applies to manufactured homes, manufactured home parks, campgrounds and recreational vehicle parks.
  5. Structures shall be constructed and placed on the building site so as to cause an increase of less than one one-hundredth (0.01) foot increase in flood height off-site and offer minimum obstruction to the flow of flood waters. All piers in the floodways should have sufficient clearance between flood elevation and any horizontal portions of the bridge to avoid debris jams. The City's Director of Public Works shall approve all such crossings.
  6. Structures shall be firmly anchored to prevent them from floating away or collapsing. Structures shall be certified by an engineer to withstand velocities and likely debris loadings at that point in the floodplain.
  7. Where approved development shall meet the following standards:
    - a. design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
    - b. construction with materials resistant to flood damage;
    - c. utilization of methods and practices that minimize flood damages;
    - d. all electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
    - e. new or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination; and
    - f. subdivision proposals and other proposed new development located within special flood hazard areas are required to assure that:
      - (1) all such proposals are consistent with the need to minimize flood damage;
      - (2) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
      - (3) adequate drainage is provided so as to reduce exposure to flood hazards; and

(4) all proposals for development, including proposals for manufactured home parks and subdivisions, of five (5) acres or fifty (50) lots, whichever is lesser, must include within such proposals base flood elevation data.

L. **FILLS IN THE FLOODPLAIN.**

The desired method of building in the floodplain is to elevate the structure on piers or columns. Fill material may be deposited provided all of the following are met:

1. It is approved as essential to the provision of a permitted or conditional property use (see Table 05.220). Such fills shall only be permitted in the floodplain and are prohibited in the floodway.
2. The fill shall be protected against erosion by riprap, vegetative cover, sheet piling, or bulk-heading sufficient to prevent erosion.
3. The fill shall be clean and compacted to minimize erosion potential.
4. There shall be sufficient culverts spaced along the length of fills for roads or other essential river crossings to allow flood waters to reach the other side of the fill. Longer bridge spans are preferred to fills. The intent is to maintain water flows through the structure in order to avoid increased floodway velocity.
5. Compensation shall be made for the volume of fill so that neither cross sectional area decreases nor flood level increases more than one one-hundredth (0.01) foot in off-site flood height.

**M. GENERAL STANDARDS**

1. No permit for floodplain development shall be granted for new construction, substantial improvements, and other improvements, including the placement of manufactured homes, within any numbered or unnumbered A zones, AE, AO, and AH zones, unless the conditions of this section are satisfied.
2. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this ordinance. If Flood Insurance Study data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.
3. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any unnumbered or numbered A zones, or AE zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

4. All new construction, subdivision proposals, substantial-improvements, prefabricated structures, placement of manufactured homes, and other developments shall require:
  - a. Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - b. Construction with materials resistant to flood damage;
  - c. Utilization of methods and practices that minimize flood damages;
  - d. All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
  - e. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination; and
  - f. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:
    - (1) All such proposals are consistent with the need to minimize flood damage;
    - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
    - (3) Adequate drainage is provided so as to reduce exposure to flood hazards; and
    - (4) All proposals for development, including proposals for manufactured home parks and subdivisions, of five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals base flood elevation data.

5. *Storage, Material, and Equipment*

- a. The storage or processing of materials within the special flood hazard area that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.

- b. Storage of other material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

## 6. *Nonconforming Use*

A structure, or the use of a structure or premises that was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this ordinance, may be continued subject to the following conditions:

- a. If such structure, use, or utility service is discontinued for **six (6)** consecutive months, any future use of the building shall conform to this ordinance.
- b. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.

## N. SPECIFIC STANDARDS

- 1. In all areas identified as numbered and unnumbered A zones, AE, and AH Zones, where base flood elevation data have been provided, as set forth in Section 05.231 K(2), the following provisions are required:

### a. *Residential Construction*

New construction or substantial-improvement of any residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of **three (3) feet** above base flood elevation. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**

### b. *Non-Residential Construction*

New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of **three (3) feet** above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural

components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.** Such certification shall be provided to the floodplain administrator as set forth in Section 20.350(7)(8)(9).

c. Require, for all new construction and substantial-improvements, that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- (1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided; and
- (2) The bottom of all opening shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

## O. MANUFACTURED HOMES

1. All manufactured homes to be placed within all unnumbered and numbered A zones, AE, and AH zones, on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
2. Require manufactured homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites:
  - a. Outside of a manufactured home park or subdivision;
  - b. In a new manufactured home park or subdivision;
  - c. In an expansion to an existing manufactured home park or subdivision; or

- d. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial-damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of three (3) feet above the base flood elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**
- 3. Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE and AH zones, on the community's FIRM, that are not subject to the provisions of Section 05.231 O(2) of this ordinance, be elevated so that either:
  - a. The lowest floor of the manufactured home is a minimum of three (3) feet above the base flood level; or
  - b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**

#### P. AREAS OF SHALLOW FLOODING (AO and AH zones)

Located within the areas of special flood hazard as described in Article 2, Section A are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

- 1. *AO Zones*
  - a. All new construction and substantial-improvements of residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least three (3) feet if no depth number is specified).
  - b. All new construction and substantial-improvements of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community FIRM (at least three (3) feet

if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed to that so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

c. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

2. *AH Zones*

- a. The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in, Section 05.231 N.
- b. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

**Q. FLOODWAY**

Located within areas of special flood hazard established in Section 05.231 D, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply:

1. The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than 0.001 feet at any point.
2. The community shall prohibit any encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in **any** increase in flood levels within the community during the occurrence of the base flood discharge.
3. If Section 05.231 Q(2), is satisfied, all new construction and substantial-improvements shall comply with all applicable flood hazard reduction provisions of Section 05.231.
4. In unnumbered A zones, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in Section 05.231 K(2).

## R. RECREATIONAL VEHICLES

Require that recreational vehicles placed on sites within all unnumbered and numbered A Zones, AE, AH, and AO Zones on the community's FIRM either:

1. Be on the site for fewer than 180 consecutive days, or
2. Be fully licensed and ready for highway use\*; or
3. Meet the permitting, elevation, and anchoring requirements for manufactured homes of this ordinance.

\*A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

## S. PENALTIES FOR VIOLATION

Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than **\$500.00**, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the **City of Paola** or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

## T. AMENDMENTS

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the **City of Paola**. At least twenty (20) days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the FEMA Region VII office. The regulations of this ordinance are in compliance with the NFIP regulations.

## **SECTION 05.232 STANDARDS FOR BENEFICIAL USES IN FLOODPLAIN**

All new construction, subdivision proposals, substantial-improvements, prefabricated structures and other developments shall be prohibited except where approved as essential to the provision of a beneficial

property use. In approving any beneficial use permit, in addition to the standards for beneficial uses in Division 21.400, the following standards shall be met.

- A. No structure designed for human habitation shall be permitted in the floodway.
- B. Any occupied residential space shall have its lowest floor, including basement, and lowest opening at least three (3) feet above the flood elevation. All service and utility connections such as water, sewer, gas, and electrical and heating equipment shall be similarly located, or buried with adequate cover to prevent erosion.
- C. New non-residential construction or substantial-improvement of any commercial, industrial, or other non-residential structures, shall have the lowest floor, including basement, elevated 3 feet above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator.
- D. All development approved under a beneficial use permit shall meet the standards in Section 05.231 B. 5, 6, and 7 above for structural integrity.
- E. Storage, material, and equipment
  - 1. The storage or processing of materials within the special flood hazard area that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.
  - 2. Storage of other material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.
- F. Parking
  - 1. Parking may be located within the floodplain provided that the depth of water shall not exceed six (6) inches, except as provided in b. below.
  - 2. Recreational areas that may be closed to access during flooding and are closed to access on a nightly basis may be approved provided the depth of water does not exceed three (3) feet.
  - 3. Areas below lowest floor used solely for parking of vehicles, building access, and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided; and
- b. the bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

**G. Fills in Floodplains.** The desired method of building in the floodplain is to elevate the structure on piers or columns. Fill material may be deposited provided all of the following are met:

1. It is approved as essential to the provision of a beneficial property use (see Division 21.400). Such fills shall only be permitted in the floodplain and never permitted in the floodway.
2. No fill shall be in or within twenty (20) feet of the floodway or within 20% of the distance between the outside edge of the floodway, and the outside edge of the floodplain, whichever is greater,
3. The fill shall be protected against erosion by riprap, vegetative cover, sheet piling, or bulk-heading sufficient to prevent erosion.
4. The fill shall be clean and compacted to minimize erosion potential.
5. Compensation shall be made for the volume of fill so that neither cross sectional area decreases nor flood level increases more than one one-hundredth (0.01) foot in off-site flood height.

## **ARTICLE 6 PENALTIES FOR VIOLATION**

Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than **\$500.00**, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the **City of Paola** or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

## **ARTICLE 7 AMENDMENTS**

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the **City of Paola**. At least twenty (20) days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the FEMA Region VII office. The regulations of this ordinance are in compliance with the NFIP regulations.

## **SECTION 05.233 WETLANDS**

Only limited uses are permitted in wetlands. Where structures are necessary to a permitted use and cannot be located outside the wetland, the structure shall be located on piles. Where needed, access shall be provided on structures such as boardwalks. Cases may exist where protection is not a reasonable alternative and mitigation is an acceptable solution. Farm ponds of less than three (3) acres shall not be considered wetlands by the City and may be filled, provided their stormwater capacity is preserved at another location on the same stream. The following regulations apply to wetland mitigation when such areas are to be filled or severely disturbed:

**A. Mitigation Permitted.** Mitigation is permitted only under the following situations:

1. In the D, TA, BP, and I Districts, the use intensity is so high that retained wetlands of less than two (2) acres will be degraded habitats, and may be isolated and thus serve no significant stormwater benefit. In these cases, filling shall be permitted where:
  - a. A mitigation plan has been approved, designating the area in which the site is located as a mitigation area; or
  - b. Mitigation will actually provide larger, more easily protected and managed on-site wetland areas. This provision permits consolidating many small wetlands into a single wetland management unit; and
  - c. The wetlands to be mitigated are not, and cannot easily become part of an interconnected area that provides drainage and flood storage; and
2. In all districts, where, due to parcel shape and interaction with topography, reshaping the wetland boundary is necessary to provide a reasonable building site, minor filling is permitted provided:
  - a. Less than ten (10) percent of the wetland area or less than two (2) acres, whichever is less, is disturbed.
  - b. High quality wetland areas are avoided.
3. In all districts, where the wetlands are less than one quarter (0.25) acre and not connected to a stream or drainage corridor.

**B. Mitigation Standards**

1. All fill and mitigation shall meet this Ordinance's requirements or a U.S. Army Corps of Engineers permit requirements, whichever are more stringent. In either case, a permit shall be required.
2. The site plan shall be reviewed to determine if the need for mitigation can be reduced or eliminated by development redesign.
3. All mitigation shall be calculated per acre of wetland filled as follows:

- a. Depressional, less than two (2) acres: one and one-quarter (1.25) acres of new wetland.
- b. Depressional, two (2) acres or more: one and one-half (1.5) acres of new wetland.
- c. Depressional wetland classified as high quality, regardless of size: two (2) acres of new wetland.

4. The wetland area shall be replanted using hydric prairie (grassland), emergent vegetation, swamp trees and shrubs, and suitable seed bank soils for the wetland form and type to be created. A wetlands biologist or other professional with experience in wetland creation shall certify the planting plan.

#### **SECTION 05.234 LAKE MIOLA WATERSHED STANDARDS**

Lake Miola is the City=s water supply reservoir. Its watershed area must be protected to limit the pollutant loading from all surrounding land uses. Its boundary shall be designated on the Zoning Map and shall have 300-foot waterbody buffers around the lake/reservoir and all stream channels up-stream of the lake. The following standards apply:

- A. The 300-foot buffer shall be planted in a mix of pasture grasses, prairie plants and trees (seventy [70] percent minimum coverage) to enhance the buffer=s absorption and filtering potential.
- B. In the area bounded by US 169, 287th Street, and Hedge Lane Road upstream of the dam, no septic systems shall be allowed. Elsewhere in the watershed, no septic systems shall be allowed within eight hundred (800) feet of the waterbody.
- C. Sewage lagoons shall only be allowed with the permission of the City and Kansas Department of Health and the Environment.
- D. Discharge from package plants shall be allowed in the Lake Miola watershed only with the permission of the City and Kansas Department of Health and the Environment.
- E. All developments shall maximize the amount of drainage conducted in natural swales rather than storm sewers. Stormwater systems= discharge to streams or watercourses shall be by sheet flow through a grassland or discharge into a wetland and then the stream.
- F. All detention shall either be entirely within dry basins or planted to become wetlands. If wet basins are to be used as amenities, two (2) additional wetland basins shall be required for filtering- a wetland basin filtering the initial inflow, and another filtering at least thirty (30) percent of total detention at the discharge end.
- G. Industrial and commercial parking shall install oil separation devices in their drainage system.

#### **SECTION 05.235 WATERBODY BUFFERS**

The waterbody buffers shall meet the following standards (see Section 05.234 for Lake Miola watershed standards):

**A. Lakes and ponds**

1. The buffer shall be planted in a mix of prairie plants and trees (forty [40] percent minimum coverage) to enhance the buffer=s absorption and filtering potential.
2. No septic systems shall be allowed within five hundred (500) feet of the waterbody.
3. All developments shall maximize the drainage amount conducted in natural swales rather than storm sewers. Stormwater systems= discharge to streams or watercourses shall be by sheet flow through a grassland or discharge into a wetland and then the stream.
4. Industrial and commercial parking shall install oil separation devices in their drainage system. All detention shall either be entirely within dry basins or planted to become wetlands. If wet basins are to be used as amenities, two additional wetland basins shall be required for filtering- a wetland basin filtering the initial inflow, and another filtering at least thirty (30) percent of total detention at the discharge end.

**B. Rivers and streams**

1. The buffer shall be planted in a mix of prairie plants and trees (fifty [50] percent minimum coverage) to enhance the buffer=s absorption and filtering potential.
2. No septic systems shall be allowed within five hundred (500) feet of the waterbody.
3. All developments shall maximize the drainage amount conducted in natural swales rather than storm sewers. Stormwater systems= discharge to streams or watercourses shall be by sheet flow through a grassland or discharge into a wetland and then the stream.

**SECTION 05.236 STEEP SLOPES**

The following practices shall be required when developing steep slope areas:

- A. Permits shall require all earth work to be conducted between April 6 and October 1. This practice will enable a ground cover to be established after work completion.
- B. A ground cover, as approved by Staff, shall be placed on all exposed surfaces prior to October 1, or as the work is completed prior to that date.
- C. All slopes exceeding twenty (20) percent or where water flows can be anticipated shall have a protective cover to hold the seed or plants in place. All protective covers shall be approved by Staff.
- D. All plant materials should be approved by Staff as suitable for the area's soils and exposure, growth, and coverage rate.

**SECTION 05.237 FORESTS**

Trees may be cut over a greater area than permitted in Table 05.210 only if mitigation is provided and the following standards are met:

- A. A tree survey of the site's forest is conducted. The best forests, in terms of percentage of climax vegetation, tree size, tree health, and habitat value, shall be preserved. The mitigation purpose shall be either:

1. To permit large office type buildings typically requiring large areas. This purpose does not include grading the entire site, and parking should seek to preserve trees; or
2. To maintain forest through a residential development.

B. The protection level given forests shall not be less than that below:

1. Mature forest protection may be reduced from sixty (60) percent to fifty (50) percent with mitigation.
2. Young forest protection may be reduced from forty (40) percent to twenty (20) percent with mitigation.

C. The land on which the mitigation is to occur may be on site where adequate land is available to achieve the required mitigation level. The land on which mitigation is to occur may be off site if within an approved mitigation bank area for upland mitigation. All land used for mitigation shall be placed under a conservation easement as permanent open space.

D. Mitigation shall include planting one acre of new woodland for every one (1) acre of disturbed mature or young forest for which mitigation is required.

E. The plant material in the mitigation area shall be determined based on a tree survey of the disturbed area (Table 05.237 E.).

Table 05.237E. STANDARDS FOR FOREST REPLACEMENT		
DBH of Canopy Trees Removed	Replacement Canopy Trees	
	Amount	Caliper
36" or larger	5	3"
24" -35"	3	3"
16" - 23"	3	2.5"
8" - 15"	2	2.5"
4" - 8"	1	2"
undesirable species	2	6 ft. whips
area requirement per acre	40	4 ft. whips

F. The plant species used in mitigation shall be similar to those destroyed.

## SECTION 05.238 DRAINAGEWAYS

In addition to the open space protection, the drainageway area protected shall be kept open to provide continuous drainage corridors. Positive surface drainage in these areas shall be preserved. The protected area may be regraded and reshaped to provide for stormwater detention and drainage. The following standards shall apply:

- A. The drainageways shall be used as a natural positive surface drainage system. Any filling shall keep the drainageway continuous. Enclosed storm drainage to connect areas of drainageways shall be prohibited, except that culverts shall be installed at all road crossings.
- B. The areas shall be restored to a natural state using seed mixes as recommended by the agriculture extension agent.
- C. Where the protected area is to be used for a permitted open space use (Table 05.220), the use shall not interrupt the positive surface drainage flows.
- D. The following standards shall govern the design of detention or surface drainage systems in drainageways:
  1. The drainage shall be designed to slow the time of concentration on the site and retain maximum ground infiltration.
  2. Where flows permit, the channels shall be designed as grassed swales, wetlands, or mesic grasslands encouraging sheet flow, except in forests.
  3. In forests, narrow winding channels shall be used to reduce velocity and avoid trees.
  4. All wet basin retention ponds shall be designed to have natural edges using approved plant materials from Staff lists.
- E. The homeowners association shall maintain the drainageway to provide free movement of water and prevent flooding. The City may inspect these areas from time to time and require maintenance.

#### **DIVISION 05.300 STANDARDS FOR OPEN SPACE USES**

Various open space uses (see Table 05.220) are limited or conditional in nature. These uses present potential threats to the natural resource involved. This Division sets forth the standards required for approval. If present, limited or conditional use standards established in Table 03.110 A. still apply.

#### **SECTION 05.310 ENVIRONMENTAL IMPACT ASSESSMENT REPORT**

All conditional approvals of open space uses (see Table 05.220) requiring submitting an environmental impact assessment report shall have the report prepared by persons trained in the fields of biology, ecology, soil science, forestry, or other relevant professions. Mitigation cannot be used where the conflict can be avoided or minimized. The report shall contain the following criteria, given in order of preference:

- A. **Avoidance.** For such use, alternative sites or routes shall be identified that would not damage the resource or result in less resource damage. Reasons shall be provided explaining why using these sites is impossible or infeasible versus that proposed.

- B. **Minimization.** The applicant shall demonstrate that the plan minimizes the impact of the activity, route, or use on the resource. The applicant shall also demonstrate that the areas impacted shall be the lowest quality and result in the least damage to the resource.
- C. **Mitigation.** A mitigation plan shall be submitted indicating mitigation activities. Replacement is the most acceptable form of mitigation. However, mitigation can include restoration and enhancement after the use is abandoned. Mitigation by replacement on another site shall be at a ratio of two to one (2:1). Mitigation may also include enhancement; this ratio shall be four to one (4:1).

#### **SECTION 05.320 COMMERCIAL KENNELS AND STABLES**

Commercial kennels and stables shall be permitted in the floodplain, provided the only element in the floodplain is outdoor enclosures and the enclosures are designed with a shelf upon which animals can take shelter that is located at least one (1) foot above the flood elevation. In no event shall the outdoor enclosures be located where there would be a depth of water exceeding two (2) feet. All other structures shall be outside the floodplain.

#### **SECTION 05.321 NURSERIES**

Nurseries in the floodplain and floodway shall be permitted. The area shall be disconnected from adjoining wetland areas and separated by a dike to control the water flow or sediment movement from the nursery to the surrounding wetlands. The following shall be required:

- A. A water control structure shall permit backflow into the nursery area.
- B. Water shall be discharged through a channel, grassed channel, or new wetland.

#### **SECTION 05.322 GOLF COURSES**

Golf courses shall be permitted on floodplains, wetlands, steep slopes, and forested areas provided that the following standards are met:

- A. **Floodplains.** Golf courses shall be permitted provided that there is no change in the flood elevation due to the construction. Tees and greens shall be above flood elevation.
- B. **Wetlands.** These shall be preserved. The course shall be designed so that wetlands are natural hazards. No filling will be permitted.
- C. **Steep slopes.** Areas of protected steep slope may be used as part of the golf course provided this does not involve the cutting of forest cover. If natural grass cover is to be disturbed, the earth work should be finished in less than sixty (60) days and a new vegetative cover installed immediately. Erosion control matting shall be used to reduce erosion and prevent the seed from washing out.
- D. **Forests.** No area of protected forest shall be used for golf courses if the tree cover is to be disturbed. Areas of mature forest where the trees are to remain may have undergrowth removed and be seeded in grass.

### **SECTION 05.323      PLAYING COURTS AND POOLS**

The playing courts shall be designed and located so as not to trap debris resulting in floodwater backups. No fill shall be permitted. Parking areas shall be gravel, or pervious paving blocks or grids. Paving shall not exceed five (5) percent of the floodplain area.

### **SECTION 05.324      TRAILS**

All trails in wetlands shall be elevated walkways. There shall be a minimum of eighteen (18) inches of clearance of the structure above the normal high water elevation.

### **SECTION 05.325      PUBLIC/PRIVATE ROADS AND SEWER/WATER**

Disturbances of resources with roadways or utility lines and easements shall be discouraged. The applicant must demonstrate no feasible alternative to crossing the resource exists and the route selected is the least disruptive.

### **SECTION 05.326      ESSENTIAL ACCESS**

Essential access shall be permitted only upon finding (in the Environmental Impact Assessment Report) that the access cannot avoid crossing waterbodies or floodways. If several properties in the area suffer the same problem, then the essential access shall be designed to serve all properties, and access easements shall be provided. Staff shall make every effort to gain the cooperation of all property owners, including financial sharing of costs. If adjoining property owners do not cooperate, the landowner making the improvements may submit a certified billing on the cost of the access. Subsequent essential access requests in the area shall be denied. The landowners shall be required to use the initial access and pay for their share of the documented expenses based on the number of dwellings or lots served.

### **SECTION 05.327      PUBLIC INTEREST AND SPECIAL INTEREST EVENTS**

Public interest and special events may involve significant numbers of people, equipment, and temporary structures; they may be permitted in the floodplain and floodway when Staff can determine that flooding during the event is unlikely. Such determination is accomplished by calculating the concentration time required for a 100-year storm to flood the property. No permit shall be issued if the time of concentration is less than four (4) hours. In no case shall a permit be issued if the depth of water would exceed two (2) feet. A preliminary permit may be issued up to one hundred (100) days prior to the event. The final permit may be revoked if the Zoning Officer determines that stream flow conditions and weather conditions are favorable for flooding.

## ARTICLE 06

### LANDSCAPING, PARKING, AND LOADING STANDARDS

#### DIVISION 06.000 PURPOSE

This Article provides landscaping, parking, and loading standards.

#### DIVISION 06.100 LANDSCAPING

##### SECTION 06.110 REQUIRED LANDSCAPING

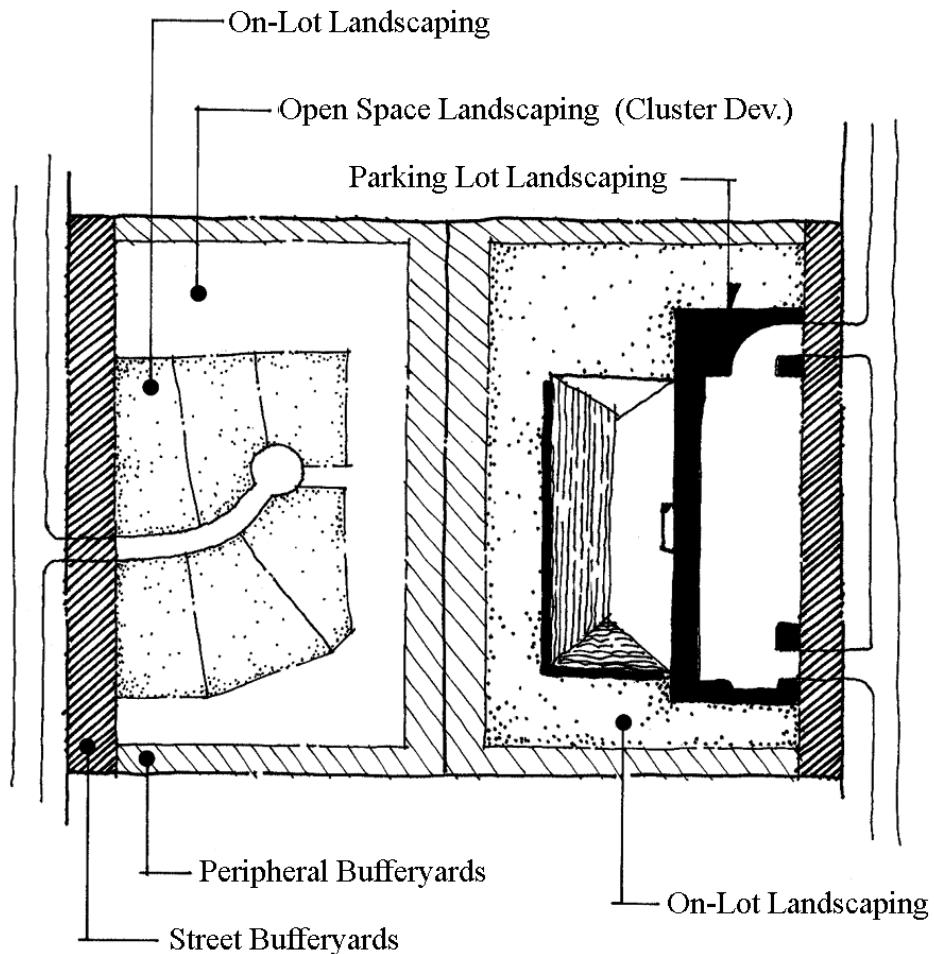
- A. Landscaping is required on lots, in parking areas, in open spaces, along roads and streets, as a buffer between certain specified uses, and as a buffer between zoning districts.
- B. Figure 06.110 shows how a property is divided into areas for peripheral bufferyards, street bufferyards, on-lot landscaping, open space landscaping, and parking lot landscaping. Each area must be measured to determine the amount of landscaping required. **The landscaping areas do not overlap.**
- C. Most landscaping standards are in plant units -- a combination of canopy, understory, evergreen trees, and shrubs. Planting and maintenance standards and alternative plant units are contained in Figure 13.110.
- D. All landscape material shall be maintained in accordance with Section 13.220.

##### SECTION 06.120 LANDSCAPING STANDARDS FOR LOTS AND PARKING LOTS

Table 04.110 A. establishes the required landscaping for the landscaped area of each lot and in parking lots. The landscaped area standards apply only to those areas of the lot or property not covered by buildings, road rights-of-way, open space, parking, or bufferyards. The parking lot standard applies to the parking area.

- A. Table 04.110 A. lists nonresidential landscaping requirements in plant units per acre. Residential landscaping is given in plant units per lot or dwelling unit.
- B. Parking lot landscaping shall be one (1) plant unit per number of parking spaces specified in Table 04.110. A. Any parking lot having fifty (50) percent or less than the number listed is exempt from the requirement to provide parking lot landscaping.

**Figure 06.110  
LANDSCAPING AREAS**



**SECTION 06.130 LANDSCAPING STANDARDS FOR REQUIRED OPEN SPACE**

All areas of open space shall be landscaped using one of the following landscape treatments:

- A. Areas presently covered with natural vegetation shall be maintained in that natural state. If maintained as a meadow, the area shall be mowed at least twice a year.
- B. Open space areas intended to be a mowed lawn, except those used as sports fields or other recreational uses otherwise paved or surfaced, shall be planted with a minimum of four (4) plant units per acre. Golf courses shall provide three (3) plant units per acre.
- C. Areas disturbed but scheduled to be returned to natural conditions shall be planted as forest (afforestation) or wetland.

## **DIVISION 06.200      BUFFERYARD PERFORMANCE STANDARDS**

This Division provides standards for bufferyards between uses and districts, and for special purposes.

### **SECTION 06.201      PURPOSE**

Bufferyard requirements are designed to ameliorate nuisances between certain adjacent zoning districts or land uses. Bufferyards function to eliminate or minimize potential nuisances such as dirt; litter; noise; glare of lights; unsightly buildings, parking areas, or signs; and/or large changes in scale. Bufferyards also provide spacing to reduce danger from fires or explosions. Bufferyards serve a similar function between streets and various land uses.

### **SECTION 06.202      BUFFERYARDS REQUIRED**

Bufferyards shall be located along the outer perimeter of a lot or parcel; they shall extend to the lot or parcel boundary line. Bufferyards shall not be located on any portion of an existing or dedicated public or private street or right-of-way, except when specifically noted as street buffers. Bufferyards are required, as indicated in Table 04.110 A., under the following conditions:

- A. Along a district boundary where adjoining properties are in different zoning districts.
- B. Along a property boundary within the same zoning district.
- C. Along all streets, where no buffer is required by A. or B. above.

### **SECTION 06.210      OPACITY VALUES OF REQUIRED BUFFERYARDS**

- A. Table 04.110 A. lists the opacity levels of the peripheral bufferyards required under specified conditions. Opacity levels present the buffering level to be provided by the use. Table 13.140 specifies the number of plant units required to achieve a level of opacity. A bufferyard that meets the opacity rating specified in Table 04.110 A shall be approved as part of the plat or land development approval.
- B. Where the adjoining use was built prior to this Ordinance's adoption date, the total bufferyard required of both uses shall be provided by the proposed use. Various uses are required to have additional buffers by Table 03.110 A. Also, where parking lots abut residential uses within a zoning district, bufferyards meeting the standards of Section 06.220 shall be provided.
- C. Security up to the cost of the bufferyard may be required. The zoning officer shall verify that it is in place prior to any occupancy permits being issued. If buildings are completed at a time of the year where planting cannot be accomplished, the zoning officer may issue a temporary occupancy permit and hold the security until the landscaping is completed.

### **SECTION 06.220      PARKING BUFFERYARDS REQUIRED**

Parking bufferyards are required where parking areas abut an existing residential use within an established district. Table 13.140 lists parking buffer options. Parking buffers shall conform with the following:

- A. Where no buffer is required by Table 04.110 A., the parking buffer shall be installed.
- B. When a buffer is required by Table 04.110 A., the parking buffer may be required. The following standards apply:
  - 1. Where the bufferyard has a fence equivalent to a four (4) foot fence with one hundred (100) percent opacity or a four (4) foot berm, no parking buffer shall be required.
  - 2. Bufferyards with opacities of one-half (0.50) or greater do not require a parking buffer.
  - 3. Where a wall or hedge is part of the parking buffer selected, the number of each plant unit item (canopy, evergreen, understory, and shrubs) shall be the greater number of those required for the parking buffer and the district or street buffer.
- C. Parking buffers shall not be required in the interior of a residential development, however the planning commission shall review the plat and landscape plan to insure that site landscaping provides for protection where needed.

#### **SECTION 06.230 SPECIAL BUFFERS REQUIRED**

Where indicated in Table 04.110 A., special buffers may be required for selected uses under certain conditions. Uses that adjoin a public or private school, County Hospital, City Administration, County Administration, Ursuline Academy, or Lakemary shall be reviewed individually to determine if a buffer having a maximum opacity of 0.4 shall be required or whether the proposed landscaping and building design is adequate without additional buffering. Also, commercial uses with floor areas above sixty thousand (60,000) square feet may be required to increase buffers to 0.4 opacity. The following shall be used to evaluate the buffer:

- A. The scale of the adjoining uses. Where the scale difference of the buildings is greater than ten (10), buffering shall be required.
- B. Where architecture is very different, contrasts, conflicts, or distracts from the quality of the existing building, buffering shall be required.
- C. Where mechanical equipment is visible, screening shall be required architecturally and/or in the bufferyard.
- D. Where signs, lighting, or loading areas are a detraction from the adjoining public use, bufferyards shall be required.
- E. Where bufferyards or special buffers are required, the latter developer shall be required to install the bufferyard/special buffer.

#### **SECTION 06.240 BUFFERYARD USE**

A bufferyard may be used for passive recreation. It may contain pedestrian, bike, or equestrian trails, provided the plant material amount is not reduced because of the trail, the total width of the bufferyard is maintained, and all other Ordinance regulations are met. However, in no event shall swimming pools, tennis courts, sports fields, or other such uses be permitted in bufferyards. Where a golf course is installed in the bufferyard location, it shall be considered an adequate bufferyard provision.

## **DIVISION 06.300 PARKING**

This Ordinance recognizes that roads are a public investment paid for by all citizens, not just those whose properties front the road. This Division requires off-street parking areas for land uses. These requirements lessen congestion on streets and ensure an adequate supply of parking and loading spaces for customers within a reasonable distance.

### **SECTION 06.310 OFF-STREET PARKING REQUIRED**

All uses shall be required to meet the off-street parking standards set forth in Table 03.110 A. or B. The following general requirements shall govern off-street parking provisions and maintenance:

- A. **Change of Use.** Should a lot or building owner or occupant change the use of said lot or building, the new use shall conform with this Ordinance's off-street parking provisions.
- B. **Storage Prohibited.** Required off-street parking spaces shall be available for operable passenger automobiles of the residents, customers, patrons, and employees of the use to which they are accessory. Storing materials or inoperable vehicles, or parking trucks or trailers, shall be prohibited.
- C. **Vehicle Work Prohibited.** No major vehicle work of any kind shall be permitted in conjunction with off-street parking facilities.

### **SECTION 06.320 OFF-STREET PARKING STANDARDS**

Table 03.110 A. specifies the minimum number of parking spaces required for each use type. When the number of required off-street parking spaces results in a fractional space, the fractional space shall be counted as one (1) parking space. If several uses occupy a single parcel or building, the off-street parking and loading requirement shall be the additive total for all these parcel's or building's uses. Uses not listed shall have their parking requirements determined by Staff based on most similar use(s) or studies.

### **SECTION 06.321 SPECIAL STUDY**

Where Table 03.110 A. calls for a special study, or where a developer believes the parking requirements are inappropriate for the proposed use, a special study conducted by a transportation planner or engineer citing similar uses and based on a detailed analysis of the proposed use may be submitted at the developer=s expense. The City may substitute or rely on the special study for that specific property. The Planning Commission may require reserve space for additional parking if they believe there is a high probability the use could change and require the normal amount of parking spaces.

### **SECTION 06.322 MIXED USES AND SHARED PARKING**

Where a building is a mixed use structure, or where a combination of uses is such that uses with very different parking requirements are in the same complex or building, the uses' off-street parking requirements shall be calculated individually. However, in some instances, the uses may have very different hours of operation reducing the parking need; the uses can share parking spaces. In other cases, particular land uses may be able to reduce the need for parking due to a synergistic relationship. A special study shall document the parking needs. The Planning Commission may require open area be placed in reserve if they are not convinced all needs can be met at the reduced level.

## **SECTION 06.323      ON-STREET PARKING**

In the D District, the developer may deduct from the required parking their share of on-street parking spaces, parking around the Square, and City lot parking in accordance with the following formula:

$$\text{Parking Credit} = S_a \times P$$

where  $S_a$  = Share of the area in the D District less the area of the Square and the County Building.

$P$  = Total parking spaces on streets and in City lots. (February 1997 totals were 151 parking spaces in lots around the square and 385 spaces in the Downtown District.) Developers may get current counts from the City or provide a Downtown District total by survey.

## **SECTION 06.324      OFF-STREET PARKING**

- A. Parking shall be setback behind any required buffer area or as specified in Table 04.110A. All parking spaces, aisles, and turning areas shall be located entirely within the served property's lot lines and shall not encroach on any road, driveway, or other public right-of-way. No parked vehicle shall overhang any road, sidewalk, access driveway, or public right-of-way.
- B. Parking or overflow parking may be located off-site or in common parking areas subject to the following rules:
  1. Single-family homes shall have all parking other than overflow parking on lot, except town houses and atrium homes may opt to use off-site parking.
  2. Multi-family dwelling units shall have all off-street parking located within one hundred eighty (180) feet of the building being served. This provision also applies to town houses or atrium homes that choose to use off-site parking.
  3. For all other uses, all off-street parking shall be located within six-hundred (600) feet of the building being served.

## **DIVISION 06.400      OFF-STREET LOADING**

### **SECTION 06.410      OFF-STREET LOADING STANDARDS**

All uses shall provide off-street loading as required by Table 03.110 A. However, existing buildings shall be exempt from this Section's provisions if installation is impossible.

## ARTICLE 07

### SIGN REGULATIONS

#### DIVISION 07.000 PURPOSE

This Article's purpose is to regulate sign placement, size, lighting, and other factors to preserve the desired community character and avoid confusing and cluttered streetscapes. This Article permits signs necessary to communicate land use information and increase a use's ability to be easily located. **See Article 23 for sign definitions.**

#### DIVISION 07.100 SIGN STANDARDS

This Division establishes minimum regulations for the display of signs.

#### SECTION 07.101 APPLICABILITY

- A. Any sign shall, by definition, be a structure. After the effective date of this Ordinance, no sign shall be erected, enlarged, constructed or otherwise installed without first obtaining a sign permit, unless otherwise exempted in this Article. A sign permit shall be legally issued only when in compliance with this Article. A signage plan shall be furnished to the Zoning Officer in the application for a sign permit for all signs (See Section 07.103).
- B. No land or building or structure shall be used for sign purposes except within the stipulated districts listed in Table 07.210 and specified herein.
- C. All signs legally existing at the time of passage of these regulations may remain in use under the conditions of legal non-conformance (See Article 09). Signs in legal non-conformance shall not be enlarged, moved, lighted, or reconstructed; however, the change of the advertising display shall not be restricted except as previously stated.
- D. All signs shall be constructed in such a manner and of such materials that they shall be safe and substantial. Where the sign structure extends over a pedestrian walkway, an annual inspection shall be required.
- E. The fee for a sign permit shall be required according to the City Fee Schedule.

#### SECTION 07.102 TOTAL EXEMPTIONS

- A. **Total Exemptions.** The following signs shall be exempt from the requirements of this Article, except for the provisions of Section 07.104 and 07.220.
  1. Signs of a duly constituted governmental body, including traffic or similar regulatory signs, legal notices, warnings at railroad crossing and other instructional or regulatory signs having to do with health, safety, parking, swimming, dumping, etc.

2. Memorial signs and tablets displayed on public or private property.
3. Small signs, not exceeding three (3) square feet in area, displayed on private property for the convenience of the public, including signs to identify entrance and exit drives, parking areas, one-way drives, restrooms, freight entrances, and other similar signs.
4. Score boards in athletic stadiums.
5. Political campaign signs, not exceeding four (4) square feet in area, displayed during no more than a four-week period preceding and a one-week period following an election.
6. Temporary signs for the sale of household goods at a residence (garage sales) for a period not to exceed three (3) days.
7. Temporary signs making a public announcement (support of a local team, birth, anniversary, etc.) for a period not to exceed three (3) days.
8. Holiday or seasonal displays, provided no prohibited elements are included. Lighting with individual bulbs not exceeding five (5) watts or moving elements and do not constitute a nuisance or safety hazard.
9. Wall, ground, and projecting signs, not exceeding twelve (12) sq. ft. in area, associated with a valid home occupation. No other type of temporary or permanent signage is permitted for a home occupation. (Ordinance # 2712, 11/24/99)

B. **Exemptions from Sign Permit.** The following signs are exempt from the sign permit section of this Article, but shall comply with all of the other regulations imposed by this Article.

1. Flags or emblems of a governmental or of a political, civic, philanthropic, educational or religious organization, displayed on private property.
2. Name plate signs not exceeding two (2) square feet in gross area accessory to a single-family or two-family dwelling.
3. Bulletin board signs not exceeding 100 square feet in gross area accessory to a church, school or public or non-profit institution.
4. Business signs when located on property used for agricultural purposes and pertaining to the sale of agricultural products produced on the premises.
5. Real estate signs not exceeding six (6) square feet in area.
6. Construction signs not exceeding sixteen (16) square feet in area.
7. Banners or flags as provided in 07.216 BANNER SIGNS. (Ordinance # 2712, 11/24/99)

## **SECTION 07.103 SIGNAGE PLAN REQUIRED**

A signage plan shall be submitted with the Sign Permit. For shopping centers, office parks, industrial parks, residential subdivision, or development on a pedestrian precinct, a signage plan shall be submitted which shows signage in the context of proposed building elevations. Such plans should encourage a unified approach to signage throughout the development. The signage plan shall include, in addition to other materials which may be required, scaled drawings of the sign and manner of support, including building elevations. (See Division 15.400 on design review.)

## **SECTION 07.104 SIGNS PROHIBITED IN ALL DISTRICTS**

The following are signs prohibited in all districts:

- A. Fluttering, rotating, undulating, flags, strings, or banners used to attract attention to a use; outline, define, or cover sales areas or displays, or decorate buildings or grounds; and made out of paper, fabric, plastic, or other flexible materials, except as permitted on holidays (See Section 07.102. A.8 and as provided in section 07.216). (Ordinance # 2712, 11/24/99)
- B. Off-premise/Advertising Signs.
- C. Travelers Convenience Signs, except as approved by the Zoning Officer. These exceptions shall only be permitted along K-263 (Baptiste Dr.) within 1/4 mile of the US 169 exit ramps at a maximum of 1 sign per ramp. Exceptions shall be consistent with the Kansas Department of Transportation's design standards for similar signs on state roadways.
- D. Any illuminated sign on which the artificial light is not constant in intensity and color at all times. For the purpose of this Article, any revolving, rotating, moving, animated, signs with moving lights or signs which create the illusion of movement shall be considered as a flashing sign. A sign which displays the current time and/or temperature by use of intermittent lighting shall not be deemed a flashing sign if the lighting changes are limited to text indicating time, temperature or other public messages. Such sign shall not in any case exceed 32 square feet in area.
- E. Portable Signs. Unless otherwise permitted in Section 07.102.

## **DIVISION 07.200 PERMITTED SIGNS AND STANDARDS**

### **SECTION 07.210 PERMITTED SIGNS**

No use shall be permitted signage, except as provided in this Section. Each use shall be permitted at least one (1) sign. Table 07.210 indicates the type of signs permitted for uses by district type as follows:

- A. Y = A sign that is permitted and regulated independently of other sign types.
- B. O = All optional signs are permitted signs, any combination may be used at the owner's discretion provided he/she meets the standards of Table 07.210 and Section 07.220.
- C. N = Not permitted.

## **SECTION 07.215 MULTIPLE BUILDING/TENTANT DEVELOPMENT SIGNS**

In the case of a unified development consisting of multiple buildings (attached or freestanding) or multiple tenants in a single building, one detached ground sign may be permitted identifying the entire center. The sign shall not exceed 20 feet in height and the sign face shall not exceed 100 square feet in area.

One wall sign shall be allowed for each business or commercial establishment in a unified development and shall be located on the facade of the tenant space. Each tenant sign may not exceed 10% of the front facade of the space the tenant occupies. In cases where one or more tenants do not have a front facade, a comprehensive sign plan must be submitted for the entire development. (Ordinance #2772, 03/13/01)

## **SECTION 07.216 BANNER SIGNS**

Not more than two banners bearing announcements are permitted per each business establishment, organization, school, or church, provided that not more than one banner is permitted for each exterior facade or permanent structure. The banner shall be attached at all corners flat against the building wall or other permanent existing solid building structure (e.g. a fence). Banners measuring four (4) feet by eight (8) feet are exempt from requirements to obtain a sign permit. A sign permit is required for banners larger than four (4) feet by eight (8) feet. The permit shall be issued free of charge, the banner shall be counted toward the total banner limits, and the banner may be displayed for a maximum of one month from the date of issuance of the permit. For the purposes of this section, a business establishment is defined as having an exterior door for customer access. The intent is to prohibit a separate banner to be displayed by a small business that operates from inside another building or business. However, the banner(s) allowed for the building may advertise the smaller business' good or services.

Flags attached to a rope or similar line may be mounted on residential property that is featured for an open house or commercial property featured for a Grand Opening or other similar event (maximum display time 72 hours). Such flags are also permitted for automobile sales lots without limitation as to time.

Banners, flags, strings, or other attention attracting devices used for holiday displays shall meet the provisions of Section 07.102 A.8.

Banners and/or flags that are torn, faded, or in general disrepair constitute a nuisance and shall be removed. (Ordinance # 2712, 11/24/98)

## **SECTION 07.220 GENERAL SIGN REGULATIONS**

The following general regulations shall apply to all signs:

### **A. Illuminated Signs.**

1. Illuminated signs shall be designed as to reflect or direct light away from any residential dwelling district.
2. Lighted signs in direct vision of a traffic signal shall not be in red, amber, or green illumination.

- B. **Accessway or Window.** No sign shall block any required accessway or window.
- C. **Signs on Trees or Utility Poles.** No sign shall block any required accessway or window.
- D. **Metal Signs.** All metal signs shall maintain a free clearance to grade of nine (9) feet. Accessory lighting fixtures attached to a non-metal frame sign shall also maintain a clearance of nine (9) feet to grade. No metal ground sign shall be located within eight (8) feet vertically and four (4) feet horizontally of electric wires or conductors in free air carrying more than 48 volts, whether or not such wires or conductors are insulated or otherwise protected.
- E. **Traffic and Pedestrian Safety.**
  - 1. No sign shall be maintained at any location where by reason of its position, size, shape or color, it may obstruct, impair, obscure, interfere with the view of, or be confused with any traffic or railroad control sign, signal or device, or where it may interfere with, mislead, or confuse traffic.
  - 2. Any sign located within three (3) feet of a driveway or within a parking area shall have its lowest elevation at least ten (10) feet above the curb level; however, in no event shall any sign except wall signs and awning/canopy, or projecting signs be placed so as to project over any public right-of-way.
  - 3. Under no circumstances shall any sign be placed in the sight triangle as defined by Section 11.260.
  - 4. The lowest element of any projecting, awning canopy or marquee sign shall be at least seven feet six inches (7'6") above any sidewalk or other walkway.

**Table 07.210**  
**PERMITTED SIGNS AND STANDARDS**

Zoning District & Development Type	Sign Type Permitted						
	Freestanding		Projecting	Wall	Awning Canopy	Bulletin Board Marquee	Roof
	Ground	Pole					
<b>Estate (E)</b>							
Single-Family Conventional	Y	N	N	Y	N	N	N
Equestrian	Y	N	N	Y	N	N	N
Single-Family Cluster	Y	N	N	Y	N	N	N
Planned	Y	N	N	Y	N	N	N
Institutional Residential	Y	N	N	Y	N	Y	N
All Other Uses	Y	N	N	Y	N	N	N
<b>Suburban (S)</b>							
Single-Family Conventional	Y	N	N	Y	N	N	N
Single-Family Cluster	Y	N	N	Y	N	N	N
Planned	Y	N	N	Y	N	N	N
Manufactured Home Park	Y	N	N	Y	N	N	N
Institutional Residential	Y	N	N	Y	N	Y	N
All Other Uses	Y	N	N	Y	N	N	N
<b>Suburban Commercial (SC)</b>							
Planned	Y	N	N	Y	O	O	N
Institutional Residential	Y	Y	N	Y	O	O	N
Shopping Center	Y	Y	N	Y	O	O	N
Retail	Y	Y	Y	Y	O	O	N
Office and All Other Uses	Y	Y	Y	Y	O	O	N
<b>Thoroughfare Access (TA)</b>							
Single-Family Conventional	Y	N	N	Y	N	N	N
Single-Family Attached	Y	N	N	Y	N	N	N
Planned	Y	N	N	Y	O	O	N
Multi-Family	Y	N	N	N	O	O	N
Manufactured Home Park	Y	N	N	N	O	O	N
Institutional Residential	Y	N	N	N	O	O	N
Retail	Y	Y	Y	Y	O	O	N
Offices/Services/ Commercial Lodging	Y	N	Y	Y	O	O	N
All Other Uses	Y	Y	Y	Y	O	O	N
Y = Allowed    N = Not allowed    O = Optional sign that may be used at owners discretion							

**Table 07.210**  
**PERMITTED SIGNS AND STANDARDS**

Zoning District & Development Type	Sign Type Permitted						
	Freestanding		Projecting	Wall	Awning Canopy	Bulletin Board	Roof Marquee
	Ground	Pole					
<b>Neighborhood Conservation (NC)</b>							
NC-R3 Single-Family	Y	N	N	Y	N	N	N
NC-R2 Single-Family	Y	N	N	Y	N	N	N
NC-R1	Y	N	N	Y	N	N	N
<b>Downtown</b>							
Single-Family Conventional	N	N	Y	Y	O	O	N
Single-Family Attached	N	N	Y	Y	O	O	N
Planned	N	N	Y	Y	O	O	N
Multi-Family	N	N	Y	Y	O	O	N
Institutional Residential	N	N	Y	Y	O	O	N
Retail	N	N	Y	Y	O	O	N
Offices/Services/ Commercial Lodging	Y	N	Y	Y	O	O	N
Assembly /Worship	Y	N	Y	Y	O	O	N
All Other Uses	N	N	Y	Y	O	O	N
<b>Business Park</b>							
Office - exterior ring	Y	Y	Y	Y	O	O	N
Industry - exterior ring	Y	Y	Y	Y	O	O	N
All Other Uses - exterior ring	Y	Y	Y	Y	O	O	N
Office - interior ring	Y	Y	Y	Y	O	O	N
Industry - interior ring	Y	Y	Y	Y	O	O	N
All Other Uses - interior ring	Y	Y	Y	Y	O	O	N
<b>Industry (I)</b>							
Industry	Y	Y	Y	Y	O	O	N
All Other Uses	Y	Y	Y	Y	O	O	N
Y = Allowed    N = Not allowed    O = Optional sign that may be used at owners discretion							

Amended by Ordinance #2732, 10/12/99

**TABLE 07.210**  
**PERMITTED SIGNS AND STANDARDS (continued)**

Zoning District	Signs Per Lot*	Maximum Gross Area	Maximum Height	Minimum Setback	Illumination**
<b>Estate (E)</b>	2	-- Home Occupation - 2 sf -- Bulletin Board/Marquee - 100 sf -- Ground - 50 sf -- Construction - 32 sf -- Real Estate - 6 sf provided that one sign not more than 100 sf in area announcing the sale of houses in a subdivision may be located in said development. Said sign shall be removed at the end of 3 years or when 75% of the lots are sold, whichever occurs sooner.	15'	Minimum Parking Setback (See Section 04.110)	Permitted
<b>Suburban (S)</b>	2	See Estate (E) District Standards	15'	Minimum Parking Setback (See Section 04.110)	Permitted
<b>Suburban Commercial (SC)</b>	3	-- Ground - 100 sf at minimum setback - 125 sf at 2 times the minimum setback -- Pole - 50 sf -- Wall - 10% of the sf of the front façade; all other facades 5%. -- See Section 07.215 for multiple business/tenant developments	15'	Minimum Parking Setback (See Section 04.110)	Permitted
<b>Thoroughfare Access (TA)</b>	3	-- Ground - 100 sf at minimum setback - 125 sf at 2 times the minimum setback -- Pole - 50 sf -- Wall - 10% of the sf of the front façade; all other facades 5%. -- See Section 07.215 for multiple business/tenant developments	Ground: 20' at minimum setback; 25' at 2 times the minimum setback Pole = 15'	Minimum Parking Setback (See Section 04.110)	Permitted
<b>Neighborhood Conservation (NC)</b>	2	See Estate (E) District Standards	15'	Minimum Parking Setback (See Section 04.110)	Permitted
<b>Downtown (D)</b>	2	-- Wall - 10% of the sf of the front façade; all other facades 5%. -- Ground - 50 sf	15'	None	Permitted
<b>Business Park (BP)</b>	2	See Thoroughfare Access (TA) District	Ground: See TA District Pole: 20'	Minimum Parking Setback (See Section 04.110)	Permitted
<b>Industrial (I)</b>	3	See Thoroughfare Access (TA) District	Ground: See TA District Pole: 20'	Minimum Parking Setback (See Section 04.110)	Permitted

## ARTICLE 08

### MODULATION AND BONUSES

#### **DIVISION 08.000 PURPOSE**

This Ordinance uses hard standards in many places because a completely flexible performance standard would be too lengthy or complicated to administer. In other cases, uncommon, yet logical, exceptions to a standard have been anticipated. Specific standards are identified that may be modulated pursuant to this Division.

#### **DIVISION 08.100 MODULATION STANDARDS**

#### **SECTION 08.110 REVIEW AND APPROVAL**

The Zoning Officer shall review all requests for modulation of standards against this Division. A report indicating the modulation approval shall be placed on file and indicated by a note on the final plat.

#### **SECTION 08.120 CONSTRUCTION ENVELOPES**

The site capacity calculations and net densities in Article 04 and Article 05 assume all of a residential lot will be disturbed during development. This Section provides the rules by which resource protection is permitted to occur *on a lot*. It is permitted only when the minimum lot size exceeds twenty thousand (20,000) square feet. All eligible lots shall place a conservation easement over the resource area in question, restricting the use of that land to open space uses and prohibiting the clearing, cutting, or disturbing of vegetation. All construction envelope developments shall follow this Section's standards.

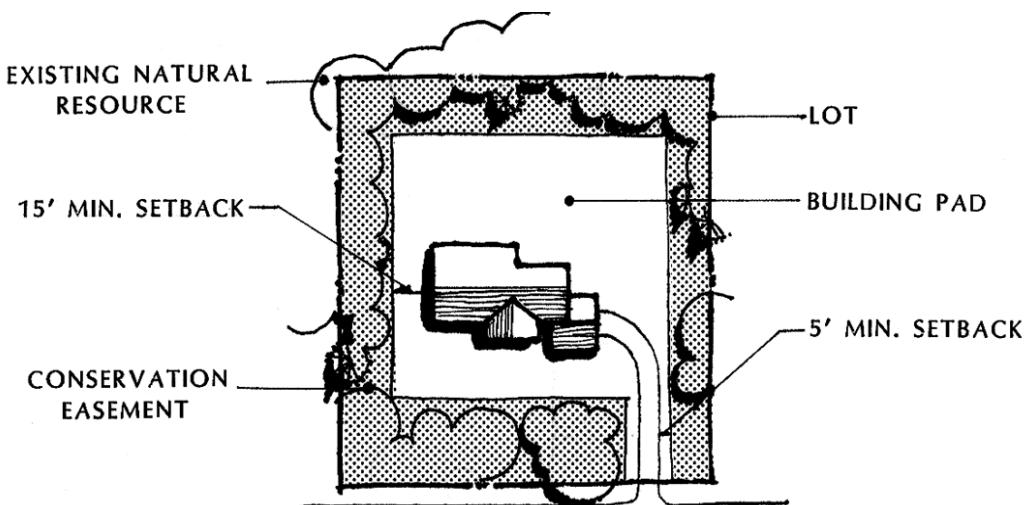
- A. The net density in Table 08.120 shall be substituted for that in Table 04.110 A. based on the size of the maximum area of the construction envelope used in the development.
- B. The construction envelope may occupy no more than seventy-five (75) percent of the lot.
- C. All lot construction and clearing shall be confined to the construction envelope including buildings, decks or patios, driveways, lawns, pools, tennis courts, septic tanks and tile fields, and utility access. The construction envelope shall be extended fifteen (15) feet from the foundation and five (5) feet from any other area to be developed or disturbed to provide for machinery and earth movement. The construction envelope shall be fenced to prevent equipment from intruding into the conservation areas. Figure 08.120 shows the relationship between the lot, construction envelope, and conservation areas on a lot.

**Table 08.120  
CONSTRUCTION ENVELOPE NET DENSITIES**

Maximum Envelope Area (s.f.)	Net Density	Minimum Lot Area
10,000	2.17	20,000 sf.
15,000	1.51	20,000 sf.
20,000	1.16	1 ac.
25,000	0.95	1 ac.
30,000	0.80	1 ac.
40,000	0.61	2 ac.
50,000	0.49	3 ac.
60,000	0.41	3 ac.
80,000	0.31	3 ac.

D. The Zoning Officer shall inspect for damaged trees in the conservation easement before occupancy and shall require mitigation for those trees damaged. The mitigation rate shall be three (3) trees, five (5) to six (6) feet in height, for each tree damaged; new trees may be bare-root plants.

**Figure 08.120  
LOT WITH CONSTRUCTION ENVELOPE**



## **SECTION 08.130      BUFFERYARDS**

The standards in Table 13.140 have been tested to ensure they meet the opacity standard. Numerous other mixes can meet the standard. The bufferyard calculation (or the Kendigsoft Bufferyard Model) provided in Section 13.141 can be used to design an individualized buffer that meets the required opacity standard.

## **SECTION 08.140      STREET YARD SETBACKS**

The street yard is normally kept free of structures; however, landscaping or variations in setback can reduce the need for the setback. In other cases, building form may dictate a different type of setback.

A. **Single-family and Lot Line.** A combination of landscaping and facades that are articulated or staggered to give the sense that setbacks are varied can provide an environment equal to that in which all houses sit exactly on the setback line. The setback may be reduced where the following are met:

1. Building construction envelopes are described for each lot to provide a streetscape with varied building locations.
2. In addition to the street buffer requirements (Table 04.110 A.), one plant unit per two hundred (200) feet of street frontage shall be placed in the right-of-way or first ten (10) feet of the lot.
3. Where the setback in Table 04.110 A. is greater than thirty-five (35) feet, the setback shall average ten (10) percent less than that specified in Table 04.110 A. No single lot setback reduction shall be greater than a thirty (30) percent.
4. Where the setback in Table 04.110 A. is thirty-five (35) feet or less, the development's setbacks shall average the setback listed in Table 04.110 A. No single lot setback reduction shall be greater than twenty (20) percent.
5. This provision shall only be used along the development's internal streets, not where facing single-family homes across a street.

B. **Adjoining Lots Are Nonconforming.** In older parts of the City, setbacks may not conform or may vary from lot to lot. In these areas, the Zoning Administrator may approve unique setbacks under the following conditions:

1. Where forty (40) percent of the lots on a block face are nonconforming, the unit may be set back as so to blend in with the average distance of the existing nearby structures.
2. Where existing block faces are all nonconforming, the Zoning Administrator, upon determining local conditions, shall determine the setback.
3. The front wall of the house shall be at the minimum setback line. The garage shall have a minimum setback of 25'.

(Ordinance 2789, 11/27/01)

C. **Side Loading Garages.** Side loading garages located in front of the house shall be permitted on single-family detached house lots listed as fifteen thousand (15,000) square feet in Table 04.110 A. The setback for such garages may be reduced, provided the following are met:

1. Side load garage setbacks shall be a minimum of fifteen (15) feet.
2. One (1) plant unit shall be installed for each side load garage in the area between the garage and the right-of-way.
3. Within a development, no more than forty (40) percent of the total lots may be side load garages. No more than three (3) adjacent lots may contain side load garages. The orientation shall be broken-up so that garages do not all face the same direction.

#### **SECTION 08.141 PATIO AND ATRIUM DWELLING UNITS**

The wall enclosing these lots may be eliminated or reduced in height or opacity where the unit faces open space. The street yard should be varied to avoid monotony. The following rules govern wall modulation:

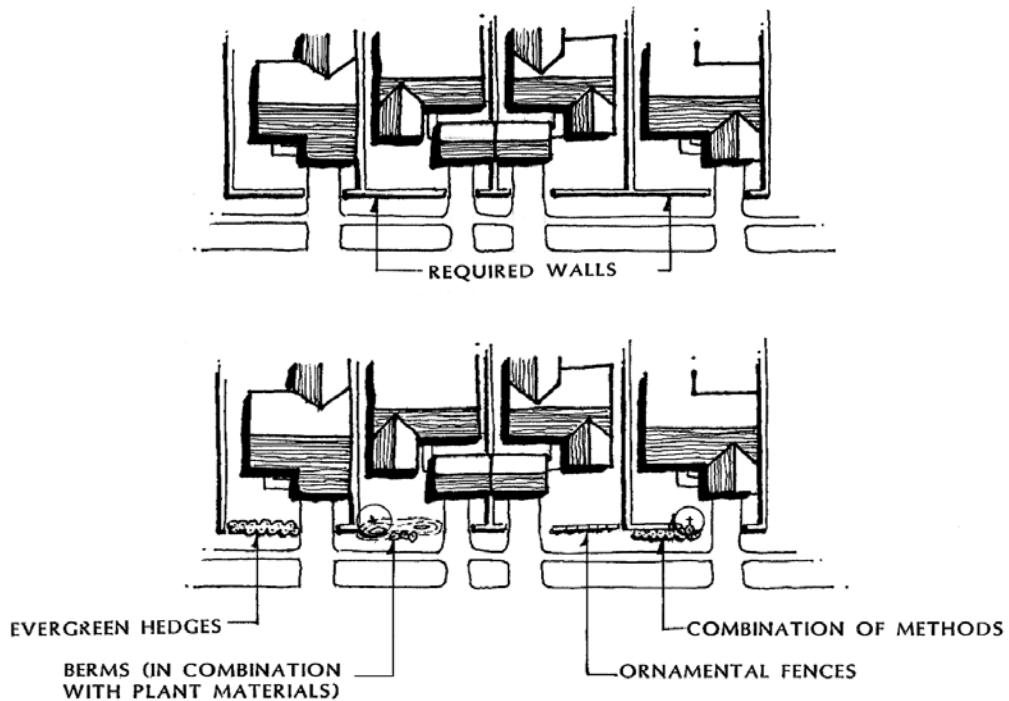
- A. Where the wall abuts open space within the development, it may be reduced in height, length, or opacity in accordance with Table 08.141.

Type of Cover	Width of Open Space*			
	30-40 ft.	41-60 ft.	61-100 ft.	101 ft. +
Lawn	10%	15%	30%	40%
Old Field	30%	40%	60%	80%
Young Woodland	50%	70%	90%	100%
Mature Woodland	60%	80%	100%	100%

\*If a trail or walk is present, add ten (10) feet to width.

- B. A patio or atrium dwelling unit's street face (where applicable) may be articulated to avoid monotony. The wall requirement shall be eliminated in favor of some combination of the wall and one or more of the techniques shown in Figure 08.141.

**Figure 08.141  
TECHNIQUES FOR ARTICULATING PATIO AND ATRIUM STREET FACE WALLS**



**SECTION 08.142      WINDOWLESS WALL**

In lot-line, atrium, and patio units, windows are prohibited from looking into the neighboring yards. Windows shall be permitted in walls designated as windowless provided the following conditions are met:

- A. The adjoining land is a public right-of-way.
- B. The adjoining land is open space having a minimum width of fifteen (15) feet, where the unit on the opposite side of the open space is walled.
- C. The adjoining land is open space having a minimum width of thirty (30) feet.
- D. The windows face a closed courtyard, or the windows are located at a height that prevents a view into the adjoining property.

## **SECTION 08.143        BUILDING SEPARATION**

This Section sets forth the residential building spacing regulations and standards. Various attached dwelling unit types have no side lot lines, since the individual dwelling units are attached. However, blocks of attached units are regulated by building spacing. A variety of situations can modify the basic standards. The normal separation assumes the building walls are generally parallel, but that need not be the case; this circumstance also changes the separation requirements needed to provide light and air and fire access. The following standards permit modification of building spacing under the specified conditions.

- A. **Irregular Facing Walls.** Where facing building planes are not a straight line, the average distance between the adjoining walls shall be used, provided no portion of the building is closer than eighty (80) percent of the minimum building spacing.
- B. **Non-Parallel Building Alignment.** Where building walls are not parallel, the minimum building separation may be reduced. The average separation must be equal to the requirement of Table 04.110 B. and the minimum shall be no less than eighty (80) percent of that requirement.
- C. **Building Code.** The building code may establish increased requirements for fire-rated construction where building setbacks are reduced, thus increasing costs, or require stricter standards.

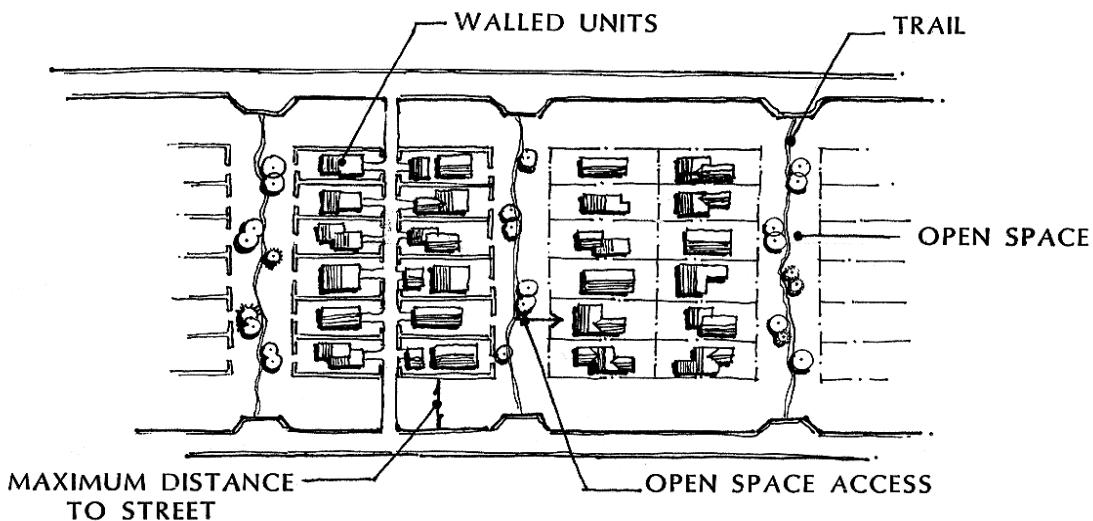
## **SECTION 08.144        NO ROAD FRONTAGE**

- A. Under certain circumstances, atrium, patio, village houses, and town houses of all types do not have to front a street. All such units shall front an open space that meets the standards in Table 08.144. The maximum distance such a unit may be away from a street depends on whether the lot has direct access to both the open space and an alley that provides the lots with on-site parking and emergency access, or whether access is solely via the open space. The distance in Table 08.144 is doubled if a road or emergency access alley is available at both ends of the open space. Figure 08.144 illustrates the various conditions.
- B. Buildings or uses fronting a pedestrian precinct in the D District need have no street frontage. Fire fighting measures for the complex shall be approved by the Paola Fire Department. Adequate access for other emergency vehicles as well as the loading needs of these uses or buildings shall also be provided.

**Table 08.144**  
**STANDARDS FOR SPECIFIC RESIDENTIAL UNITS WITH**  
**NO ROAD FRONTAGE**

Width of Open Space (ft.)	Walled Unit	Maximum Distance from Street (ft.)	
		Open Space Access	Alley and Open Space Access
8	yes	60	100
12	yes	75	150
20	no	100	180
30	no	120	200

**Figure 08.144**  
**RESIDENTIAL UNITS WITH NO ROAD FRONTAGE**

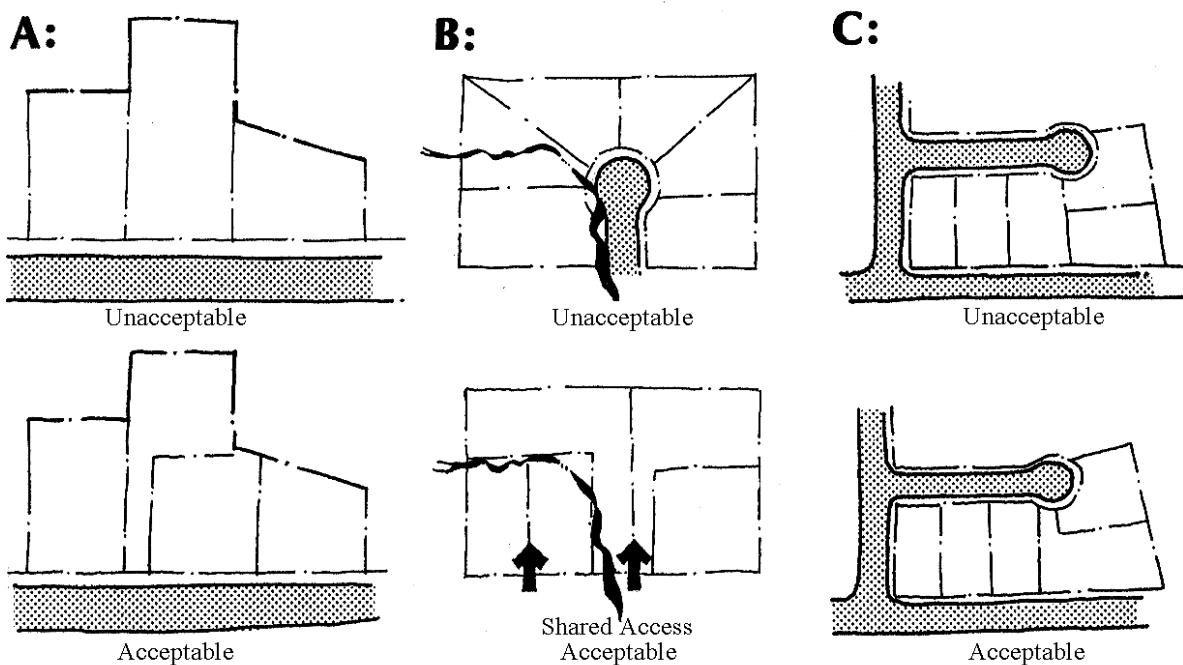


#### SECTION 08.145 FLAG LOTS

Flag lots are generally prohibited because they have often been used to avoid building a street to serve a subdivision, and their use increases the number of curb cuts on arterial or collector roads. However, conditions exist where flag lots are reasonable and can even enhance the community's character. These conditions are set forth below and illustrated in Figure 08.145.

- A. If the property to be subdivided has very irregular boundaries and the narrowest of streets does not work, a flag lot may be used to serve a single lot. (See A below).
- B. In a resource protection area, a flag lot may be used to reduce resource destruction which would have occurred by extending the cul-de-sac further into the sensitive area. (See B below).
- C. A flag lot shall be used to avoid lots taking access to arterial or collector streets as long as the flag lot does not take access from the arterial or collector. (See C below)
- D. A combined curb cut for the flag lot and one or more lots may be required where Staff believes such design will improve safety.

**Figure 08.145**  
**FLAG LOT CONDITIONS**



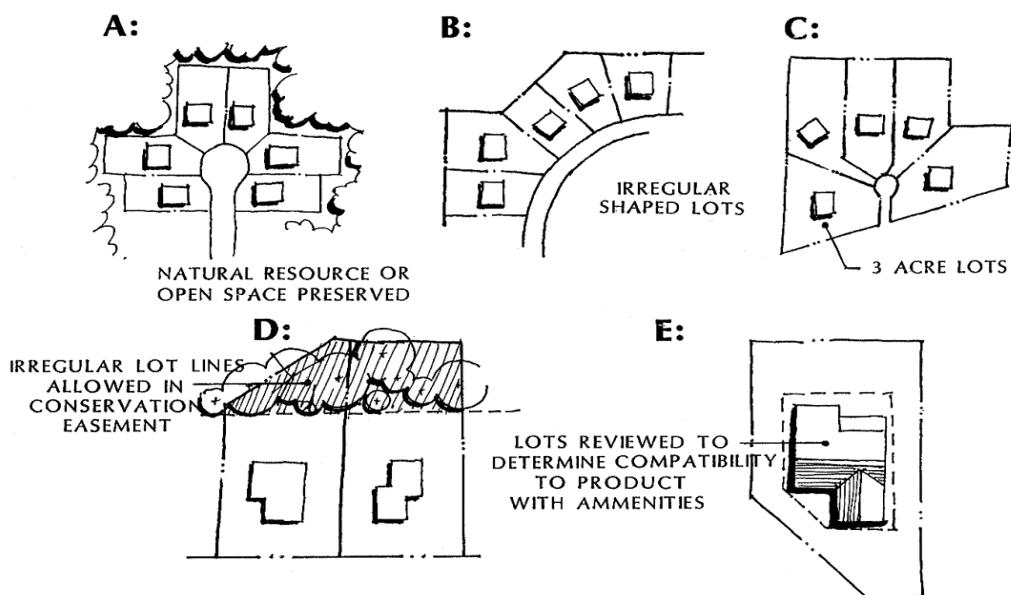
#### **SECTION 08.150      LOT SHAPES**

Normally, lot shapes are rectangular or pie-shaped. This pattern works well in some cases; rectangular lots are important when lots are rather small since they provide a maximum buildable area. Pie-shaped lots can be very inefficient. The most important element is that the lot contains a building construction envelope adequate for conventional house design. Lot shapes may be irregular under the following circumstances (see Figure 08.150):

- A. Where lots are surrounded by open space, lots of approximately trapezoidal shape may be used to maximize the benefits of the open space and reduce road length.

- B. Where the property has a shape that makes it difficult to lot efficiently, the developer should be able to use irregular lot shapes rather than waste land.
- C. Where lots exceeding three (3) acres are provided, the lot shape that provides efficient use of the land and minimum lot size may be used.
- D. Portions of lots in a conservation easement may have irregular shapes, since they cannot be used for construction.
- E. All lot sizes and shapes shall be reviewed to determine if houses similar to those normally built in the district can be constructed with normal patios or decks within the building envelope.

**Figure 08.150  
IRREGULAR SHAPED LOTS**



#### **SECTION 08.151 CUL-DE-SAC OR BLOCK LENGTH**

Cul-de-sac length is generally set to avoid unduly long roads where only one means of access exists. Maximum block lengths provide for good circulation in lengthwise and cross streets. However, instances may arise where a longer block length or cul-de-sac length is justified.

- A. A cul-de-sac's maximum length may be extended to serve twenty-four (24) lots provided:
  1. No stub street is possible on any cul-de-sac whose length would exceed eighteen (18) lots.
  2. The average number of lots served by cul-de-sacs in the development is sixteen (16) or less.

B. Up to twenty-eight (28) lots per block length or cul-de-sac may be permitted where:

1. Unique topography, shape, or physical features make it difficult to connect to another street without building structures that are well above normal improvement costs; or
2. The connection would result in undesirable intrusions into natural resources; and
3. Adjoining developments provided no connections, which if linked to the subject property would reduce the need for the modulation, or no stubs are possible to adjoining vacant land.

#### **SECTION 08.152        INTERSECTIONS**

Intersections may be permitted closer than the three hundred (300) foot centerline distances where:

- A. The depth of a block is less than these distances. An exception shall be granted unless a reasonable alternative street configuration exists which will provide the needed separation; or
- B. Topographic, natural resource, or ownership problems make providing the separation impractical or undesirable; or
- C. A narrower distance may be permitted where Staff determines the shorter distance results in safer conditions based on site distances.

#### **SECTION 8.153        LANDSCAPING**

The total number of landscaping units may be reduced by 25% when underground irrigation is provided. However, the reduction may not be taken from any required bufferyards, special buffers, or street trees.

## ARTICLE 09

### NONCONFORMITIES

#### **DIVISION 09.000 PURPOSE**

It is the general policy of the City to allow uses, buildings and lots that were created legally and in conformance with then applicable requirements, but that do not conform to the current applicable requirements of the zoning regulations, to continue. However, it is also the policy of these regulations to bring such uses, buildings and lots into conformance with current regulations to the extent lawfully allowed. The provisions of this Article are intended to fully respect the legal rights of property owners but to discourage the substantial expansion of properties and to preclude the re-establishment of an abandoned nonconforming use or replacement of damaged or destroyed nonconforming uses.

#### **SECTION 09.010 APPLICABILITY**

This Article shall apply to buildings, structures or uses that became nonconforming by initial adoption of these regulations, amendment to these Chapters or by annexation. It shall also apply to nonconforming buildings, structures or uses that were legal nonconformities under previously applicable regulations and that remain nonconforming under these regulations, even if the type or extent of nonconformity is different.

#### **SECTION 09.020 CONTINUATION PERMITTED**

Any nonconforming building, structure or use that existed lawfully on the adoption of these regulations or which becomes nonconforming upon the adoption of any amendment to these regulations may be continued in accordance with the provisions of this Article. Where two or more provisions of this Article apply, the more restrictive requirement controls.

#### **SECTION 09.030 PROOF OF NONCONFORMANCE**

The burden shall be on the landowner or developer to establish entitlement to continuation of nonconforming buildings, structures or uses or completion of nonconforming buildings, structures or uses.

#### **DIVISION 09.100 CONTINUATION**

#### **SECTION 09.110 CONTINUATION OF NONCONFORMING USE OF LAND**

The lawful nonconforming use of land not involving a building or where any building is merely incidental to or accessory to the principal use of land, may continue subject to the following requirements:

- A. Expansion. A nonconforming use of land may not be expanded beyond the area that it occupied on the date that it became nonconforming.
- B. Discontinuance. A nonconforming use of land may not be resumed when the use has been voluntarily discontinued for six consecutive months. Any subsequent use of land shall conform to the applicable regulations of the zoning district in which the land is located.
- C. Change of Use. A nonconforming use of land may not be changed to another use unless that use is permitted in the zoning district in which the land is located. Whenever a nonconforming use has been changed to a conforming use, such use shall not thereafter be changed to a nonconforming use.

#### **SECTION 09.120 CONTINUATION OF NONCONFORMING USE OF BUILDINGS OR SITES**

The lawful nonconforming use of a building or site may continue subject to the following requirements:

A. Expansion

1. Expansion within an existing building: A nonconforming use may be expanded throughout a building it occupies or a portion thereof.
2. Expansion of the physical area of a building or site: A building located on a nonconforming property may be expanded by 10% or less without bringing the site into compliance with current regulations. If a site contains more than one building the 10% expansion permitted shall apply to the total floor area of all building located on the site. For purposes of this article, "site" shall mean all lots and/or parcels under ownership or control of the person proposing the expansion contiguous to the property containing the buildings to be expanded. Such conditions that may be nonconforming include, but are not limited to, lack of screening, lack of landscaping, inadequate surface or curbing of parking areas or drives, discharge of surface water, noncompliance with one or more performance standards or other similar conditions. The Zoning Officer shall have the authority to determine what improvements would be required to bring a property fully or substantially into compliance as part of new construction, alteration or expansion which exceeds 10% of the area of the existing improvements on the property.

B. Discontinuance. A nonconforming use of a building or site may not be resumed if it is voluntarily discontinued for a period of six consecutive months. Any subsequent use of a building or site shall conform to the applicable regulations or the zoning district in which the property is located.

C. Change of Use. A nonconforming use of a building or site may not be changed to another use unless that use is permitted in the zoning district in which the building or site is located. Whenever a nonconforming use has been changed to a conforming use, such use shall not thereafter be changed to a nonconforming use.

### **SECTION 09.130        NONCONFORMING BUILDINGS**

A lawful, existing nonconforming building may remain subject to the following requirements:

- A. Expansion. A nonconforming building may not be expanded so as to increase the degree of nonconformity. Other expansions may occur, provided, that such additions comply with the requirements of these regulations and all other applicable laws of the City.
- B. Remodeling. Remodeling of a building within an existing footprint is permitted, provided that the remodeling does not increase the degree of nonconformity and is in compliance with all other applicable laws of the City.

- C. Replacement and Repairs. A nonconforming building damaged by more than 50% of fair market value through fire, explosion, act of God or the public enemy may not be rebuilt, or repaired or used unless such is in conformance with all regulations for buildings in the district in which it is located. The "cost" of renovation, repair or restoration includes the fair market value of materials and services necessary to complete the total intended renovation, repair or restoration.
- D. Replacement and Repairs. When any building or structure is damaged more than the fair market value of the structure, the building or structure must come into conformance with all regulations in the district, including the conforming use of the property. (Ordinance 2824, 01/28/03)

#### **SECTION 09.140        NONCONFORMING PROJECTS**

Nonconforming projects on which construction was begun at least 180 days before the effective date of these regulations and those nonconforming projects that are 10% completed (in terms of total expected costs of the project) on the effective date of these regulations may be completed in accordance with the terms of their permits (validly issued, unrevoked, and unexpired). Other nonconforming projects may continue upon a finding by the Planning Commission that the landowner or developer has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his or her position in some substantial way in reasonable reliance on the regulations as they existed prior to the effective date of these regulations and thereby would be unreasonably prejudiced if not allowed to complete the project as proposed. A request for such a find by the Planning Commission must be made in writing by the landowner or developer, to the Zoning Officer, within 60 days of the effective date of these regulations.

#### **SECTION 09.150        NONCONFORMING SIGNS**

- A. Subject to the remaining restrictions of this section, nonconforming signs that were otherwise lawful on the effective date of this ordinance may be continued.
- B. No person may engage in any activity that causes an increase in the extent of the nonconformity of a nonconforming sign. Without limiting the generality of the foregoing, no nonconforming sign may be enlarged or altered, nor may illumination be added to any nonconforming sign.
- C. A nonconforming sign may not be moved or replaced, and the message may not be changed, except to bring the sign into complete conformity with this ordinance.
- D. Sign maintenance means the normal care and minor repair that is necessary to retain a safe, attractive and finished structure, frame, pole, brackets or surface. Changing a copy or logo without increasing sign dimensions shall be considered maintenance if the information, product or service depicted remains the same and if the sign is to serve the identical establishment using the same business firm name as before the change.
- E. Maintenance and repair within any 12-month period shall not exceed 50% of the value of the sign. No work shall be done without first submitting information to the Zoning Officer that demonstrates repairs do not exceed 50% the value.
- F. If a nonconforming sign advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be deemed abandoned and shall be removed within 30-days after such abandonment by the sign owner, owner of the property where the sign is located, or other person having control over the sign.

## ARTICLE 10

### SUBDIVISION AND LAND DEVELOPMENT DESIGN STANDARDS

#### **DIVISION 10.000 PURPOSE**

This Article provides the standards for the layout and design of subdivisions and land developments. These standards are consistent with Paola's community character by ensuring that:

- A. The development contributes to the development of Paola as a community and is integrated into the neighborhood in which it is built.
- B. The plan preserves or enhances the character and the quality of the City and neighborhood.
- C. The street and road system is created in a manner that is safe and provides the best overall layout for the community as well as the individual development.
- D. Developments are functional and internally safe to the greatest degree possible, without reducing the permitted density or increasing adverse impacts on the environment and adjoining properties.

#### **DIVISION 10.100 SUBDIVISION DESIGN**

#### **SECTION 10.110 GENERAL STANDARDS**

The design of a subdivision is evaluated against the following design standards. Subdivision review shall check for these elements, and design modifications may be required. The purpose is to evaluate the design -- more specifically, the manner in which uses, lots, drainage, and roads relate to the site and adjoining land. The purpose is not to review or modify the proposed use or intensity; these requirements shall be in accordance with the district in which the development is proposed.

- A. The subdivision plan shall protect the site's natural resources as provided by this Ordinance with highest quality resource areas having the highest preservation priority. Specimen trees shall be identified and protected.
- B. The subdivision plan shall provide for well-proportioned and oriented lots that relate properly to roads and open space.
- C. The plan shall promote the best design for the use of the property in relation to the development's uses and adjoining portions of the neighborhood.
- D. Traffic and circulation shall be designed to provide adequate and safe conditions for the proposed uses and those on adjoining properties or streets.
- E. The drainage and utilities shall be efficiently integrated into the design and shall avoid off-site impacts.

- F. The subdivision landscaping layout shall promote the district's qualities and character. The bufferyard landscaping shall be located to achieve the screening objectives and, where possible, enhance open space objectives.
- G. The standards shall be reviewed to determine if modulations in zoning or infrastructure design would assist in improving the development's quality or preserve natural resources while maintaining density.
- H. Applying the standards above is intended to permit plan modifications to improve design, but not to require site density reduction. The design review shall focus on revising the site plan by altering roads, lots, landscaping, or other plan elements= location, not by altering development intensity.

## **SECTION 10.120 STREET LAYOUT**

The following standards provide guidance in laying out streets in a development. The community shall be laid out with a system of major and minor streets creating blocks of land.

- A. **Blocks.** Where possible, blocks shall be laid out to have their short length abutting arterials, collectors, or the development's major road. The blocks shall not exceed fifteen (15) lots in length as measured on one side of the street, except where topography, open space, or resource protection dictates (see Section 08.151). Where blocks would be less than six (6) lots in length, cul-de-sacs or stubs to other parcels are preferred. Most of Paola is laid out in a grid street system. The system should be extended in a grid or modified grid with open spaces where ever possible. Exceptions would be made for green spaces along drainage or stream channels, or where other natural resources make the grid difficult or very costly.
- B. **Cul-de-sacs.** A cul-de-sac=s length shall be dictated by the number of lots with street frontage. Cul-de-sacs shall not serve a total of more than sixteen (16) lots, except where topography, open space, or resource protection dictates (see Section 08.151). Lengths of six (6) to fourteen (14) lots are preferred.
- C. **Intersections.** Intersections shall line up with those in previously approved or completed developments. Intersections shall have a minimum of three hundred (300) feet between centerlines. Streets with parkways or eye-brow cul-de-sacs shall be measured from the centerline located in the parkway.
- D. **Street Connectors.** Subdivisions shall be connected to each other to provide reasonable access within a superblock. The street connections shall follow the access plan (Section 11.111).
- E. **Collectors.** Where collectors are shown on the access plan, they shall be provided by the developer. Residential access shall be from streets or cul-de-sacs generally perpendicular to the collector.
- F. **Private Roads.** Private streets shall be only permitted within the City limits in the E District, rural subdivisions (Article 14), or where the roads and rights-of-way meet all standards and the community is gated to prevent public access.

### **SECTION 10.130      LOT FRONTAGE**

Lot frontage requirements shall reflect the subdivision or land development conditions. These standards are intended to provide a reasonable building envelope on each lot. The following guidelines govern lot configuration (see Section 08.145 and Section 08.150).

- A. Where a grid street system exists, the lots should be as close to rectangular as feasible.
- B. In curvilinear street patterns, irregular lot shapes will result. The construction envelope is where the minimum frontage is needed; therefore, the lot width may not be narrower than the minimum frontage at any point of intersection with the envelope. The developer may have envelopes more restrictive than the side yard setback.
- C. Where topography, natural resources, or property shape make normal lotting difficult, common drives, flag lots, or shared easements shall be considered.

### **SECTION 10.131      LOT LINES**

While the City desires lot lines to be generally perpendicular to or radial to the street, this provision should not lead to inefficiency in design, requiring lots to be more than several percent larger than the district minimums. Lots with non-radial, non-perpendicular, or broken lot lines may be permitted where it leads to greater efficiency while still providing generally rectilinear building envelopes. More flexibility in this consideration shall be granted as lot sizes increase.

### **SECTION 10.132      EASEMENTS**

Where required, all lots shall provide easements for sewer, water, drainage, telephone, or cable TV necessary to serve the subdivision. Such easements shall be located in either street rights-of-way, alleys, or side or rear yards (see CGA Street Map on page 11-3 to identify the type of right-of-way required). The following standards shall apply to easements:

- A. The utility easements shall be a minimum of ten (10) feet wide. Easements which fall on shared side or rear lot lines shall be divided equally requiring five (5) feet from each lot.
- B. Where attached housing types or patio lots are involved and yards are enclosed or very narrow, easements shall be placed in open space areas where maintenance will not disturb the enclosures.
- C. Drainage easements shall be placed on lots to convey surface water or storm sewers from the street or open spaces.
- D. The minimum lot size may include ten (10) foot easements, except as provided in B. above. Where open space is protected on the lot by an easement, or where public access easements are provided, the areas in the conservation easement shall be in addition to the minimum lot size in Tables 04.110 A. or 04.110 B.
- E. Wherever possible, surface drainage patterns shall be protected by easements or open space.

### **SECTION 10.133      LOT SPLITS**

- A. A previously platted lot may be divided as a lot split by either metes and bounds description or by replatting. If divided by metes and bounds description, it may only be divided one time and by only one new dividing lot line, and shall not again be divided without replatting. Any such lot split need not comply with procedures set out in these regulations for platting. All lots produced by a lot split shall conform with the minimum standards of these regulations and other applicable codes of the City. No building permit shall be issued for a lot split until the lot split has been reviewed and approved by the zoning officer.
- B. **Approval Guidelines:** No lot split shall be approved if one or more of the following applies:
  - 1. A new street or alley is needed or proposed.
  - 2. Such action will result in significant increases in service requirements, or will interfere with maintaining existing service levels.
  - 3. There is less street right-of-way than required by these Regulations, unless dedication of additional right-of-way can be made by separate instrument.
  - 4. Any easement requirements have not been satisfied.
  - 5. Such split will result in a lot without direct access to and/or less than the required frontage on a street as specified in these Regulations.
  - 6. A substandard sized lot will be created according to these Regulations.
- C. Lots zoned for industrial purposes may be divided into two or more tracts without replatting such lot, as required by K.S.A. 12-752(f). Any lot so produced shall conform to all minimum standards of this ordinance and other applicable laws of the City.
- D. The Zoning Officer shall, in writing, either approve with or without conditions, or disapprove the lot split within 15 working days of the application.

#### **SECTION 10.134 MONUMENTS**

The following requirements apply to the location and standards for survey monuments:

- A. Where none exist, survey monuments shall be placed by a registered land surveyor at street corners; i.e., at a four-way intersection, two (2) corners are required to be monumented, and at a three-way intersection, one (1) corner is required to be monumented. For all other types of intersections, monuments shall be placed as determined by the City. In addition, monuments shall be so located to find angle points, points of tangency of curves on one side of the street, and at all out boundary corners.
- B. Should conditions prohibit placing any monuments at the above locations, off-setting the permanent marker is permitted; provided, however, that the exact off-set courses and distances are shown on the letter of certification when monuments are set. If a monument would be in a driveway, a cross would be permitted in concrete; and a steel pin, iron pipe, or railroad spike in asphalt.
- C. All monuments shall be at least two (2) feet long and made of one of the following materials and to the respective standards:

1. Portland cement concrete. Four (4) inches square on the top tapering to six (6) inches square on the bottom.
2. Stone. Four (4) inches square or larger.
3. Iron Pipe or Steel Pins. From one-half (0.5) inch to one and one-half (1.5) inches in diameter.

D. An existing permanent benchmark, or a new permanent benchmark shall be accessibly established, and shall be accurately noted on the record of subdivision plat.

## **SECTION 10.135      BOUNDARY LINE ADJUSTMENTS**

A. The adjustment of one or more common boundaries between existing platted or un-platted lots, tracts or parcels, or the merger of two or more platted or unplatted lots, tracts, or parcels is allowed provided that the resulting lots, tracts, or parcels shall conform with the minimum standards of these regulations and other applicable codes of the City. Any such boundary line adjustment need not comply with the procedures set out in these regulations for platting. No building permit shall be issued for a boundary line adjustment until the boundary line adjustment has been reviewed and approved by the zoning officer.

B. **Approval Guidelines.** No boundary line adjustment shall be approved if one or more of the following applies:

1. A new street or alley is needed or proposed.
2. Such action will result in significant increases in service requirements, or will interfere with maintaining existing service levels.
3. There is less street right-of-way than required by these Regulations, unless dedication of additional right-of-way can be made by separate instrument.
4. Any easement requirements have not been satisfied.
5. Such adjustment will result in a lot without direct access to and/or less than the required frontage on a street as specified in these Regulations.
6. A substandard sized lot will be created according to these Regulations.

C. The Zoning Officer shall, in writing, either approve with or without conditions, or disapprove the boundary line adjustment within 15 working days of the application.

(Ordinance 2835, 08/26/03)

## **DIVISION 10.200      SITE PLAN DESIGN**

All developments other than subdivisions, a single-family house, or a duplex shall be required to submit a site plan for approval by the Planning Commission.

## **SECTION 10.210      GENERAL STANDARDS**

Site plan design is evaluated against the following design standards. Site plan review shall check for these elements, and design modifications may be required. The purpose is to evaluate the design -- more specifically, the manner in which uses on the property, drainage, and circulation relate to the site and adjoining land. The purpose is not to review or modify the proposed use or intensity; these requirements shall be in accordance with the district in which the development is proposed.

- A. The site plan shall protect the site's natural resources as provided by this Ordinance with highest quality resource areas having the highest preservation priority.
- B. The site plan shall promote the best design for the use of the property in relation to the development's uses and uses on adjoining property to promote a streetscape that matches the district's desired character.
- C. Traffic and circulation shall be designed to provide adequate and safe conditions for the proposed uses and those on adjoining properties or streets. In particular, linking commercial circulation to reduce curb cuts and to preserve capacity on arterials and collectors shall be reviewed.
- D. The drainage and utilities should be efficiently integrated into the design to avoid off-site impacts.
- E. The site plan landscaping layout shall promote the district's qualities and character. The bufferyard landscaping shall be located to achieve the screening objectives.
- F. The standards should be reviewed to determine if modulations in zoning or infrastructure design would assist in improving the development's quality or preserve natural resources while maintaining density.
- G. Applying the standards above is intended to permit plan modifications to improve site design, but not to require site density reduction. The design review shall focus on revising the site plan by altering circulation, connection points, building placement, or landscaping not by altering development intensity.

## **SECTION 10.220      CIRCULATION**

The circulation review:

- A. Ensures access to arterials and collectors is accomplished in a manner that minimizes congestion and provides needed improvements at the entrances.
- B. Coordinates access between adjoining properties so people can move from one use to another without having to return to arterials or collectors.
- C. Protects and limits access to minor streets that also serve residential areas to eliminate conflicts that might endanger residents or make the access a nuisance to nearby residential units.

## **DIVISION 10.300 IMPROVEMENTS**

All subdivisions and site plans shall be required to provide adequate surety for the road, utility, drainage, landscaping, and other infrastructure required to ensure all required improvements are completed. See Division 21.700.

## **DIVISION 10.400 COVENANTS AND DEEDS**

### **SECTION 10.410 PRIVATE RESTRICTIONS**

The provisions of this ordinance are not intended to abrogate any deed restrictions covenant, easement, or any other private agreement on the use of land. Such restrictions shall be enforced by parties to the restriction, not by the City.

### **SECTION 10.420 PUBLIC EASEMENTS**

During the platting of a property the City may require the granting of a variety of easements on private property or lots. These easements may be for any of the following purposes: drainage, utilities, access to public utilities or drainage areas, and conservation easements. These easements shall be enforced by the City and violating the provisions may result in structures, landscaping, or other improvements being damaged, destroyed, or removed.

## **DIVISION 10.500 CONDOMINIUMS**

Condominiums may be permitted within the zone that underlies the area of the project, and shall be subject to all conditions and restrictions required within the zone for the use provided the use for which the project is being used is permitted in the zone.

### **SECTION 10.520 APPROVAL PROCESS AND DOCUMENTATION**

The procedure leading to approval of a condominium project shall be the same as set forth in Section 21.620. The following documents shall be prepared and submitted by the developer for each condominium project:

1. Articles of incorporation
2. Corporation by-laws
3. Declaration of covenants, conditions, restrictions and management policies/declaration of condominium management agreement
4. Open space easements
5. Record of survey map/final subdivision plat (when applicable)

Where, in the opinion of the Zoning Officer, a particular document as required under this Section is inapplicable for the particular condominium project proposed, the City may waive the requirement for submitting the document.

It shall be unlawful to record any survey map or declaration of a condominium project in the office of the County Recorder, unless the same shall bear thereon final approval of the City Council as required by the terms of this Ordinance.

Any owner, or agent of any owner, of land or units located within a purported condominium project, who transfers or sells any land, structure, or condominium unit in a purported condominium project, before obtaining final approval from the City Council shall be guilty of a misdemeanor for each lot, parcel of land, structure or condominium unit so transferred or sold.

### **SECTION 10.530 LAYOUT AND IMPROVEMENT**

Each proposed condominium project shall conform to the following minimum standards:

*Residential Projects*

1. All Off-Street Parking shall be regulated pursuant to this Ordinance.
2. Provision of an area containing not less than twenty (20) percent of the total area of the project shall be set aside as common open space for the use and enjoyment of the residents. The area shall be landscaped in accordance with City standards. The location and design shall be such that the area is easily accessible to all residents. Land used for parking, driveways, vehicle storage and similar uses may not be included in meeting this requirement.

### **SECTION 10.540 UTILITY AND FACILITY REQUIREMENTS**

All units shall be separately metered for water, gas, electricity, and sewer, unless the covenants, conditions and restrictions provide for the Association to pay the costs of services. Each unit shall be provided with readily accessible individual shut-off valves. (Ordinance 2994, 07/28/09)

## ARTICLE 11

### STREET AND ACCESS STANDARDS

#### DIVISION 11.000 PURPOSE

This Article provides the standards for street and access improvements. These standards are consistent with Paola's community character by ensuring that:

- A. Adequate municipal facilities are installed at the time of a project's development so that the uses' occupants have adequate services to protect their health and safety.
- B. The facilities will function efficiently and require minimum maintenance.
- C. Developments are functional and internally safe to the greatest degree possible without reducing the permitted density and increasing adverse impacts on the environment and adjoining properties.

#### DIVISION 11.100 STREETS

This Division's standards apply to street and highway design and construction.

#### SECTION 11.110 STREET DESIGN OBJECTIVES

Streets in a subdivision or land development shall be designed to achieve the following objectives:

- A. Integrate into the existing street pattern so as to address the area's future circulation needs as well as citywide traffic.
- B. Provide a safe and convenient layout and design.
- C. Match the respective district's community character.
- D. Respect natural resources, topography, and drainage.

#### SECTION 11.111 LOCAL CIRCULATION PLANS

To minimize vehicular access points on arterial and collector roads, the Planning Commission shall, when the first development occurs in an area, develop a Local Circulation Plan. The Local Circulation Plan shall identify desired collector or residential collectors within a superblock, areas for frontage-type roads or reverse frontage, and preferred intersection locations. The Local Circulation Plan shall be based on property maps, zoning, and topographic and alignment information. All landowners shall conform to this Plan in order to obtain subdivision approval. The following criteria shall be used in developing the Local Circulation Plan:

- A. Collectors shall serve only the superblock and not provide alternative or cut-through routes for regional or sub-regional traffic. Where superblocks are too large, new arterial alignments may be designated.
- B. Where possible, collectors shall be located on the superblock's largest parcels.

- C. Parallel access shall be used where providing individual access to small parcels would create adverse safety conditions due to frequent access on arterials or collectors.
- D. Half streets and boundary streets shall be used sparingly and only where parcel size, shape, or configuration would result in inefficient development by requiring other types of street patterns.
- E. The Plan shall be sensitive to natural resources and topography.

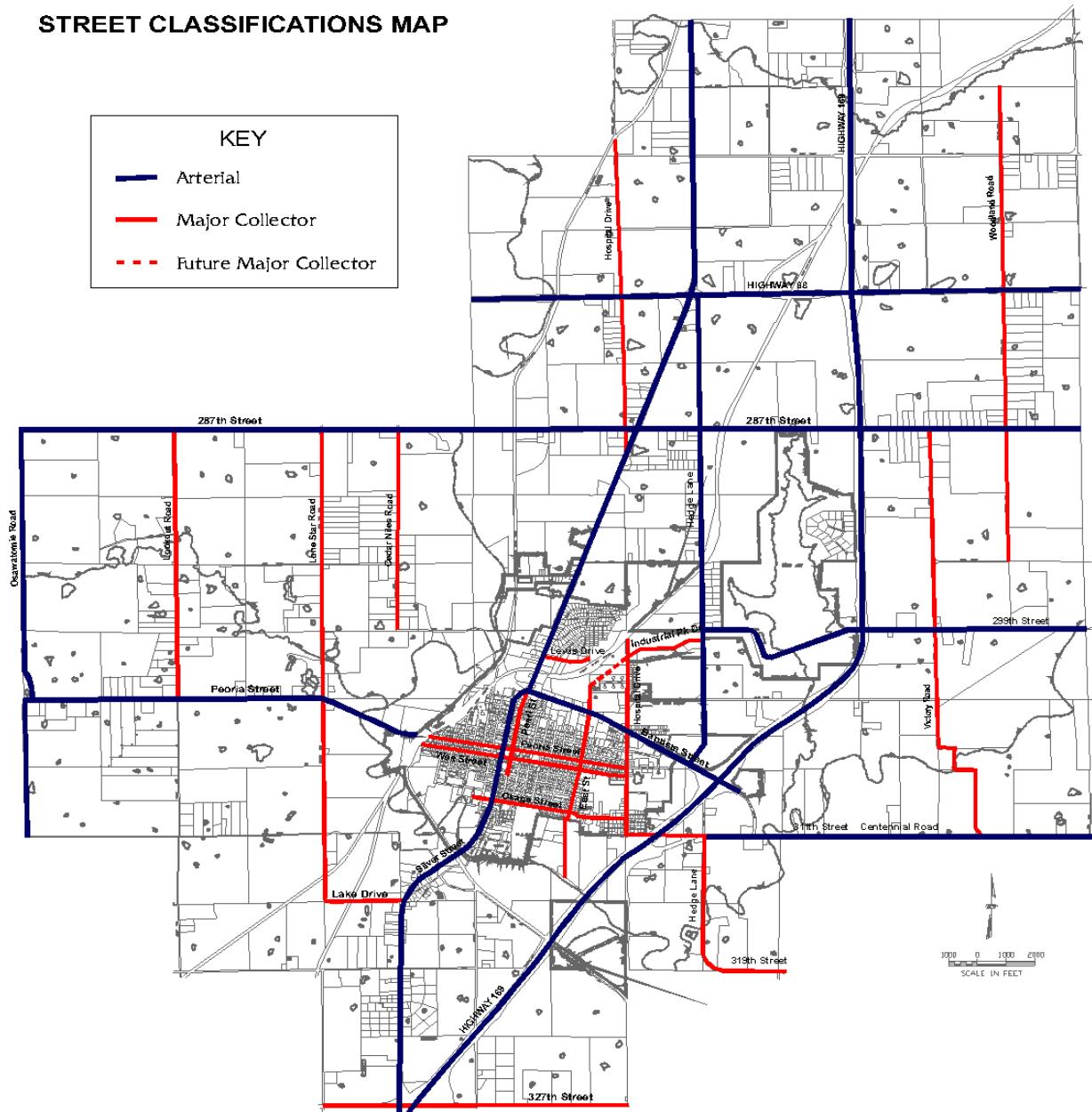
#### **SECTION 11.120 CLASSIFICATION**

Streets and highways shall be classified according to function. Classifications for major highways are found on the Zoning Map. Other classifications shall be made at the time of development by the Planning Commission. Road classifications shall anticipate long-term growth prospects so they are not degraded in functional capacity in the early development stages. The Paola arterial and major collector roads are delineated on Figure 11.120, and road classifications are shown in Table 11.130. The classification of minor and residential collectors, non-residential local access roads and alleys will be determined according to the standards outlined in this ordinance.

#### **SECTION 11.130 STREET STANDARDS**

- A. **Streets.** The standards in Table 11.130 shall govern all street construction except regional highways, which shall meet State specifications, and residential streets, which shall meet the standards of Section 11.140.
- B. **Adjustments.** The standards in Table 11.130 assume relatively level and resource free land. The City shall, where feasible, require the road's design to minimize the disturbance of natural resources protected by Section 05.210. Where additional right-of-way is needed to obtain vertical curve, grade, clear site triangles, turn lanes, or medians, the required right-of-way shall be adjusted in accordance with local needs.

## STREET CLASSIFICATIONS MAP



### **Figure 11.120 PAOLA STREET CLASSIFICATION**

**Table 11.130**  
**STREET STANDARDS (IN FEET)**

Type	Total ROW	Travel Lane	Curb & St. Sewer	Open ROW Each Side	Side-walk	Median Type	Median Width	Maximum Speed Limit (mph)	Minimum Access Spacing <sup>3</sup>				Minimum Drive Width**	Curb Radius Minimum
									55-50 mph	45-40 mph	35-30 mph	25 mph or less		
Arterial <sup>1</sup>	160	4@12	N	28	5	grass	16	55	1,320	880	660	440	12 ft./lane	50
	160	4@12	N	19	5	mountable	14	45	N	880	660	440	12 ft./lane	50
	130	4@12	Y	15	5	mountable	4	35	N	N	660	440	12 ft./lane	50
Major Collector	100	4@12	Y	12	5	mountable	14	40	N	880	500	300	12 ft./lane	40
	100	4@12	Y	12	5	mountable	4	35	N	N	500	300	12 ft./lane	25
	100	4@12	Y	10	5	mountable	4	30	N	N	500	300	12 ft./lane	25
Minor Collector	80	2@12	Y	10	5	none		30	N	N	250	200	12 ft./lane	25
Residential Collector	60	2@12	Y	10	5	none		30	N	500 <sup>2</sup>	300	150	12 ft/lane	25
Nonresidential Local Access	60	2@13	Y	9	5	none		25	N	N	250	150	12 ft./lane	20
Alley	20	14	N	3	none	none		10			N		10 ft.	none

Y Permitted

N Not permitted

<sup>1</sup> Special standards exist along Baptiste, check with City Public Works.

<sup>2</sup> Permitted in the Estate (E) District.

<sup>3</sup> Measured from centerline of ROW to centerline of access road. For residential street standards, see Table 11.140.

\*\* Maximum drive width is 36 feet.

## **SECTION 11.140 PERFORMANCE STANDARDS FOR RESIDENTIAL STREETS**

- A. **General.** Table 11.140 lists residential streets' general standards. Type of access, number of dwelling units served, and the units' average frontage can modify the requirements.
- B. **Parkways.** The developer may choose to use parkways or other landscaped medians in residential streets. In that case, the parkway standard shall apply.
- C. **Natural Areas.** In areas where resource protection is desired, narrower rights-of-way may be approved and drainage accomplished in a manner that provides for the minimum width while accommodating the stormwater movement. The City's Director of Public Works shall assist the developer in developing a cross-section that minimizes environmental impact.
- D. **Narrow Widths.** Where roads are less than eighteen (18) feet wide, they shall be widened to eighteen (18) feet for a distance of sixty (60) feet where they intersect with other roads to permit adequate turning. Where such roads exceed eight hundred (800) feet in length, they shall have passing points at least every five hundred (500) feet. The passing points or sections shall be forty (40) feet in length and may include driveways as part of the passing area. Roads not meeting or exceeding the width and construction material requirements of the County shall be allowed only in the City of Paola.

**Table 11.140**  
**PERFORMANCE STANDARDS FOR RESIDENTIAL STREETS**

Frontage (ft.)/ Lot Area	Number of Dwelling Units Served			
	8 or less	9-44	45-159	160-240
<b>Two-way Residential</b>				
200+ / 3 acres+	ROW 50' PW 20'	ROW 60' PW 20'	ROW 66' PW 20'	ROW 66' PW 24'
100-199/ 20,000 - 2.9 acres	ROW 60' PW 20'	ROW 60' PW 22'	ROW 60' sw PW 22'+ curb	ROW 60' sw PW 26'+ curb
50-99/ 6,000 - 19,999 sf.	ROW 60' PW 22'+ curb	ROW 60' sw PW 22'+ curb	ROW 60 sw PW 24'+ curb	ROW 60' sw PW 26'+ curb
less than 50/ less than 6,000 sf.	ROW 60' PW 24'+ curb	ROW 60' sw PW 26' +curb	ROW 60' sw PW 28 ' + curb	ROW 60' sw PW 28' + curb
no access	ROW 50' PW 10'	ROW 50' PW 18'	ROW 60' PW 20'	ROW 60' PW 24'
<b>One-way Single-loaded -- Parkway</b>				
200+ / 3 acres+	ROW 36' PW 12'	ROW 36' PW 16'	ROW 36' PW 18'	ROW 40' PW 18'
100-199/ 20,000 - 2.9 acres	ROW 36' PW 14'	ROW 36' PW 16'	ROW 36' sw PW 16' + curb	ROW 36' sw PW 18'+ curb
50-99/ 6,000 - 19,999 sf.	ROW 36' PW 18' + curb	ROW 36' sw PW 18' + curb	ROW 36' sw PW 18' + curb	ROW 36' sw PW 20' + curb
less than 50/ less than 6,000 sf.	ROW 36' PW 20' + curb	ROW 36' sw PW 20'+curb	ROW 36' sw PW 20' + curb	ROW 36' sw PW 20' + curb
no access	ROW 36' PW 12'	ROW 36' PW 12'	ROW 36' PW 14'	ROW 36' PW 16'
sw sidewalk	pw pavement width			

(Ordinance 2789, 11/27/01)

Where a curb is designated, an enclosed stormwater conveyance system shall also be included. On-street parking requirements are outlined in Section 06.300 Parking.

#### **SECTION 11.141 PRIVATE ROADS**

Private roads shall be permitted provided the following are met:

A. Private roads may be constructed in accordance with this Article's public street standards in the E District within the City limits provided:

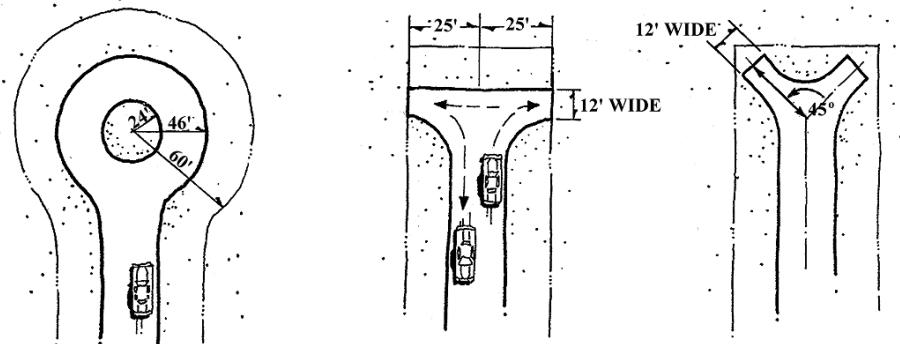
1. The community is gated with access restricted. Police, fire, sanitation, and other public vehicles shall be provided access.
2. All subdivision or land development plats, deeds, and covenants or restrictions shall indicate that the City will not accept a private road except upon a two thirds (2/3) vote of the development's landowners. Regardless of the vote, the City will not accept the road unless the road shall be brought up to public road standards, or a one time assessment or special taxing district shall be created to pay for the improvements.

B. Rural subdivisions and minor staged subdivisions shall provide access, but the street shall remain private until the residual development occurs and the road improved in accordance with this Ordinance.

#### **SECTION 11.142 CUL-DE-SACS**

All cul-de-sacs shall be designed to permit vehicles to turn around without backing, except on private roads serving less than five (5) lots. All cul-de-sacs must have a landscaped island. (Ordinance 2835, 8/26/03). Cul-de-sac standards are shown in Figure 11.142.

**Figure 11.142  
CUL-DE-SACS**



#### **SECTION 11.150 IMPROVEMENTS**

Highways, streets, and alleys shall be improved as follows:

A. Arterials, collectors, local streets, and alleys shall be designed according to the Highway Pavement Structural Design method, as described in Part II, Chapter 3 of the AASHTO Guide for Design of Pavement Structures, except in Rural Subdivisions and Staged Developments. County or State Roads shall meet the standards of those agencies unless the standards of this Section are

greater. An opinion from a professional geotechnical service shall be required for all road construction. All road construction shall be on 95% compacted subgrade.

B. Arterial, collector, and streets in the D, BP and I districts shall meet at least one of the following minimum standards once reviewed and approved by the City's Director of Public Works. The Director may require a greater base where soils, anticipated truck traffic, or other conditions would affect the long-term maintenance costs of the road.

1. Seven (7) inches asphalt concrete base course (BM-2B) with two (2) inches asphaltic concrete surface course (BM-2) over six (6) inches of crushed stone base course (AB-3); or
2. Seven (7) inches thick concrete reinforced with wire mesh over six (6) inches of crushed stone base course (AB-3).
3. The City's Director of Public Works may require a greater base where soils, anticipated truck traffic, or other conditions would affect the long-term maintenance costs of the road.

(Ordinance #2748, 06/27/00)

C. Residential streets shall have six (6) inches minimum crushed stone base course (AB-3) with four (4) inches asphaltic concrete base course (BM-2B) with two (2) inches asphaltic concrete surface course (BM-2) or seven (7) inches thick concrete reinforced with wire mesh over prepared subgrade except as follows:

1. In the E District:
  - a. Cul-de-sacs with less than ten (10) lots on a private road shall have a five (5) inch crushed stone (AB-3). All lots using this standard shall be covered by a conservation easement prohibiting further subdivision of this property into smaller lots.
  - b. Other residential streets serving less than forty (40) lots shall have a six (6) inch crushed stone base (AB-3) and a surface of prime and double asphaltic seal with crushed rock cover.
2. Rural Subdivisions (Article 14) shall have a six (6) inch crushed stone base (AB-3) to serve the initial four (4) lots. When the residual parcel is developed, all streets shall be improved in accordance with the standard governing lots of that size. These roads shall remain private until improved to normal City standards.
3. Staged subdivisions shall have a six (6) inch crushed stone base (AB-3) and a surface of prime and double asphaltic seal with crushed rock cover. When the residual parcel develops, such roads shall no longer be considered an exception and must be upgraded accordingly. These roads shall remain private until improved to normal City standards.

(Ordinance 2783, 08/21/01)

(Ordinance #2748, 06/27/00)

- D. Residential alleys shall have an aggregate base of six (6) inches. Where rock alleys meet paved roads, a 20-foot hard surface apron shall be required.
- E. In soils with limitations for roads due to soil strength, shrink-swell, or moisture, extra excavation and back fill, subgrade modifications, and/or extra base and one half (0.5) inch of extra surface coat or additional drainage structures may be required by the City's Director of Public Works.
- F. Where an unpaved road meets a paved road, a 100-foot hard surface apron shall be required.
- G. Streets constructed without curbs and enclosed stormwater systems are anticipated to be adequate for the immediate and near future and are allowed as an accommodation to the developer. However, changing land use patterns and growth may generate higher traffic loads on these streets than originally projected, requiring subsequent improvements.

When the City or County determines that residential streets constructed without curbs or enclosed stormwater systems are insufficient and/or impeding traffic flow, the street may be upgraded. It is the intent of these regulations that, as a general practice, the cost of the improvements, including pavement upgrade, installation of curbs, enclosed stormwater systems, and sidewalks shall be 100% assessed to the benefited property owners in accordance with Kansas law.

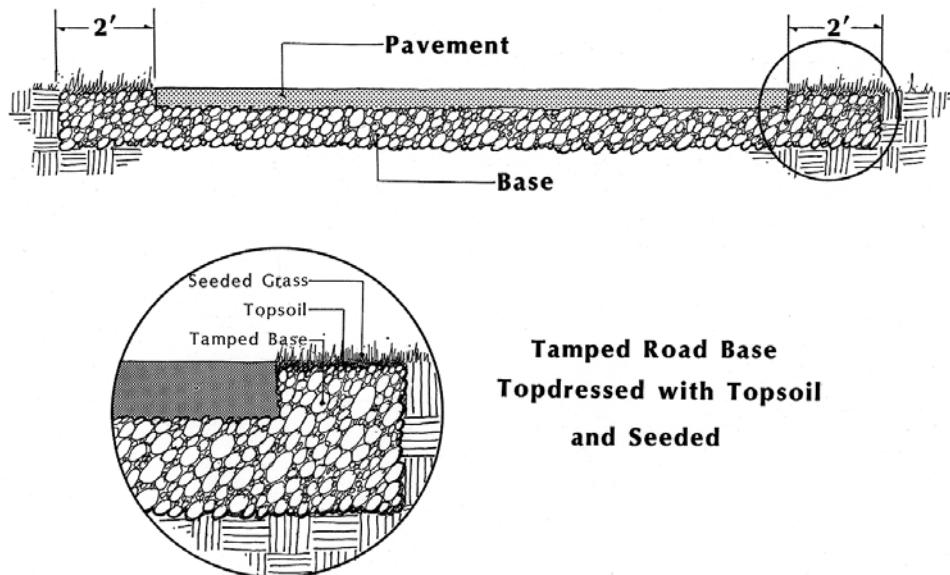
Constructing roads without curbs and enclosed stormwater systems at the time of development is considered a benefit to the developer and property owners. In recognition of this, the developer shall place a note on the plat, that the City's/County's policy is that the cost of upgrading streets and stormwater systems in these situations is to 100% access the cost to the property owner. The developer shall further place a note on the plat that all subsequent purchasers of lots take those lots with notice that the right to protest the establishment of a special assessment benefit district to finance such improvements has been waived.

- H. Nonresidential alleys and parking lots with over fifteen (15) spaces shall have a six (6) inch crushed stone base (AB-3) with four (4) inch asphaltic surface course (BM-2).  
(Ordinance 2783, 08/21/01) The Public Works Director shall determine the minimum improvement required for parking lots with 15 spaces or fewer. (Ordinance 2824, 01/28/03)

## **SECTION 11.151 CURBS**

Curbs shall be installed where required by Tables 11.130 and 11.140, or where required to prevent erosion. The curbs shall be eliminated in areas where they will promote drainage over natural areas and pose no risk to buildings or homes. Where no curbs are provided, the aggregate base shall be extended two (2) feet beyond the edge of the cartway or pavement. The base shall be filled to the pavement level with aggregate, spread with topsoil, and seeded to provide a structure to support the pavement edge and eliminate damage from vehicles running off the pavement (see Figure 11.151).

**Figure 11.151**  
**CURBLESS PAVEMENT DETAIL**



### **SECTION 11.152 SIDEWALKS**

Sidewalks shall be installed on both sides of all arterial, collector and commercial streets and shall be required on one side of all residential streets. All sidewalks shall not be less than five (5) feet in width of Portland cement concrete and shall comply with specifications of the Governing Body. Sidewalks shall be located in the platted street right-of-way, six (6) inches from the property line. When natural vegetation, topography or other factors make locating the sidewalk in the right-of-way impractical, the sidewalk shall be located as close to the right-of-way as possible. An easement or additional right-of-way shall be granted to the City to include the sidewalk. Walks shall also be installed in any pedestrian easements as may be required by the Planning Commission.

Sidewalk requirements may be altered or waived if a sidewalk plan is submitted to and approved by the Planning Commission at the time of platting. The Planning Commission may grant a waiver from sidewalk requirements in in-fill developments.

### **SECTION 11.153 DEVIATION FROM CERTAIN STREET STANDARDS**

A. Upon application by any owner of property in the Neighborhood Conservation zoning districts the Planning Commission shall, in accordance with the provisions of this Section, make a recommendation to the Governing Body to approve or deny a request for deviation from certain street standards, specifically those relating to street widths, curbs, gutters and sidewalks, in the Neighborhood Conservation zoning districts. No request shall be accepted or considered by the City regarding deviation from base or pavement construction standards, or other street standards. Notice of the Planning Commission hearing on the application shall

be given to all owners of property with frontage on those portions of the subject street that may be affected by the deviation. Such notice shall be given in the same manner as provided for in Section 21.151 of these regulations. The Planning Commission may recommend additional street width and/or shoulder requirements as a condition of approval of a deviation from curb or gutter standards.

B. When considering a deviation request the Planning Commission shall make written findings regarding the following factors:

1. Access. If the deviation is approved, whether all ingress and egress to any platted lots would be over public streets not meeting City standards. Consideration shall be given to character of adjacent streets and the likelihood that any substandard street will be subsequently improved to standards.
2. Effect Upon Additional Property. Whether adjacent property would require access from the subject street(s) as such property develops.
3. Staff Recommendations. The Public Works Director shall make recommendations regarding drainage, utilities, maintenance, traffic flow and other pertinent matters related to the deviation request. The Zoning Administrator shall make recommendations regarding the consistency of the proposed deviation with the objectives of the Comprehensive Plan.
4. Public Interest. If the deviation is approved, whether such would result in adverse impacts for public health, safety or general welfare.

C. The Planning Commission shall make a written recommendation to the Governing Body for approval, approval subject to conditions, or denial of the application. Such recommendation shall be submitted to the Governing Body within 60 calendar days following the date a complete application is made to the Zoning Administrator. The Governing Body shall consider the recommendation in accordance with Section 21.161, Part C of these regulations and consistent with its written findings regarding the factors set out above.

D. Recording of Deviation. No approved deviation shall take effect until the applicant records the application, as approved by the Governing Body, with the Miami County Register of Deeds. (Ordinance 2840, 10/14/03)

#### **SECTION 11.154      UTILITY CROSSINGS**

All utility crossings under the street, including the curb line, shall be backfilled with a dig-able flowable fill to within 6" of the final subgrade elevation, unless a substitution is approved by the City Engineer or his/her designee. This includes both new and replacement construction. (Ordinance 2893 08/23/05)

#### **DIVISION 11.200      ACCESS**

Direct vehicular access to public roads and highways by individual uses shall be limited to ensure congestion and hazardous conditions are not created by frequent turning movements. On arterials and major collectors, access must be limited to allow the roads to fulfill their function as regional traffic

movers. In residential areas, access to collector or arterial streets provides safer residential areas as well as improved highway access.

### **SECTION 11.210 RESIDENTIAL ACCESS**

All residential developments and uses shall take direct access only to local residential streets except as provided below:

- A. Individual residential uses shall take access to residential collectors to the minimum extent possible. The developer shall use flag lots on residential streets, cul-de-sacs, or align blocks to present the sides of lots, rather than front lots, on residential collectors.
- B. Individual detached single-family residences may take direct access to a collector or arterial street only if no other access options are viable and only if the developer is unable to provide a safe street access due to physical site limitations such as topography, sight distances, ownership patterns, etc. A residential street shall be required if the site can be served with a street. The City may also require shared entrances or a private access easement for two (2) or more lots to keep individual access to a minimum.
- C. Double-entry drives are prohibited on all arterial, major, and minor collector streets and on lots with less than 80' of street frontage as measured at the curb. (Ordinance 2835, 08/26/03)

### **SECTION 11.220 NONRESIDENTIAL ACCESS TO RESIDENTIAL STREETS**

All nonresidential uses shall be prohibited from taking access to a residential street. Instead, such uses shall take primary access from a frontage road, reverse frontage road, parking circulation road, or roads designed to provide internal circulation within the development. The following exceptions are permitted:

- A. Agricultural uses shall take access to the road expected to carry the least traffic unless restricted by soils, topography, or existing home sites.
- B. Home uses shall be treated as residential uses.
- C. Direct primary access to a local residential street or residential collector is prohibited for nonresidential uses except institutional uses, bed and breakfasts, and home uses. Emergency access through a locked access may be required by the Fire Chief.

### **SECTION 11.230 NONRESIDENTIAL ACCESS TO ARTERIALS OR COLLECTORS**

Nonresidential uses shall be permitted direct access to arterial or collector roads only if:

- A. The access meets the minimum spacing requirements of Section 11.231, and the site plan provides access to/for other properties at the rear or sides.
- B. The access is temporary (see Section 11.240).

- C. No other access options are viable, and the developer is unable to provide a street due to physical site limitations such as topography, natural features, and sight distance.

### **SECTION 11.231 ACCESS SPACING**

All uses, developments, and streets shall abide by this Section's spacing provisions except where deviations meet the standards of Section 11.233. Table 11.130 sets forth spacing provisions. Section 11.232 states the special requirements for Baptiste Drive from North Pearl Street east. The following standards shall apply:

- A. All uses shall be discouraged from having more than one (1) access point to a collector or arterial street, except where the additional access point meets the spacing requirements.
- B. In instances where more than one (1) access point is requested, or access at less than the specified spacing is requested, a traffic study shall be required to demonstrate that the additional access point(s) is required to move traffic out of the development under the following:
  1. The additional access relieves congestion at intersections spaced in accordance with Table 11.130.
  2. Access points in excess of one (1) shall also be designated as "right turn only" wherever possible. This designation shall minimize potential adverse impacts on the collector or arterial street's capacity.
  3. The additional access point(s) improves or leaves road performance on the arterial or collector unchanged. Regional traffic capacity should not be reduced to permit increased access.
  4. The traffic study indicates necessary improvements to maintain levels of service and the developer makes such improvements.
  5. The developer shall make all necessary improvements, in terms of turning lanes and bypass lanes, to maintain a level of service C at the nearest intersections.

### **SECTION 11.232 BAPTISTE DRIVE ACCESS STANDARDS**

In addition to the standards in Section 11.231, developers with frontage along Baptiste Drive, from North Pearl Street east, shall design their circulation system so no individual use shall take access directly to Baptiste Drive but rather from an internal circulation system. The following standards shall be used by developers to achieve this goal:

- A. No parcel of less than eight (8) acres shall be approved unless a preliminary plat for the entire property shows the developer has provided proper access, visibility, detention, and an overall design theme for the entire property.
- B. No out parcels on the frontage shall be permitted unless their sole access is from an internal circulation system or road.

- C. The internal circulation system shall have stubs to existing uses or adjoining vacant land to facilitate travel between commercial developments without requiring the use of Baptiste Drive. Access points may tie to the parking isles of adjoining development or be located as a parallel access or frontage road. If a Local Circulation Plan has been prepared, access shall follow that Plan.
- D. Where it is possible to have local traffic without accessing Baptiste Drive, no access on Baptiste shall be allowed.

### **SECTION 11.233 EXCEPTIONS ON ACCESS STANDARDS**

The standards in Table 11.130 provide for the safest access conditions. However, conditions may arise in which the standards do not fit the context of the topography, land ownership, or existing conditions. Where the following conditions exist, the Planning Commission may recommend deviations from Sections 11.210, 11.220, 11.230, 11.231, and 11.232. The deviations may be in the form of temporary access (Section 11.240) or they may be permanent. Also, the Planning Commission may recommend to the City Council alterations to the road or its speed limits to improve safety.

- A. The vertical or horizontal alignment makes the required location dangerous. The Planning Commission shall consider the following alternatives:
  1. A temporary access with ultimate access via adjoining properties.
  2. Permitting a closer spacing provided sight distances are adequate.
  3. If other access points are in the area, lowering the speed limit to provide safe site distances.
  4. Coordinating a road improvement project with the development to eliminate a dangerous area.
- B. Aligning the access with an existing access may be considered, even though the existing access does not meet the standards, provided that aligning results in a safer situation than two access points.
- C. Where internal roads cannot reasonably be provided, and the access will not present safety problems, connections will be permitted.
- D. Where multiple land uses will exist, additional accesses may be permitted if a better design results. "Better design" requires:
  1. The land uses will be better served by separate accesses to avoid residential/commercial traffic conflicts and turning movements restricting access and/or disturbing a residential development's character; or,
  2. Traffic studies indicate that traffic will flow better on the arterial or collector with the additional intersection than without.

### **SECTION 11.240 TEMPORARY ACCESS**

No developer shall be denied a Zoning Permit (as required under Section 21.530) or plan approval for the sole reason that a property cannot meet the permanent access standards, provided the development plan

meets all this Ordinance's other requirements. A Temporary Access Permit may be granted which shall expire when the permanent access to the property, via adjoining parking lots, parallel access, or reverse frontage roads, is achieved. The property owners shall bear the cost of closing the temporary access and connecting to the permanent access.

## **SECTION 11.250 RESIDENTIAL ACCESS DRIVES**

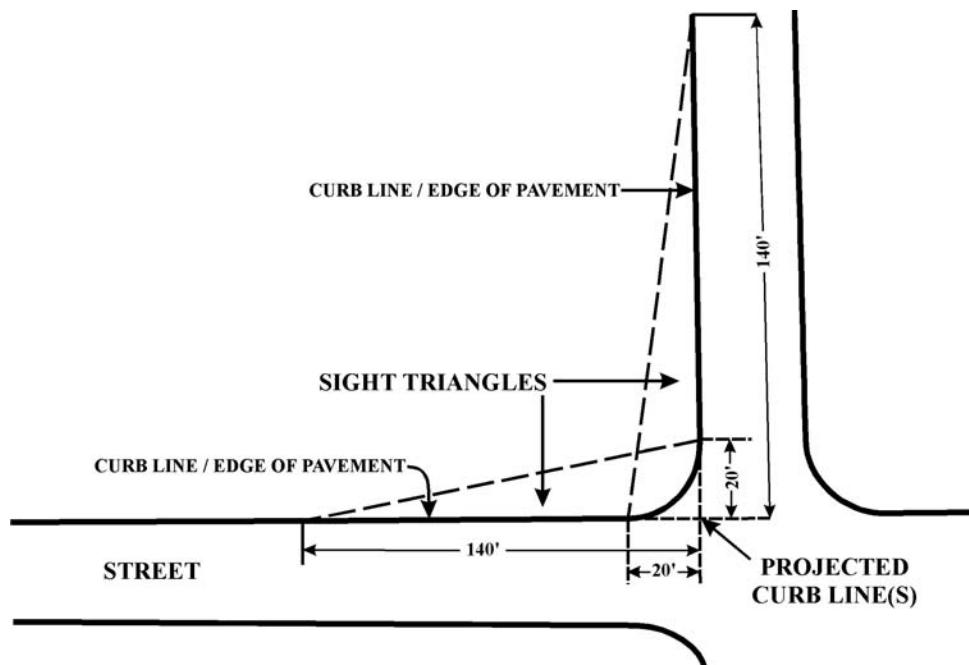
Residential access drives shall meet the following:

- A. Ten (10) feet minimum and twenty (20) feet maximum at the right of way line.
- B. Twelve (12) feet minimum if the distance between the sidewalk and the pavement edge is less than four (4) feet.
- C. If curbs are provided, access shall be by a saw cut of the curb. Where there are no curbs, a five (5) foot radii shall be used.
- D. Where alley access is available, the garage or carport shall take access from the alley.  
*Exceptions.* When the Public Works Director determines alley access cannot reasonably be provided, and the access will not create safety problems, the Public Works Director may approve an alternate access plan. (Ordinance 2789, 11/27/01).

## **SECTION 11.260 CLEAR VIEW OF INTERSECTING STREETS**

Signs or other obstructions shall not be located in either road rights-of-way or the clear zones indicated in Figure 11.260.

**Figure 11.260  
CLEAR VIEW OF INTERSECTING STREETS**



## ARTICLE 12

### DRAINAGE, UTILITIES, PARKING, LOADING, AND LIGHTING

#### DIVISION 12.000 PURPOSE

This Article provides the standards for drainage, utilities, parking, loading, and lighting improvements (Ordinance 2808, 08/27/02). These standards are consistent with Paola's community character by ensuring that:

- A. Adequate municipal facilities are installed at the time of a project's development so that the uses' occupants have adequate services to protect their health and safety.
- B. The facilities will function efficiently and require minimum maintenance.
- C. Developments are functional and internally safe to the greatest degree possible without reducing the permitted density and increasing adverse impacts on the environment and adjoining properties.

#### DIVISION 12.100 DRAINAGE

##### SECTION 12.110 SURFACE DRAINAGE

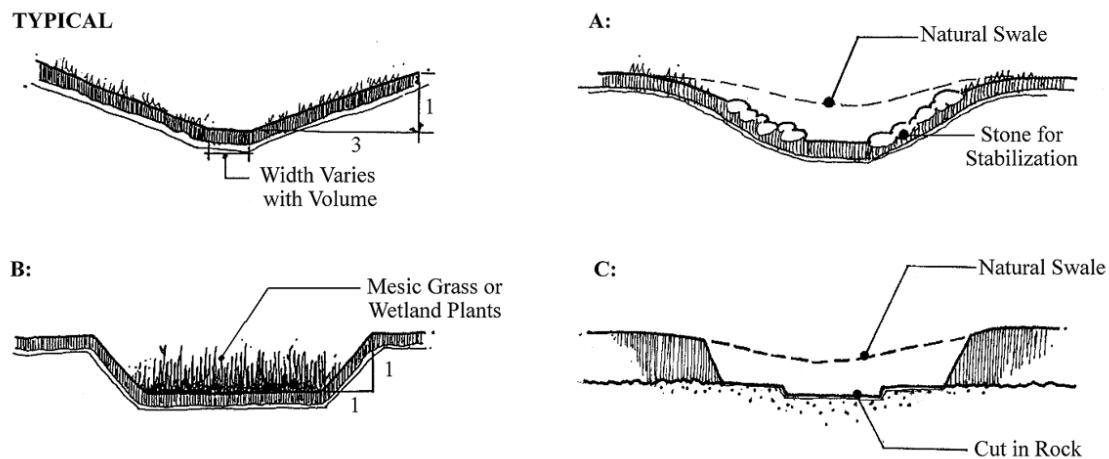
Every effort shall be made to utilize natural drainageways rather than an underground stormwater system. Site and street drainage shall be enclosed and conveyed in the TA, BP, and SC districts. Developers shall not be required to enclose drainage on Baptiste for site plan approval or development. This does not preclude the City Council's ability to form a benefit district drainage improvements along Baptiste Drive. Drainage easements are encouraged to move water from the street face to the back of the lots and natural drainage areas in the rear.

##### SECTION 12.111 SURFACE DRAINAGE CONFIGURATIONS

The typical open channel storm drainage is a V-shaped swale with grass sides. Such drainage ditches shall have no greater than a 3:1 slope (Figure 12.111). Wherever possible in water supply watersheds and the E, S, and SC Districts, the more natural drainage configurations that follow shall be used (Figure 12.111):

- A. Natural swales shall be maintained wherever possible, even when the stream would be on an otherwise buildable portion of a lot. In steeper areas, these swales may require minor widening and stabilization with stone.
- B. All improved channels shall be lined with riprap, grouted riprap, concrete, turf or gabions. Channels lined with riprap shall be designed with a filter fabric.
- C. On gentle upland slopes, wide steep-sided grassed ditches filter water before entering a water course. These ditches can be made into a landscape feature and also provide additional storm detention in relatively flat topography.
- D. In shallow rock areas, narrow channels may be cut into the rock and used without the normal side slope, provided the City's Director of Public Works is satisfied with volumes and velocities.

**Figure 12.111  
SURFACE DRAINAGE CONFIGURATIONS**



## SECTION 12.120 DETENTION

A. Each development shall provide on- or off-lot detention of excess stormwater runoff resulting from that development. For this Section's purposes, "excess stormwater runoff" shall include all increases in stormwater resulting from one of the following:

1. An increase in the site's impervious surface resulting from any new buildings, roads, and/or parking lots.
2. Changes in soil absorption caused by compaction during development.
3. Contour modifications, including filling or draining small depressional areas, altering drainageways, or installing collection systems to intercept street flows or replace swales or other drainageways.
4. Altering subsurface flows compared with the site in its natural state.

Detention shall be required based on the land use, pervious surface, and impervious surface for nonresidential uses. Residential uses shall use the residential size and lot type and apply pervious data to open space.

B. No development shall cause downstream property owners, water courses, channels, or conduits to receive stormwater runoff from proposed developments at a higher peak flow rate than would have resulted from the same storm event occurring over the proposed development site with the land in its natural, undeveloped condition. For this Section's purposes, "undeveloped condition" shall include all natural retention areas and drainageways, plus existing highway drainage structures, in the flow calculations.

C. All stormwater storage facilities shall be designed with sufficient capacity to accommodate all runoff caused by the development in excess of the natural, undeveloped condition. The storage capacity of all

storage facilities shall be sufficient to store one hundred fifteen (115) percent of the excess flow, in each watershed, which would result from the 100-year storm of 24-hour duration.

- D. The APWA Division V, 5600 Storm Water Drainage System Manual is the approved standard for calculating detention. Where this Section conflicts with the APWA Division V, 5600 Storm Water Drainage System Manual, the requirements of this Section shall apply. Where this Ordinance conflicts with any County, State, and Federal ordinance or regulation, the most restrictive ordinance or regulation shall apply.
- E. All detention facilities and improvements required by this Section shall comply with the following regulations:
  - 1. Storage may be provided by wet or dry bottom basins or reservoirs or rooftop storage facilities, except in the water supply watersheds where all basins shall be wet. Wet basins shall have a water volume equal to at least a two (2) hour twenty (20) year storm. In a water supply watershed, wet basins shall have a water volume equal to at least a two (2) hour fifty (50) year storm.
  - 2. Outlet control structures shall be designed as simply as possible and shall operate automatically.
  - 3. Emergency overflow facilities shall be provided.
  - 4. Basins designed without permanent pools (dry bottom basins) in the water supply watershed shall be planted as wetlands.
  - 5. All other dry bottom basins shall be designed to serve secondary purposes for recreation, open space, or other types of use that will not be adversely affected by occasional or intermittent flooding. Each shall:
    - a. Facilitate interior drainage and provide natural grades to outlet structures, longitudinal and transverse grades to perimeter drainage facilities, or install subsurface drains.
    - b. Be designed for periodic cleaning and sediment removal, which shall be removed from the site or otherwise disposed of in an appropriate manner.
    - c. Provide a water depth not exceeding four (4) feet unless otherwise approved by the City's Director of Public Works. The final depth and time of release shall also be consistent with any proposed final use.
  - 6. For basins designed with permanent pools (wet basins):
    - a. If fish are to be stocked, at least twenty-five (25) percent of the area of the permanent pool must have a minimum depth of-ten (10) feet.
    - b. For emergency purposes, cleaning, or shoreline maintenance, facilities shall be provided or plans prepared for the use of auxiliary equipment to permit emptying and drainage.
    - c. Aeration facilities may be required when the influent quality and detention time would lower the basin's dissolved oxygen content.
    - d. Approach slopes shall be at least 6:1 but not more than 3:1 and shall be at least four (4) to six (6) feet wide and slope gently toward the shore to prevent people or objects from sliding into deep water. A freeboard of two (2) feet above the high-water elevation shall be provided on all retention basins. Irregular natural appearing shorelines and vegetation shall be strongly encouraged.

- e. The basins shall be designed to include sediment traps in all inlets. Sediment traps shall be designed to permit periodic cleaning and maintenance. A basin maintenance plan shall be developed to ensure the design depths of the basin will remain stable over time.

7. **Building Regulations.**

- a. Detention storage requirements may be met either in total or in part by detention on flat roofs. Design specifications of such detention shall be a part of the Zoning Permit application (Section 21.530). These specifications shall include the storage depth and volume, outlet devices and downdrain designs, overflow scuppers elevations, rooftop structure design loadings, and emergency overflow provisions. Rooftop storage shall not be permitted to drain directly into sanitary sewers or streets. All such storage shall be certified by a registered engineer.
- b. Paved parking lots may be designed to provided temporary detention storage on a portion of their surfaces not to exceed twenty-five (25) percent. Outlets shall be designed to empty the stored waters slowly in sheeting action. Storage areas shall be posted with warning signs and shall be designed to fill to maximum depths in not less than one (1) hour.
- c. All or a portion of the detention storage may also be provided in underground detention facilities.

8. Retention in floodplains shall be permitted only where the cross section of floodplain is altered to provide the storage, and soils data indicate high water tables will not reduce storage potential.

9. Where required, easements shall be provided for adequate access for inspections, construction, and maintenance of all storm water conveyance systems and detention or retention structures.

10. Basins shall be sodded or seeded with established growth and inspected by the City's Director of Public Works.

F. The developer shall be responsible for maintaining all improvements until such time as streets are accepted, the development is substantially completed, and occupancy permits are issued. However, the developer shall not transfer these maintenance improvements until final approval, final inspection, and a certificate of compliance is granted by the City. Thereafter, all detention improvements shall be maintained in perpetuity by the owner, homeowners association, or by the City ( if dedicated and accepted by the City), and cannot be developed for any other use which would limit or cause to limit the use for detention.

G. The developer's engineer shall be required to inspect all drainage facilities under construction and certify their compliance with approved plans. In addition, a registered engineer, employed by the City of Paola, or the City's Director of Public Works may inspect all drainage facilities during construction. When facilities are not constructed according to approved plans, the Zoning Officer has the explicit authority to compel compliance and require correction of any situations not complying with the approved plans.

**DIVISION 12.150      UNDERGROUND UTILITIES**

## **SECTION 12.151 REQUIREMENTS**

- A. Except as otherwise provided in this Section, all utilities shall be installed underground within designated easements by the subdivider or utility company prior to the issuance of a certificate of occupancy. For purposes of this Section, the term "utilities" shall include, but not be limited to, all pipes, poles, wires, connections, conductors, switchers, line transformers and insulators which supply natural gas, electricity, sewage or water, or which may be used for communications transmission.
- B. The subdivider, developer or owner of any such area or portion thereof shall make the necessary arrangements for the installation of underground utilities. Such arrangements shall be made with the utility company. A letter from the utility company confirming that such underground insulation as required by this Section has been completed shall be submitted to the Zoning Administrator at the time that a certificate of occupancy is requested. A certificate of occupancy shall not be granted absent such confirmation.
- C. The provisions of this Section shall not apply to any of the following uses:
  - 1. All electrical power lines rated at or above "feeder" line class. For purposes hereof, a "feeder" line is defined as that portion of an electrical circuit which provides power from a power substation and which has a rated capacity of 3,000 KVA or more.
  - 2. All teleable lines rated at or above "trunk" line class. For purposes hereof, a "trunk" line is defined as that portion of a teleable systems line that is .750 inches in diameter.
  - 3. Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or services to individual properties from such existing overhead lines that are within a subdivision previously approved in accordance in conformance with existing regulations.
  - 4. Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or services to individual properties from such existing overhead lines that serve properties adjacent to but not within areas being subdivided.
  - 5. Any communication line that would otherwise be required by this Section to be underground that uses an overhead pole or structure exempted by this Section.
  - 6. Radio and television antennas.
  - 7. Structures on corner lots, in streets and alleys, and on easements adjacent thereto, and in cases where electrical and communication wires cross a street or other district boundary from an area where overhead wires are not prohibited, may be connected to said overhead wires.
  - 8. Overhead lines attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location of the building to another location of the building or to an adjacent building without crossing a property line.
  - 9. Poles used exclusively for street or area lighting or for traffic control facilities.
  - 10. Service terminals, transformers, regulators, meters or other on- and above-ground appurtenances normally used with and as a part of an underground distribution system.
- D. Nothing in this Section will prevent the replacement of poles, overhead wires, and associated overhead structures on these lines when necessary for the purpose of maintaining the line or upgrading the capacity thereof or, in the case of single-phase lines, the addition of the necessary facilities to three-phasing of the line.

E. Electric distribution systems shall be located at the rear of lots except where the property owner makes a written request to the Zoning Administrator for installation elsewhere on the property due to topographic conditions which, in the sole discretion of the Zoning Administrator, outweigh the benefits resulting from rear lot installation and such alternative location will not result in adverse consequences for neighboring properties or the community. (Ordinance 2946, 07/10/07)

(Ordinance 2808, 08/27/02)

## **DIVISION 12.200 SANITARY SEWER**

### **SECTION 12.210 PUBLIC SANITARY SYSTEMS**

Article 4 lists uses in the E District that are permitted to use on-lot sanitary sewer systems. All other uses shall provide public sanitary sewer approved by the City's Director of Public Works unless on-lot systems are permitted by this Division for specific conditions or by Article 14. It is the intent of these regulations that property served by public sewer either be within the city limits or be subject to a fully executed and recorded consent to annexation by the City.

### **SECTION 12.220 ON-LOT SYSTEMS**

On-lot systems shall be permitted approved by the Miami County Environmental Health Department. Lots of record on the date of adoption of this Ordinance shall be allowed to use on-lot systems, provided the system is not within four hundred (400) feet of a public sewer to which the City would allow connection to be made. See Article 5.

### **SECTION 12.221 ON-LOT STANDARDS**

A developer may install an individual sewage disposal system for each lot, if the following criteria are met:

- A. The subdivision may not exceed a maximum of twenty (20) lots;
- B. Each lot must have the minimum lot and area requirements of Table 4.110 A. for single-family conventional systems permitted to have on-lot sewer systems.
- C. All septic tanks and lateral lines shall meet the following setbacks:
  1. Dwelling or property line: ten (10) feet.
  2. Water supply, including public water lines, wells, and cisterns: one hundred (100) feet.
  3. Watercourse: fifty (50) feet. All such systems within the water supply watershed shall meet the standards of Section 05.233.
- D. All lateral fields shall meet the Miami County Environmental Health Department standards. If variances are requested of the County, they must also be approved by the City's Director of Public Works.

### **SECTION 12.230 INTERIM SEWER SYSTEMS**

Extending sewer in the Community Growth Area is intended to be phased. Therefore, areas zoned for uses requiring public sewer (Table 4.110 A.) may not currently have sewer available. Alternative systems using permitted system designs shall be permitted provided they meet this Ordinance=s requirements. The permitted systems are:

- A. Systems with normal gravity sewers leading to an aerated lagoon treatment system that meets all discharge requirements or irrigates open space land for final disposal or to package plants approved by the State of Kansas.
- B. Systems with septic tanks pumping into low pressure sewers leading to an aerated lagoon treatment system that meets all discharge requirements or is used as land application in open space land for final disposal or to package plants approved by the State of Kansas.
- C. Sewage lagoons shall be allowed in the Lake Miola Watershed only with the permission of the City and Kansas Department of Health and the Environment.
- D. Discharge from package plants shall be allowed in the Lake Miola watershed only with the permission of the City and Kansas Department of Health and the Environment.

The site plan must indicate final disposition of any land used for treatment lagoons, buildings, or land treatment areas.

#### **SECTION 12.231 MANAGEMENT OF INTERIM SYSTEMS**

All interim systems shall be managed by the City of Paola. The following conditions shall be attached to the use of such systems.

- A. The development shall be within the City=s corporate limits or a fully executed consent to annexation shall be recorded.
- B. A home or property owners= association shall be created to which all lots within the development must belong.
- C. When City services reach the development, the City at its own determination shall continue the facility or close it. All costs associated with the closing shall be assessed to the benefit district except as provided in E. below.
- D. If the land on which the interim system is to revert to the developer or successors, they shall be assessed the costs of removing the system rather than the home or property owners= association. Once removed, the developer may submit a plat of subdivision for the use of the property. If the land is to be open space dedicated to and accepted by the City, the City will pay fifty (50) percent of the grading and removal.

#### **DIVISION 12.300 WATER SUPPLY**

**SECTION 12.300 SPECIAL STUDY**

For multi-family and commercial developments, a special study to determine fire flow and fire protection requirements shall be conducted by an engineering firm licensed to practice in the state of Kansas and shall be sealed by a Licensed Professional Engineer. The study shall cite similar uses and be based on a detailed analysis of the proposed use and the available water supply. The special study shall be submitted at the developer's expense. The City may substitute or rely on the special study for that specific property.

**DIVISION 12.400 PARKING AND LOADING****SECTION 12.410 PARKING STALL DIMENSIONS**

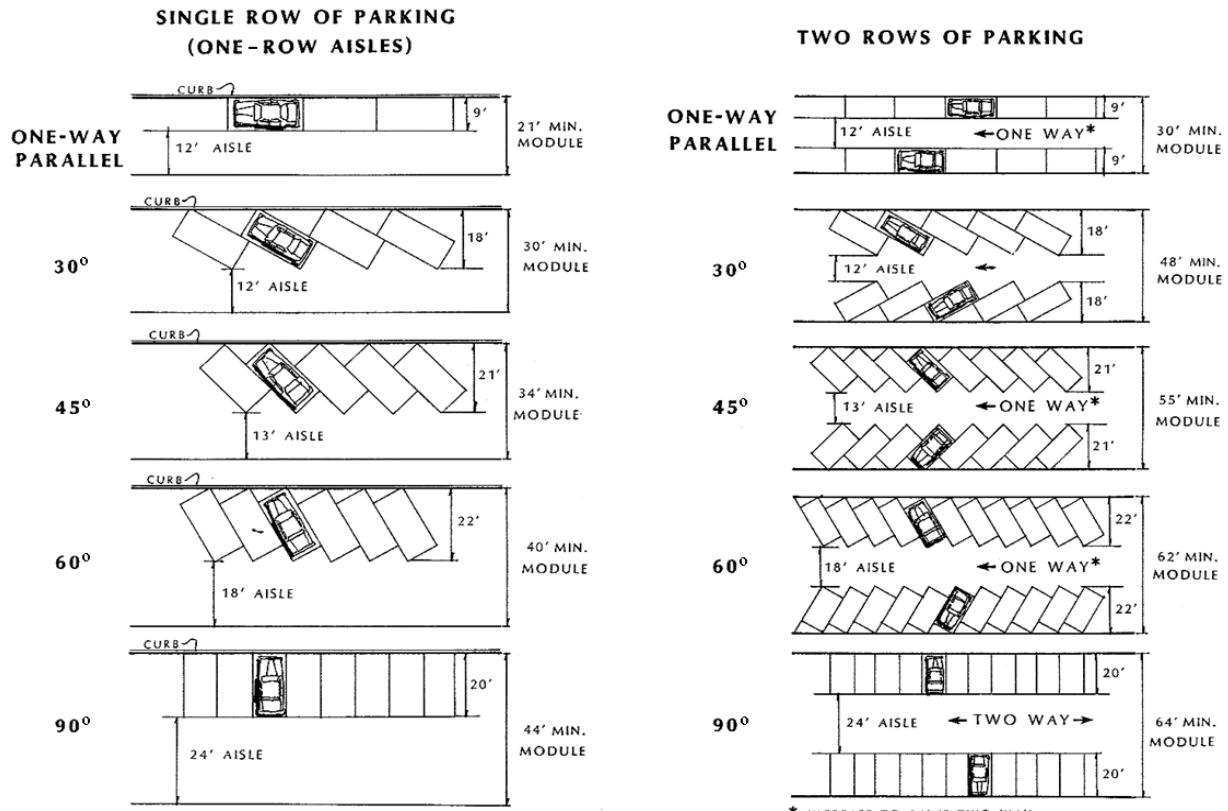
Table 12.410 specifies the minimum horizontal widths for standard parking rows, aisles, and modules (also see Figure 12.410).

- A. The standard parking space is nine (9) feet by eighteen (18) feet (also see Section 12.411).
- B. Parking space length can be reduced to sixteen and one-half (16.5) feet, including wheel stop, if additional space of one and one-half (1.5) feet in length is provided for the car's front overhang. The unpaved area shall be planted in groundcover but shall not count towards the required parking lot landscaping.
- C. Parking spaces shall have a vertical clearance of at least eight (8) feet.
- D. In parking structures, minimum aisle widths must be maintained. The owners may designate stalls as being for compact cars. Compact car spaces may be eight and a half (8.5) feet by sixteen (16) feet. The smaller stalls will reduce total width of the area needed for stalls and isles. No more than 20% of the total stalls shall be compact car stalls.

**Table 12.410**  
**MINIMUM HORIZONTAL PARKING WIDTHS FOR STANDARD AUTOMOBILES**

<b>Dimension</b>	<b>One-Way Parallel</b>	<b>Space Angle (degrees)</b>			
		<b>30</b>	<b>45</b>	<b>60</b>	<b>90</b>
<b>Single Row of Parking</b>					
Parking aisle	9'	18'	21'	22'	18'
Driving aisle	12'	12'	13'	18'	24'
Minimum width of module (row & aisle)	21'	30'	34'	40'	44'
<b>Two Rows of Parking</b>					
Parking aisle	18'	36'	42'	44'	40'
Driving aisle	12'	12'	13'	18'	24'
Minimum width of module (row & aisle)	30'	48'	55'	62'	64'

**Figure 12.410**  
**PARKING STALL DIMENSIONS**



## SECTION 12.411 HANDICAP PARKING

All uses, other than residential served by on-lot parking, shall provide parking spaces for motor vehicles which transport disabled persons in accordance with this Section's standards.

**Table 12.411  
REQUIRED NUMBER OF  
OFF-STREET HANDICAP PARKING SPACES**

Number of Parking Spaces Provided	Number of Handicap Spaces Required
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
>200	7 plus 1 for each 100 additional parking spaces provided over 200

- A. Handicap parking spaces shall be a minimum of eight (8) feet wide by eighteen (18) feet long with an adjacent parallel access aisle five (5) feet wide. The adjacent parallel access aisle may be shared by two (2) accessible parking spaces. One (1) in every eight (8) accessible spaces shall have an access aisle a minimum of eight (8) feet wide (rather than five (5) feet) and shall be signed "Van Accessible."
- B. Handicap parking spaces shall be located as close as possible to an entrance which allows such persons to enter and leave the parking area and building without assistance.
- C. Handicap parking spaces shall be posted and marked with both a ground-mounted sign and pavement marking which includes the international symbol for barrier-free environments and a statement informing the public that the parking space is reserved for use by disabled persons.
- D. Residential units designed for occupancy by disabled persons shall provide one (1) handicap parking space for each dwelling unit designed for such occupancy.
- E. Off-street parking spaces required for the disabled by this Ordinance shall count toward fulfilling this Ordinance's total off-street parking requirements.
- F. Other Ordinance guidelines for handicap accessibility to public facilities shall be in accordance with regulations issued by federal agencies, including the United States Department of Justice, under the Americans with Disabilities Act of 1990. More specifically, these regulations include 28 CFR Part 36 "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Final Rule."

#### **SECTION 12.420 OFF-STREET PARKING DESIGN STANDARDS**

All off-street parking shall meet the following design standards:

- A. All off-street parking areas shall be designed so vehicles do not back out into any road or public right-of-way, except for parking facilities serving single-family residential lots and over-flow parking facilities accommodating less than five (5) vehicles.
- B. Each required parking space, except valet parking spaces, shall have unobstructed access from a road or alley, or from an aisle or drive connecting with a road or alley, without moving another vehicle.
- C. All off-street parking facilities shall be designed with appropriate vehicular access to a street or alley in such a manner which causes the least interference with traffic movements.

#### **SECTION 12.430 PARKING SURFACES**

- A. All parking lots shall be paved with concrete, paving blocks, asphalt, or other all-weather surface. Pavers or grids are permitted in low-volume parking or overflow areas. Gravel is not an all weather surface.
- B. Light use areas, those needed only twenty-five (25) days per year or less, may be provided with pervious pavements or grids that permit grass to grow through the blocks.

C. Gravel may be considered for parking areas associated with outdoor recreation facilities. A parking lot plan must be submitted for approval by the Planning Commission and City Council. Gravel parking is prohibited for all other areas.

#### **SECTION 12.431 WAIVER - IMPROVING PARKING, LOADING, AND STORAGE AREAS**

A portion of the parking lot, loading, and storage areas required under this Ordinance may remain unimproved until such time as the City Council deems it must be improved to serve demand or deems it a nuisance. Such delayed improvement of parking, loading, and storage areas may be permitted only after the Planning Commission is satisfied that initial occupancy of the premises will be adequately served by the unimproved parking, loading, and storage areas and only after the approval of a final development plan that clearly indicates the location, pattern and circulation to and from the deferred parking, loading, and storage areas.

#### **SECTION 12.440 OUTDOOR LOADING BAY AREA STANDARDS**

##### **A. Dimensions.**

1. Each off-street loading space's minimum area, excluding area for maneuvering, shall be eight hundred (800) square feet. Where semi-trailers are prohibited, the minimum area shall be reduced to three hundred (300) square feet.
2. Each outdoor loading bay area's minimum dimensions shall be twelve (12) feet wide and twenty-five (25) feet long. At no time shall any part of a truck or van be allowed to extend into a public thoroughfare or right-of-way while the truck or van is being loaded or unloaded. If the outdoor loading area is covered but not totally enclosed, the minimum height of the outdoor loading bay area shall be fourteen (14) feet.

B. **Maneuvering Space.** Adequate off-street truck maneuvering space shall be provided on-lot and not within any public street right-of-way or other public lands.

C. **Location.** All loading areas are required to be located on the same lot as the building or lot served by the loading area.

D. **Blocking Access.** Blocking loading spaces or parking spaces is prohibited. Loading spaces or parking spaces shall not be located to block access. Permanent or moveable structures of any type, including trash receptacles or compactors, shall be prohibited from parking, loading, or access areas.

E. **Fire Exit or Emergency Access.** Off-street loading facilities shall be designed so as not to interfere with any fire exits or emergency access facilities to either a building or site.

#### **DIVISION 12.500 EXTERIOR LIGHTING STANDARDS**

Exterior lighting is regulated to eliminate light spill-over and glare on motor vehicle operators, pedestrians, and land uses within the light source's proximity. Safety considerations are the basis of the regulations, especially with respect to motor vehicles. In other cases, the regulations protect against both nuisance and hazard aspects of glare or excess light.

## SECTION 12.501 APPLICABILITY

This Division shall apply to all uses except for public street lighting which shall conform to standards set by the State Department of Transportation and the City of Paola Public Works Department.

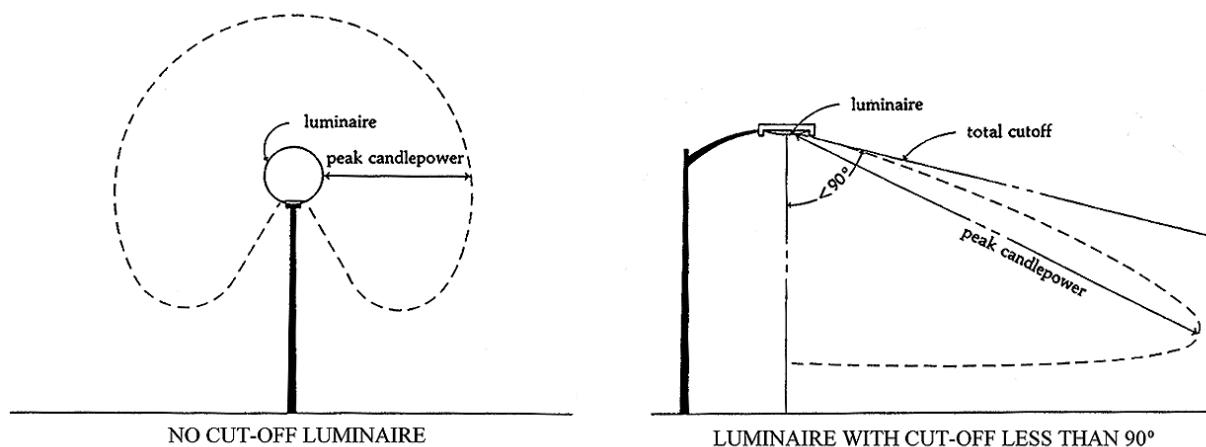
## SECTION 12.510 EXTERIOR LIGHTING PLAN

Any time exterior lighting is installed or substantially modified, and whenever a Zoning Permit is sought (as required in Section 21.530), an exterior lighting plan shall be submitted to the Zoning Administrator to determine whether this Article's requirements have been met and that adjoining property will not be adversely impacted by the proposed lighting.

## SECTION 12.520 LIGHTING STANDARDS

Two types of light sources or luminaires are available (Figure 12.520). One is a fixture having no cut-off, directing the light to limit view of the light source or luminaire. The second is a cut-off fixture, shielding the light source from view. The maximum permitted luminaire heights are indicated in Table 04.110 A.

**Figure 12.520  
TYPES OF LUMINAIRES**



**TABLE 12.522 ILLUMINATION – POLE HEIGHT STANDARDS**

Table 12.522		
Zoning District	Regular Pole	Cut-Off
Estate	10 feet	15 feet
Suburban	15 feet	20 feet
Suburban Commercial	15 feet	20 feet
Thoroughfare Access	15 feet	25 feet
Neighborhood Conservation	15 feet	25 feet
Downtown	15 feet	15 feet
Business Park	15 feet	20 feet
Industrial	15 feet	25 feet

## **SECTION 12.525 ILLUMINATION STANDARDS**

The Zoning Officer shall evaluate the level of use activity and designate the use as as high, medium, or low activity. The levels reflect both traffic and pedestrian activity and are illustrated by, but not limited to the following examples:

- A. High Activity: Major league athletic events, major cultural or civic events, and regional shopping centers. No such uses exist in Paola at present.
- B. Medium Activity: Fast food facilities, community shopping centers, office parks, hospital parking areas, transportation parking (airports, commuter lots, etc.), cultural, civic or recreational events, and residential parking complex.
- C. Low Activity: Neighborhood shopping, industrial employee parking, educational facility parking, and church parking.

Activity	Average Maximum (On Pavement)	Minimum Point	Uniformity Ratio (Average:Minimum)
HIGH	4 footcandles	0.9 footcandles	4:1
MED	3 footcandles	0.5 footcandles	4:1
LOW	2 footcandles	0.2 footcandles	4:1

- D. Illumination spillover to neighboring properties cannot exceed 0.5 footcandles as measured at the property line.

## **SECTION 12.530 EXTERIOR LIGHTING FOR OUTDOOR RECREATIONAL USES**

Ball diamonds, playing fields, and tennis courts have unique requirements for night-time visibility and generally have limited hours of operation. These uses may meet the following limited use standards for approval of lighting in excess of the exterior lighting standards of Table 4.110 A.

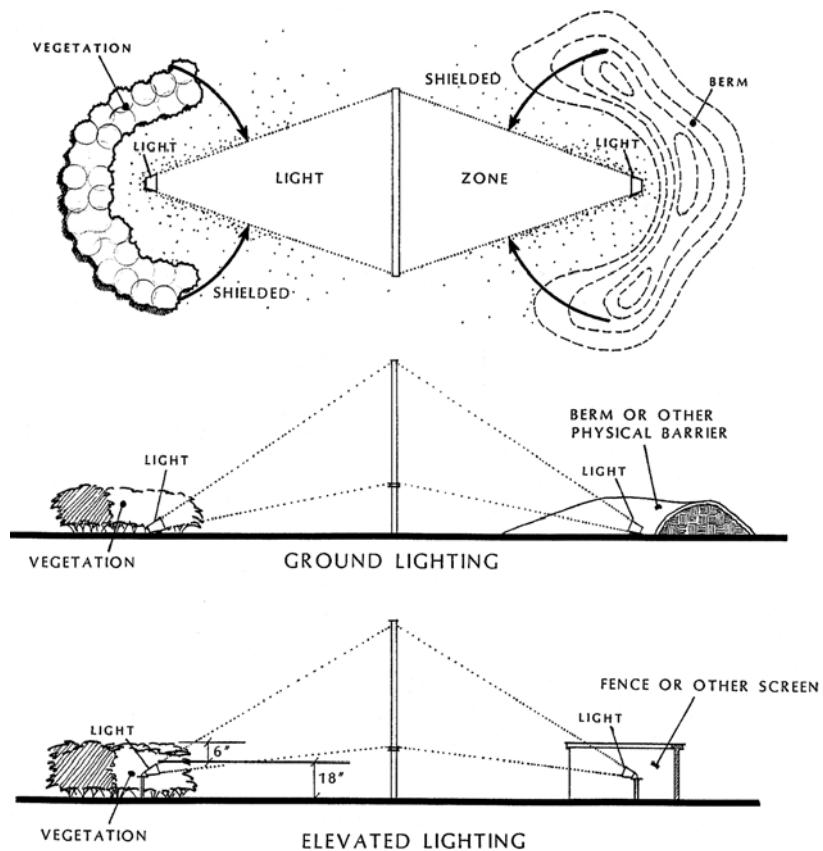
- A. The site plan meets all other Ordinance requirements and, to the maximum extent possible, lighting is located to avoid shining on residential uses.
- B. Exterior light sources do not exceed the maximum permitted post height of eighty (80) feet.
- C. The light source or luminaire shall be cut-off fixtures. The luminaire may have a cut-off angle that extends beyond the property boundaries if:
  1. A landscaped bufferyard is provided to prevent light and glare spill-over to adjacent residential property. The Zoning Officer shall be able to require denser bufferyards than those in Table 4.110 A. to achieve this objective.

2. The maximum permitted illumination shall not exceed one (1) footcandle at the residential property line or the street curb, whichever is less.

#### SECTION 12.531 SIGN LIGHTING, SHIELDED SPOTLIGHTS

Shielded spots shall be screened by evergreen landscaping, walls, berms, or cut-off shielding so the light source is not visible off-site. In most cases, a combination of cut-off shielding and a landscape or other feature will be needed to provide the necessary screening. Figure 12.531 provides an example of how this objective is to be accomplished.

**Figure 12.531  
SHIELDED SPOTLIGHTS FOR SIGNS**



## ARTICLE 13

### LANDSCAPING, TREE PROTECTION, AND EROSION CONTROL

#### **DIVISION 13.000 PURPOSE**

This Article provides the detailed landscaping standards for installing and maintaining landscaping materials and protecting specimen trees. Also, this Article provides the requirements for erosion control.

#### **DIVISION 13.100 PLANT UNITS AND MATERIALS**

This Division establishes a standard landscaping element called a "plant unit". The plant unit serves as a basic measure of plant material required for all landscaping except natural areas, pedestrian precincts, or mitigation. The plant unit provides a balance of vegetation.

#### **SECTION 13.110 STANDARD PLANT UNITS**

Each plant unit alternative in Table 13.110 is generally interchangeable with the standard plant unit. The developer is free to use any one or a combination of alternatives. However, some alternatives are preferred given certain objectives. For example, Alternative Unit D is best suited for the interior of parking lots or other places where clear, low-level views are desired or fences exist. Where year-round screening is required, Alternative Unit B or C is preferred. In some cases, this Ordinance may specify a specific plant unit, or an alternative plant unit may be required during subdivision or site plan review.

#### **SECTION 13.120 ON-LOT LANDSCAPING**

In general the on-lot landscaping shall be distributed around the lot, planted close to the buildings, or in some combination of these planting schemes. However, front yards are particularly important to preserving community character. Certain unit types require additional planting material to be planted between front load garages and the right-of-way or as indicated in Section 13.121.

PLANT UNIT <b>ALTERNATIVES</b>	SIZE & TYPE OF PLANTS <b>REQUIRED</b>	QUANTITY
<b>STANDARD PLANT UNIT</b>	2.5" caliper canopy tree 1.5" understory tree 3 gallon shrubs	1 2 13
<b>ALTERNATIVE UNIT A*</b>	2.5" caliper canopy tree 1.5" understory tree 6' high evergreen trees 3 gallon shrubs	1 1 1 11
<b>ALTERNATIVE UNIT B*</b>	1.5" understory tree 6' high evergreen trees 3 gallon shrubs	2 3 7
<b>ALTERNATIVE UNIT C*</b>	6' high evergreen trees 3 gallon shrubs	4 15
<b>ALTERNATIVE UNIT D*</b>	2.5" caliper canopy tree 3 gallon shrubs	2 3
<p>* Preferred for year-round screen. ** May be required where visibility is required for automobile operation.</p>		

## SECTION 13.121

## SPECIAL RESIDENTIAL LANDSCAPING

Village House and units using side-load garages shall install special landscaping in addition to the landscaping required by Table 04.110 A.

A. Village House street yards shall be landscaped with two additional items. Select one from each of three following categories. These additions shall be included in one of two ways. The plan shall identify the techniques on each lot or options can be included in the house price and selected by the home purchaser.

1. **Property-line Border.**

- a. Stone wall or wood or wrought-iron fence at least three (3) feet in height; or
- b. Hedge with shrubs planted at a maximum of three (3) feet on center; or
- c. A grade change of at least two (2) feet, raising the street yard above the sidewalk grade. This option is available only where the natural topography slopes up from

the sidewalk on that side of the street. This option must run across at least three (3) consecutive lots and be identified on grading plans to ensure adequate drainage.

2. **Additional Landscaping.**

- a. Two (2) flowering understory trees at one and one-half (1.5) inch caliper.
- b. Two (2) evergreen trees at least five (5) feet high.
- c. Three (3) decorative evergreen trees at least ten (10) gallon pot.
- d. A perennial flower bed having a minimum of five (5) species over eighty (80) square feet and one (1) understory or evergreen of the size indicated in a.. and b. above.

3. **Structure.** One (1) of the following and ten (10) flowering or evergreen shrubs at least twenty-four (24) inches high. These options are not available where a front-load garage is used on a lot with less than ninety (90) feet of frontage.

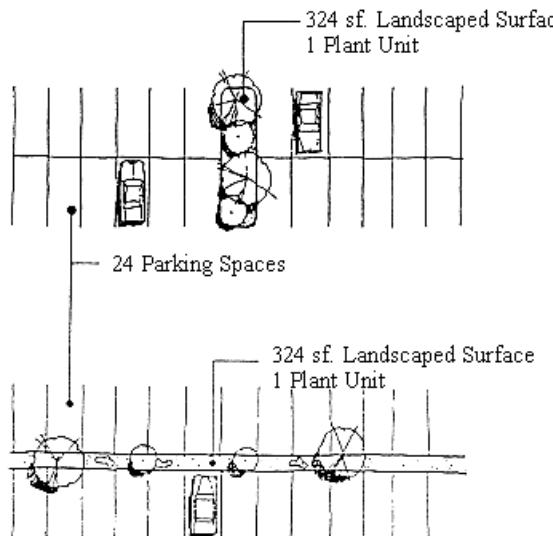
- a. A roofed porch which is not enclosed or screened, running three-quarters (0.75) the width of the house front and having a minimum width of seven (7) feet.
- b. A masonry or stone patio raised a minimum of eighteen (18) inches above the front yard, minimum eight (8) foot width, and at least five hundred (500) square feet.

B. **Side-Loading Garages.** An extra plant unit shall be required between the street and the side of the garage facing the street; or, the developer may propose planting options that in the Planning Commission=s opinion are approximately equal in cost and effectiveness.

### **SECTION 13.130 PARKING LOT LANDSCAPING**

Parking lot landscaping shall be one (1) plant unit per number of parking spaces specified in Table 4.110 A. Each plant unit shall be planted in a planting island or space with a minimum total area of three hundred twenty-four (324) square feet. The plant unit may be distributed between two landscaping islands or in larger continuous islands. If two smaller islands are selected, each shall contain a minimum of one hundred sixty-two (162) square feet in area. In small parking lots, the island(s) may be the lot's corners. The landscaping required by Table 4.110 A. shall be located within the parking lot or adjoining entrance drives and circulation drives. Existing trees that can be preserved by leaving the area under their canopy undisturbed shall count towards the landscaping requirements. Figure 13.130 illustrates appropriate planting areas, preservation of existing trees, and several configurations of one (1) plant unit per twelve (12) parking spaces. Plantings along the perimeter of a parking lot shall not be considered as part of the parking lot landscaping requirements.

**Figure 13.130**  
**EXAMPLES OF PARKING LOT LANDSCAPING CONFIGURATIONS**



Illustrating: 1.0 Plant Unit per 24 parking spaces

#### **SECTION 13.140 STANDARDS FOR BUFFERYARD PLANTINGS**

Table 13.140 depicts the narrowest and widest widths of bufferyards and the plant materials in plant units and structures necessary to reach given levels of opacity or buffertype required by Table 4.110 A. This table presents only two combinations of bufferyard width and number of plant units. In actuality, a wide range of other combinations would also meet the respective opacity rating. Flexibility is encouraged; by using the interactive bufferyard system in Section 13.141, the designer may create and test a buffer. The standards are for one hundred (100) linear feet of buffer measured at the bufferyard's centerline. Figure 13.140 shows the two bufferyard options set forth to achieve a 0.50 opacity and several others that were developed using Section 13.141. Some limited or conditional uses have requirements (Table 03.110) that increase bufferyards; these requirements shall be met by adding the opacities of the district bufferyard and the limited or conditional use. For example, if the district requires a 0.3 bufferyard and the specific use requires a 0.2 bufferyard, a 0.5 bufferyard shall be selected.

**Table 13.140**  
**BUFFERYARD REQUIREMENTS PER 100 LINEAR FEET<sup>1</sup>**

Opacity	Bufferyard Width (ft.)	Number of Plant Units	Type of Structure Required
st1	in R.O.W.	2 - 2.5" caliper trees	n/a
st2	in R.O.W.	2 - 2.5" caliper trees	n/a
parking buffer	5	1.00	masonry wall, evergreen hedge at 4' oc., or hedge at 3' oc.
	15	3.00	
.10	5	0.40 <sup>2</sup>	4 ft. hedge at 10' oc.
	15	0.45	
.20	5	0.80 <sup>2</sup>	4 ft. fence - 75% opaque
	20	1.20	
.30	5	0.85 <sup>2</sup>	6 ft. fence - 100% opaque
	25	2.00	
.40	10	1.65 <sup>2</sup>	6 ft. fence - 100% opaque
	40	2.55	
.50	15	2.45 <sup>2</sup>	6 ft. fence - 100% opaque
	40	3.50	
.60	20	2.75 <sup>2</sup>	8 ft. fence - 100% opaque
	40	4.50	
.70	25	3.60 <sup>3</sup>	8 ft. fence - 100% opaque
	60	5.00	
.80	25	4.60 <sup>3</sup>	8 ft. fence - 100% opaque
	80	5.65	
1.00	40	6.40 <sup>3</sup>	8 ft. masonry wall
	100	7.35	

<sup>1</sup> The street buffers st1 and st2 are per 100 feet of street frontage.

<sup>2</sup> This option may be used in the D, TA, NC-R1, NC-R2, and NC-R3 Districts.

<sup>3</sup> This option may be used as in footnote 1, or on lots where the next smallest buffer

**Table 13.140**  
**BUFFERYARD REQUIREMENTS PER 100 LINEAR FEET<sup>1</sup>**

Opacity	Bufferyard Width (ft.)	Number of Plant Units	Type of Structure Required
would use 20% of the site.			

(Ordinance #2835, 08/26/03)

### **SECTION 13.141        BUFFERYARDS**

A. The standards in Table 13.140 have been tested to ensure they meet the opacity standard. Numerous other mixes can meet the standard. The bufferyards were created using the Kendigsoft Bufferyard Model; this model is available within the LDO. Any bufferyard that meets the required opacity rating within the width limits in Table 13.140 is permitted. The Kendigsoft Model can also be used. Table 13.141 lists the settings that shall be used in running the model. This model determines whether or not the tested bufferyard is adequate.

**Table 13.141**  
**LANE KENDIG, INC. BUFFERYARD MODEL SETTINGS**

Factor	Setting			
Building Height	30 ft.			
Viewpoint	120 ft.			
Overlap Factor	0.8			
Opacity Factor	0.6			
Plant Unit Area	500			
<b>Plant Type Settings:</b>				
Factor	Canopy	Understory	Conifer	Shrub
Shape	2	3	4	6
Height	26.0	16.0	18.0	3.5
% Opacity	0.85	0.85	1.00	0.80

B. Buffers over fifty (50) feet wide must meet the height screening requirement of the model without a berm. Narrower buffers shall be permitted without meeting the model's height screening.

## **DIVISION 13.200 LANDSCAPING INSTALLATION REQUIREMENTS**

To ensure plant materials are installed and properly maintained, a landscape plan will be required of all developments. This plan shall show all required plant material's location. A plant list shall accompany the plan, indicating species, size, and number provided. The plan shall also indicate how the plants will receive moisture and the presence or absence of irrigation facilities.

### **SECTION 13.210 PERFORMANCE BOND**

The developer shall submit a bid for the landscaping that shall be reviewed by the Zoning Officer. A bond, landscape contractor guarantee, or other acceptable surety equal to one hundred (100) percent of the cost shall be provided to ensure proper installation and maintenance.

### **SECTION 13.220 REPLACEMENT**

The developer shall be responsible for replacing all plants that die during a two (2) year period from the date of installation. The City may use the bond or surety to replace plants if the developer fails to perform adequately. After the initial two (2) year period, the landowner or, in the case of plant material in common open space, the home or property owners= association, shall be responsible for maintaining and replacing any plants that die.

### **SECTION 13.230 IRRIGATION**

The landscaping areas should use plants that can survive with the area's natural rainfall and do not need irrigation. Where the planting areas cannot naturally be provided with adequate moisture for the plant types to be installed, an irrigation system shall be installed to ensure the plants receive adequate moisture. See Section 8.153.

### **SECTION 13.240 PLANTING LOCATIONS**

The exact placement of required plants and structures shall be the decision of each user, except the following requirements that shall be met:

- A. Trees and shrubs shall be planted clear of the road-salt spray area, or the planting area shall consist of highly salt tolerant plants.
- B. Evergreens and evergreen shrubs shall be planted with a fifteen (15) foot spacing to maximize their chance for survival.

### **SECTION 13.250 AFFORESTATION REQUIREMENTS**

All areas to be afforested and all forest mitigation areas shall be planted with the material listed in Table 13.250. The area around each tree shall be mulched. The entire area may be mulched or seeded in a perennial grass mix with twenty (20) percent prairie mix. Canopy/evergreen trees shall be selected to provide a diversity of native plants. Plantings shall involve a minimum of four (4) species. Where more than one hundred (100) canopy/evergreen trees are required, a minimum of six (6) species shall be provided; no one species shall have less than five (5) or more than thirty (30) percent of the total trees.



**Table 13.250**  
**AFFORESTATION REQUIREMENTS PER ACRE**

No. of Plants	Types of Plants
1	4" caliper canopy or 10-12 ft. evergreen tree
4	3" caliper canopy or 8-10 ft. evergreen tree
10	1-1/2" caliper canopy or 6 ft. evergreen tree
6	1-1/2" caliper or 5-6 ft. understory trees
50	6' whip canopy or 3 ft. evergreen trees
30	bare root shrubs or 1 gallon pots

### **SECTION 13.251 WETLAND PLANTING**

Wetland plantings, whether for mitigation or because of soil or drainage considerations, shall meet the following standards. The plantings shall be based on an on-site investigation by a person qualified in wetland restoration.

- A. Plant material can be of various types -- wet prairie (little standing water), marsh (emergent vegetation), or swamp (woody plants). The selected plant type shall be based on soil, moisture regime, and local conditions. Plant communities should not be forced into unsuitable environments.
- B. If on-site investigation indicates a quality seed bank exists, maintenance may be all that is required.
- C. Drainageway areas may or may not need excavations and additional suitable soils. They may require drainage control structures to maintain desired water levels. The on-site investigation and wetland type selection shall dictate the actions required.
- D. Mitigation areas may require the site's over-excavation and the addition of suitable soils, seedbank, and plants. Means to supply and maintain water levels shall be established.

### **SECTION 13.260 EXISTING VEGETATION**

Where natural vegetation will be preserved on-lot or within open space, bufferyards, or parking lots, that plant material shall be credited towards that specific landscaping requirement in accordance with Table 13.260. Note preserved vegetation shall count for only one (1) landscaping requirement. For example, a sixteen (16) inch tree to be preserved along a property line may count for three (3) open space trees or three (3) bufferyard trees. Also, preserved tree types (canopy, understory, or evergreen) shall only be credited for same tree type requirement.

**Table 13.260**  
**PRESERVED TREES CREDITED TOWARDS REQUIREMENTS**

Preserved Tree Size (DBH)	Number of Trees For	
	Open Space or Bufferyards	Parking Lots or Lots
24 inches +	4	2.5
16-24 inches	3	2
8-15.9 inches	2	1.75
3-7.9 inches	1	1

Also, the following requirements must be met:

- A. A tree survey is conducted locating the individual trees to be preserved or, in the case of a forest, trees within fifty (50) feet of the edge of construction areas.
- B. Individual trees described in the tree survey as healthy and intended to count toward the landscaping requirements shall count only if sufficient protection as indicated below is provided:
  - 1. Trees greater than twenty-four (24) inches DBH: No area within five (5) feet of the drip line shall be disturbed. No topographic change greater than eighteen (18) inches shall occur at the edge of the protected area. A tree expert should indicate the probability that the tree will survive and may require trimming prior to the construction. Only those trees with a high probability of survival will be credited.
  - 2. Trees between sixteen (16) inches and less than twenty-four (24) inches DBH: No area under the drip line is to be disturbed.
  - 3. Trees between eight (8) and less than sixteen (16) inches DBH: No area within the dripline is to be disturbed.
  - 4. Trees between three (3) and less than eight (8) inches DBH: No more than thirty (30) percent of the area within the drip line shall be disturbed.
- C. Trees sixteen (16) inches or greater DBH whose natural drainage is cut off by recontouring or exposed to heavier drainage shall not be credited toward a landscaping requirement unless a management plan approved by a qualified forester is established to protect the tree.
- D. Areas classified as mature or young forest shall count as meeting the following landscaping requirement provided:
  - 1. **Open Space.** The forested area is at least one-half (0.5) acre, seventy-five (75) feet wide part, and will be left undisturbed. Where the area is less than one-half (0.5) acre or less than seventy-five (75) feet wide and to remain undisturbed, a tree survey is required and the trees to be credited will be calculated individually as in Table 13.260.
  - 2. **Bufferyards.**

- a. Where the forested area is two (2) times the width of the bufferyard or seventy-five (75) feet wide, whichever is greater, and to remain undisturbed, the bufferyard requirement shall be considered met. No tree survey is required.
- b. Where the forested area width equals or exceeds the minimum bufferyard width of the required opacity that does not include a fence, hedge, or berm (Table 13.140), all trees with less than ten (10) percent of their canopy undisturbed shall be credited in accordance with Table 13.260.

## **DIVISION 13.300      TREE PROTECTION**

Specimen trees shall be located on the plat or land development plan. The development design shall preserve specimen trees wherever practical. The City may require plat revision where additional preservation is possible without affecting density. Where preservation is not feasible, tree replacement shall be required as mitigation. Any mitigation shall be in addition to the other landscaping requirements of this Ordinance.

## **SECTION 13.310      PRESERVING SPECIMEN TREES**

A specimen tree is preserved by protecting eighty (80) percent of the area under the tree=s drip line. The following techniques shall be used to preserve the maximum number of specimen trees:

- A. The tree=s drip line shall be fenced with three (3) foot orange snow fencing, and no earth moving shall be permitted inside the fenced area.
- B. Development design shall attempt to protect specimen trees by locating them in side yard or other setbacks.
- C. Horizontal road alignments may be reduced. Pavement center lines may meander in rights-of-way.
- D. Building pads altering the building envelope may be required.
- E. Multi-story buildings may be required to reduce building footprints. Where the site contains steep slopes, the Planning Commission may require parking under the building.

## **SECTION 13.320      TREE REPLACEMENT**

Where specimen trees are removed, they shall be replaced in accordance with Table 13.320.

**Table 13.320**  
**SPECIMEN TREE REPLACEMENT**

Size of Specimen Tree (DBH in inches)	Number of Replacement Trees	Size and Type
8.00 to 11.99	3	2" canopy trees
12.00 to 15.99	4	2" canopy trees
16.00 to 19.99	5	2-1/2" canopy trees
20.00 to 23.99	6	2-1/2" canopy trees
greater than 24	8	3" canopy trees

### **SECTION 13.330      STREET TREES**

- A. A street tree shall be defined as any tree planted within the city street right of way. No tree shall be planted within five feet of concrete.
- B. Street trees shall be chosen from an approved list submitted by the Paola Tree Board and approved by the City of Paola. The species list will be reviewed and revised as needed.
- C. Trees of the same species shall not be planted adjacent to one another. An exception may be granted to areas within overlay districts, i.e. downtown city entrance.
- D. Street trees shall have a minimum caliper of 1 ½ inches. (Ordinance 2969, 03/27/07)

### **DIVISION 13.400      EROSION CONTROL**

All development disturbing ground cover for other than agricultural purposes on areas exceeding ten thousand (10,000) square feet shall submit an erosion control plan. Those plans shall locate all required structures and ground cover requirements. Special requirements are required in the Lake Miola watershed (Section 13.430).

### **SECTION 13.410      STRUCTURES**

If required by conditions and existing or proposed topography, the following structures shall be provided. The City's Director of Public Works shall approve such structures.

- A. Silt fencing shall be installed at least two (2) days prior to the start of earth moving along the following:
  - 1. All wetlands, ponds, and floodplains to prevent silting of those areas.
  - 2. The entire down-stream border of water supply watersheds.
  - 3. Anywhere the drainage would enter a terraced area on adjoining farmland.
- B. Temporary silt traps shall be installed along swales or ditches exceeding three hundred (300) feet or as required by swale or ditch slope. They shall also be required at the entrance to all detention basins.

### **SECTION 13.420      GROUND COVER**

Ground cover shall be re-established as soon as practical within the construction period. In any event, only active earth-moving areas shall be left unvegetated for more than six (6) months. Seeding of cool season grasses shall be performed between February 15 and April 30th or August 15 and September 30th. Other forms of temporary cover shall be required if land cannot be seeded within the seeding period. In addition, the following standards shall apply:

- A. Ditches with a slope greater than four (4) percent shall use erosion control measures as approved by Staff to aid in establishing ground covers. These measures shall be required until such ground covers are well established.
- B. Areas to be planted with grass shall use a 1:3 maximum slope ratio for ease of mowing.
- C. All ground covers other than grass shall be approved by Staff. These ground covers shall be indigenous and used in areas of low pedestrian traffic only.

#### **SECTION 13.430 LAKE MIOLA WATERSHED STANDARDS**

In addition to meeting the standards in Section 13.410 and 13.420, all developments shall meet the following standards to ensure a minimum amount of erosion, sedimentation, and pollution reach the Lake Miola water supply reservoir:

- A. All subdivision and land development plans shall be submitted for review by the Miami County Soil and Water Conservation District. The district shall recommend the best management practices and long-term maintenance of detention and erosion control measures. The City may require the developer to conform to these management and design elements. If long-term maintenance is required, a special assessment district shall be created to maintain the system.
- B. During construction, extra silt fencing or sedimentation structures may be required. The use of mats and/or restricting construction areas may be required to reduce the amount of disturbed land left open to erosion.
- C. Mass grading of sites may be prohibited. No cut or fill that would change the original grade of a lot by more than two (2) feet shall be permitted. Foundations shall be stepped to remain within these limits.

## ARTICLE 14

### SPECIAL SUBDIVISIONS

#### DIVISION 14.000 PURPOSE

In addition to normal subdivisions, special subdivisions have been provided that address special conditions that may arise in Paola=s Community Growth Area. The Community Growth Area is zoned for urban development. Sewer may be available to these subdivisions or be easily extended, or the site may be so far from sewer that it cannot be extended at a reasonable cost. Special subdivisions permit landowners under special conditions greater choice in developing their land while ensuring the development pattern does not hinder future sewer extensions by creating excessive costs.

#### SECTION 14.010 TYPES OF SPECIAL SUBDIVISIONS

The authorized special subdivisions and their purposes are as listed below and shown in Figure 14.010.

- A. **Rural Subdivision.** This subdivision provides limited development opportunity where sewer is at least one-half (0.5) mile away and the landowner desires to continue agricultural operations, house family members, or raise income to supplement agricultural operations. This subdivision permits development at minimal cost while providing access protection along existing streets. The rural subdivision permits a landowner to subdivide off up to four (4) lots from a large tract; these lots are designated the "residential lots". The remaining parcel is designated the "residual lot". The "residual lot" shall be included as part of the final plat for recordation purposes. The "residual lot" shall be used in part for access and as a reserve for future development that promotes sound land use patterns. The "residual lot" shall contain a note alerting the "residual lot" owner of the requirements for development at such time further subdivision on such "lot" is proposed.
- B. **Staged Development (Septic).** This subdivision permits a landowner to divide the land into lots served with septic tanks. However, it requires the lots to be designed in a manner that permits each lot to be further subdivided into suburban sized lots at the time sewer is available. Homes must be located so they do not prohibit further subdivision. Each lot must show a future development pattern capable of subdivision without the cooperation of other lot owners in the development.
- C. **Staged Development (Sewer).** This subdivision permits land within the Paola Community Growth Area to develop using a small public sewer system in the manner that would otherwise not be possible because the site is too far from City sewer. This subdivision provides the mechanism to design either a temporary septic system with dry sewer lines or a small sewer plant. The development provides full urban services (sanitary sewer, water, and stormwater systems) that will eventually be tied into the urban system. Under this subdivision type, the subdivision lot design is based upon the ultimate availability and usage of all urban services and utilities; however, the *initial* development may be allowed on individual septic tank and lateral field systems or an acceptable treatment system as approved by the City. Refer to Division 12.200.

#### **DIVISION 14.100      QUALIFICATION**

All special subdivisions permit development with some special treatment of public improvements. No parcel, in existence at the time this Ordinance takes effect, shall use this special subdivision process more than once regardless of change in ownership. No further subdivision of a lot or the residual lot created by a special subdivision shall be permitted except as a major subdivision meeting the requirements of this Ordinance. The requirements in Sections 14.110 through 14.130 must be met for a development to qualify as a special subdivision.

#### **SECTION 14.110      RURAL SUBDIVISIONS**

The parcel upon which a rural subdivision is proposed shall have at least two (2) and no more than four (4) lots, in addition to the residual lot. No parcel shall be able to use the rural subdivision standards unless it meets the minimum area standards in Table 14.110.

<b>Table 14.110</b> <b>MINIMUM AREA STANDARDS FOR RURAL SUBDIVISIONS</b>	
<b>Number of Lots</b>	<b>Acreage</b>
2	38
3	55
4	75

#### **SECTION 14.111      STAGED DEVELOPMENT (SEPTIC) SUBDIVISIONS**

The parcel upon which the staged development (septic) subdivision is proposed shall be at least two thousand six hundred and forty (2,640) feet from an existing sanitary sewer (interceptor, main, or lateral) with capacity to serve the staged subdivision.

#### **SECTION 14.112      STAGED DEVELOPMENT (SEWER) SUBDIVISIONS**

The parcel upon which the staged development (sewer) subdivision is proposed shall be at least two thousand six hundred and forty (2,640) feet from an existing sanitary sewer (interceptor, main, or lateral) with capacity to serve the staged subdivision. The staged development (sewer) option is available only to property annexed into the City of Paola, or property which is subject to an irrevocable consent to annexation.

#### **SECTION 14.120      CONDITIONS AND LIMITATIONS**

Special subdivisions shall meet the following conditions and limitations. For all subdivision types, public right-of-way shall be dedicated to arterial or collector street standards as designated on the CGA Street Map (refer to map on page 11-3):

**A. Rural Subdivision.**

1. All lots shall take access from an easement having a minimum width of sixty (60) feet located on the residual parcel. The access easement shall be improved in accordance with Section 11.150 C.
2. Any lot abutting a public right-of-way, classified as a collector or above, shall have an accompanying plat note prohibiting access to that road or street.
3. All lots shall be at least three (3) acres and have been approved by the Miami County Health Department for a septic system. In addition, public water meeting minimum rural water supply standards shall be provided for each lot (other than the residual) in the proposed development.
4. The responsibility of the residual lot owner to pave roads and install all public utilities, water, sewer, and storm drainage for the initial lots shall be noted on the final plat.

**B. Staged Developments (Septic).**

1. Each lot shall be at least four hundred sixty (460) feet wide for the length of the lot and contain at least ten (10) acres.
2. Each lot shall take access from a new subdivision street.
3. Each lot shall demonstrate the ability to be resubdivided into lots with areas no greater than twenty thousand (20,000) square feet and one hundred (100) feet of frontage. Future resubdivided areas shall be delineated on the final plat with dotted lines.
4. A single house pad shall be provided on each lot. The pad shall occupy only one (1) future lot. The Zoning Officer shall permit a pad to be modified to use two lots if requested in writing by an owner seeking a building permit and signing an agreement not to object to a special district created to run sewer to the area.
5. The drainage system shall be designed to accommodate full development based on the future lot plan. Surface drainage meeting this Ordinance=s requirements shall be handled in a development-wide detention basin(s) built and dedicated to the City so all resubdivisions need only install on-site drainage improvements.
6. The responsibility of the individual lot owners to improve roads and install all public utilities, water, sewer, and storm drainage for the initial lots at the time of replatting shall be noted on the final plat.
7. As an alternative to 6 above, sanitary sewer lines shall be installed dry and capped to serve the subdivision at such time the lines may be connected to the City system.

**C. Staged Developments (Sewer).**

1. All lots shall take access from a sixty (60) foot easement that is part of the residual parcel or a dedicated street. The access easement shall be paved in accordance with Section 11.150 C.
2. Water lines shall be installed as per Division 12.300 even if the water pressure will not currently provide adequate fire fighting pressure.
3. All building lots shall either be less than or average less than thirty thousand (30,000) square feet in area. The average frontage shall be no more than fifty (50) percent of the lot depth or conform to the standards of a lot in Table 04.110 A. or B.

4. Any lot abutting a public right-of-way, classified as a collector or above, shall have an accompanying note prohibiting access to that street.
5. The submitted plans shall show the future design and layout of the residual area used for septic or sewer treatment facilities.
6. Sanitary sewer lines shall be installed and connected to a system approved by the City and Kansas Department of Health and the Environment.
7. As an alternative to 6 above, sanitary sewer lines shall be installed dry and capped to serve the subdivision at such time as the lines may be connected to the City system. All lots using septic shall have a system approved by the Miami County Health Department. The system may be located on the residual parcel. The residual parcel shall have a cross easement that prohibits disturbing the septic system until such time as the City connects the dwelling unit to public sewer. In return, the landowner=s easement automatically expires upon the connection.

D. All special subdivisions shall dedicate the required right-of-way for any street upon which they have frontage.

#### **SECTION 14.130 REQUIREMENT FOR RESIDUAL LOTS**

A note shall appear on all plats for rural and staged subdivisions specifying that the residual lot cannot be further subdivided until all public improvements for water, sewer, and roads are satisfied. The note on the Plat shall specify which of the following methods will apply to completing such improvements:

- A. The developer of the residual lot shall be responsible to improve all streets, utilities, and drainage for the subdivision's initial lots in accordance with this Ordinance, in conjunction with the subsequent platting of the residual lot; or
- B. A benefit district has been created for installing and financing all public improvements on the residual lot prior to development. Because the initial subdivision=s access easement is platted as part of the residual lot, the benefit district would also pay for improving all streets, utilities, and drainage for the subdivision=s initial lots in accordance with this Ordinance and in conjunction with the subsequent platting of the residual lot.

# ARTICLE 15

## QUALITY AND MONOTONY

### **DIVISION 15.000 PURPOSE**

Established in 1855, Paola has a high quality urban center, including the City Square and County Court House Square. The urban area is surrounded by residential areas containing a rich diversity of building styles, types, and sizes providing Paola with a high-quality historic charm. This heritage has been important to the City=s success in attracting residents, businesses, and tourists. Preserving that unique heritage as the City continues to grow is vital. The City also wants to establish its image and character at each entrance to the City from US 169. This Article provides regulations to control the quality of nonresidential uses that are entrances into the City. Controls over nonresidential building materials are provided to control the character of these areas. The character of new residential development is also regulated to ensure they are compatible with the diverse traditional character of the City=s existing residential areas.

### **DIVISION 15.100 PROHIBITED MATERIALS**

Because they are out of character with the historic character of Paola, metal-sided or concrete-slab buildings are permitted only as indicated below:

- A. **Metal-Sided Buildings.** Permitted in the I District. Permitted in the BP and TA Districts provided that the street facades shall be constructed of decorative masonry materials, except when an overlay district has higher standards (e.g. the City Entrance Area Standards). The façade of any building in the BP and TA district, which is located within 200' of any street right-of-way, including any highway right-of-way, shall be considered a street façade and constructed of decorative masonry materials (Ordinance 2799, 06/11/02). Metal buildings existing at the time of adoption of this ordinance may be expanded up to 15% of the original building footprint (Ordinance 2772, 03/21/01).
- B. **Concrete-Slab Buildings.** These buildings are permitted only in the I District. Permitted in the BP district provided that the street facades shall be constructed of decorative masonry materials. Prohibited in all other districts.
- C. **Design Review.** In all other locations, these materials shall be permitted only where the development submits architectural, landscaping, and sign reviews and receives Planning Commission approval.
- D. **Exception.** One (1) pre-designed storage building containing less than one hundred fifty (150) square feet is permitted per lot.

## **DIVISION 15.200 DESIGN STANDARDS**

Design controls are essential to providing the desired character of land uses and buildings in the Downtown District and in areas at the entrance to the City from US 169.

### **SECTION 15.210 DOWNTOWN DISTRICT STANDARDS**

The Downtown District contains the City Square, Court House Square, City Hall, and Library. The standards of this district are to maintain the historic image and character of the downtown area and to ensure that new buildings fit into that character. All buildings shall be reviewed during site plan approval by the planning commission for adherence to the following:

- A. **Building Material.** Red brick masonry is the preferred building fascia. Stone and other brick masonry may be approved, provided the building fits into the context of its neighbors and is not a sharp contrast to existing buildings.
- B. **Building Height.** All buildings shall be at least two stories in height. If the use proposed is such that two stories are impractical, then the architecture and street facade(s) should be such that the two-story character of the streets is maintained.
- C. **Architectural Style.** There is no single style that is mandated for the downtown area. However, building elevations should be sensitive to the scale and style of neighboring buildings. Overall window placement, window size, decorative trim or material, and colors should be consistent with the general street face.
- D. **General.** In looking at neighboring structures it should be understood that some older buildings have been degraded with applications of more modern materials over the original building facade. In these cases the Planning Commission may insist on a facade that more closely resembles the original styles, or is in keeping with buildings further down the same street that have preserved their historic character.

### **SECTION 15.220 CITY ENTRANCE AREA STANDARDS**

City entrances are shown on the Zoning Map. All buildings in these areas regardless of the zoning shall be subject to design review by the Planning Commission. Only one of the three entrances has important existing buildings; Baptiste Drive has the hospital and high school. Other entrances will develop in the future. The following building standards shall be applied to the design review of non-residential uses:

- A. **Materials.** Masonry materials including integrally colored textured block, brick and stone with unpainted finishes are required on all street exposures. The use of stucco or exterior insulated finish system may also be permitted. Metal is not a permitted exterior finish material. On Baptiste Drive, the materials should be selected to complement and blend with the high school and hospital. (Ordinance 2799, 06/11/02)
- B. **Colors.** The basic colors shall be earth tones or brick colors. The Baptiste Drive area shall use tones that are consistent with the hospital and high school. No important buildings existed as of the date of adoption of this Ordinance at the other two City entrances. The Planning Commission should review the first buildings in these areas and select a range of colors that can be extended to the rest of the corridor.

C. **Style.** There is no single style that is mandated for the entrance area. However, building elevations should be sensitive to the scale and style of neighboring buildings. Design themes that reflect the city square band shell should be strongly considered. If a business park is the proposed use, an overall design guideline should be approved.

## **SECTION 15.221 CITY ENTRANCE AREA LANDSCAPING**

The City may require certain species of trees to be planted as the street trees.

## **DIVISION 15.300 MONOTONY STANDARDS**

In Paola's traditional neighborhoods, buildings were built in small numbers so blocks developed over an extended period. The result is great diversity in scale, style, and detail. Modern development practices often result in large numbers of mass produced housing that is often monotonous and out of character with the City. This Division controls the building of similar buildings in residential subdivisions.

## **SECTION 15.310 MEASURES**

The following measures are used to evaluate developments and prevent monotony. Figure 15.310 illustrates the following points.

- A. **Floor Plan.** The floor plan defines the arrangement of the building's form, arrangement of rooms, windows, and doors. Identical floor plans can lead to monotony.
- B. **Orientation.** This describes the orientation of building floor plan(s). A building rotated ninety (90) degrees will not appear identical even when the floor plans are identical. Similarly, flipping or reversing the floor plan creates a different look.
- C. **Roof Lines.** Rotating the orientation of the roof peak, or otherwise altering the roof line in a significant manner can alter the appearance completely.
- D. **Materials.** Brick; stone; natural-stained wood vertical siding; horizontal siding in wood, fiberglass, or metal; stucco or exterior insulated finish system; and shingles are all considered different exterior materials.
- E. **Architectural Features.** The addition of a front porch, tower, or balcony are architectural features that change the facade sufficiently to create a difference.
- F. **Color.** Color can be used to provide a unifying sense to a development; it can create monotony; or it can create conflicts.

## **SECTION 15.320 STANDARDS**

The following standards shall be applied to all single-family dwellings or buildings containing more than one (1) dwelling unit to prevent monotony:

- A. A variety of building sizes or scales shall be provided. No more than three (3) buildings in a row shall have less than a thirty (30) percent difference in scale between the largest and smallest building as measured by building floor area. (See Figure 15.320.)
- B. No two (2) dwellings or buildings on a street face shall be identical in floor plan or color unless differing by at least two (2) of the following (See Figure 15.310.):
  1. Rotated or reversed lot orientation.
  2. Different roof configuration or orientation.
  3. Different materials or exterior walls. A mix of materials may be used on buildings. For example, stone and shingle or brick and horizontal siding.
  4. The addition of architectural features that alter the appearance.
  5. Identical color schemes shall require the addition of another differentiating feature (total of 3) from numbers 1 through 4 above to offset the similarity in color.
- C. Buildings having more than one (1) unit shall include different floor plans, staggered alignments with the street, roof line variation, architectural features, or rotated orientation to achieve interest in the building.
- D. **Design Review.** In some cases, as with attached units or subdivisions which seek to replicate a historic theme or themes, greater unity of design may actually enhance the character of the area. Such plans shall be permitted only where the developer submits architectural, landscaping, and sign reviews and receives Planning Commission approval.

## **DIVISION 15.400 DESIGN REVIEW**

The design review shall be applied to the use of certain building materials under Division 15.100, residential designs not meeting the monotony standards of Division 15.300, or the provision of larger signs in accordance with the provisions of Section 07.103. The Planning Commission shall conduct a design review as part of the plan approval process for a plat or site plan at the request of the developer.

## **SECTION 15.410 DESIGN REVIEW STANDARDS**

In conducting the design review, the Planning Commission shall evaluate the plan against the following criteria. Approval requires that the criteria have been met or are inapplicable to the specific project, and that the development is significantly superior to one that simply met the Ordinance requirements.

1. The project is compatible with surrounding uses in terms of scale and adherence to the traditional character of Paola.
2. The architecture, project layout, landscaping, and signs contribute to a harmonious and diverse character that has a strong sense of unity.

3. Monotony is avoided and the plan provides an environment that has interest and diversity without becoming chaotic or discordant.
4. The buildings are designed to be part of Paola, rather than a plan or character that can be applied to similar uses across the nation. Formula buildings and color schemes are undesirable.
5. The streetscape protects or enhances the entrances to Paola, making them distinct from similar land uses in other communities.
6. The combination of architecture, signs, and landscaping creates a sense of place for those developments having many buildings, or which contribute to an overall sense of unity if the development is a single building.
7. The streetscape and building design reduces apparent building mass of large buildings to match the City=s small town character.

#### **SECTION 15.525 SINGLE FAMILY RESIDENTIAL DESIGN STANDARDS**

- A. **Minimum Dimension.** The smaller dimension of a rectangular dwelling unit shall be at least 22 feet. If a dwelling unit is not rectangular, then the minimum dimension of a rectangle superimposed over and enclosing the entire footprint of the dwelling unit shall be at least 22 feet.
- B. **Foundations.** All buildings shall be placed on a permanent foundation that meets applicable building code requirements. The floor elevation of the proposed dwelling shall be reasonably compatible with the floor elevations of surrounding dwelling units.
- C. **Garage or Carport.** A single-family dwelling shall include a garage or carport constructed with the same materials as the dwelling with a concrete floor and concrete pad.
- D. **Driveways.** Driveways with access on public streets shall be hard surfaced.
- E. **Roof Pitch Overhang.** All main buildings shall have a pitched roof with a minimum 12-inch roof overhang on each of the dwelling's perimeter walls such that the overhang is architecturally integrated into the design of the dwelling.
- F. **Roofing Material.** All main buildings and all detached garages or carports shall have a roof surface of wood shakes, asphalt, composition or wood shingles, clay or concrete tiles, or other material expressly designed for roofs.
- G. **Siding Materials.** All main buildings and all detached garages shall have exterior siding material consisting of wood, masonry, concrete, stucco, masonite, vinyl or metal lap. The exterior siding shall extend to ground level, except that when a solid concrete or masonry perimeter foundation is used, the siding material needs to extend below the top of the foundation.

**Deviations.** The Planning Commission may approve deviations from one or more of the design standards on the basis of a finding that the architectural style proposed provides compensating design features and that the proposed dwelling will be compatible and harmonious with existing structures in the vicinity. (Ordinance #2772, 03/13/01)

## **ARTICLE 16**

### **SECTION 16.001 FLOODPLAINS MANAGEMENT REGULATIONS**

#### **A. STATUTORY AUTHORIZATION**

1. *Approval of Draft Regulations by Kansas Chief Engineer Prior to Adoption*  
The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on May 16, 2008.
2. *Kansas Statutory Authorization*  
The Legislature of the State of Kansas has in K.S.A. 12-741 *et seq.*, and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare. Therefore, the Governing Body of Paola, Kansas, ordains as follows:

#### **B. FINDINGS OF FACT**

1. *Flood Losses Resulting from Periodic Inundation*  
The special flood hazard areas of Paola, Kansas, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.
2. *General Causes of the Flood Losses*  
These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.
3. *Methods Used To Analyze Flood Hazards*  
The Flood Insurance Study (FIS) that is the basis of this ordinance uses a standard engineering method of analyzing flood hazards, which consist of a series of interrelated steps.
  - a. Selection of a base flood that is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this ordinance is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one percent chance of occurrence in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated August 19, 2008 as amended, and any future revisions thereto.

- b. Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.
- c. Computation of a floodway required to convey this flood without increasing flood heights more than **one one-hundredth (0.01)** foot at any point.
- d. Delineation of floodway encroachment lines within which no development is permitted that would cause **any** increase in flood height.
- e. Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

### C. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare; to minimize those losses described in Article 1, Section B(1); to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) 59.22(a)(3); and to meet the requirements of 44 CFR 60.3(d) and K.A.R. 5-44-4 by applying the provisions of this ordinance to:

- 1. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
- 2. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
- 3. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

## **SECTION 16.002 GENERAL PROVISIONS**

### A. LANDS TO WHICH ORDINANCE APPLIES

This ordinance shall apply to all lands within the jurisdiction the City of Paola identified as numbered and unnumbered A Zones, AE, AO, and AH Zones, on the Index Map dated August 19, 2008 of the Flood Insurance Rate Map (FIRM) and the Index Map dated August 19, 2008 of the Flood Boundary and Floodway Map (FBFM) as amended, and any future revisions thereto. In all areas covered by this ordinance, no development shall be permitted except through the issuance of a floodplain development permit, granted by the Governing Body or its duly designated representative under such safeguards and restrictions as the Governing Body or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in Article 4.

## **B. COMPLIANCE**

No development located within the special flood hazard areas of this community shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

## **C. ABROGATION AND GREATER RESTRICTIONS**

It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

## **D. INTERPRETATION**

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, shall be liberally construed in favor of the governing body, and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.

## **E. WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create a liability on the part of the City of Paola, or any officer or employee thereof, for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made there under.

## **F. SEVERABILITY**

If any section; clause; provision; or portion of this ordinance is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this ordinance shall not be affected thereby.

## **G. GENERAL STANDARDS**

1. The uses permitted are listed in Table 05.220. All other uses are expressly prohibited in both the floodway and all floodplains. Instead of a variance procedure this ordinance has substituted a beneficial use provision that requires the land owner to prove that they have been prohibited from any beneficial use of the property. Other uses may be permitted only upon receiving approval of a beneficial use application. All uses are subject to the following requirements.

2. Except for piers needed to support bridges, erosion control structures, dams for flood control or water supply, and utility crossings, no structure shall intrude into the floodway.
3. Only structures essential to the permitted uses shall be permitted. Roads and other essential crossings shall be permitted only where the location is the best available from an environmental standpoint.
4. No structures designed for human habitation are permitted except where approved under the beneficial use provisions of Section 05.231 and Division 21.400. This prohibition also applies to manufactured homes, manufactured home parks, campgrounds and recreational vehicle parks.
5. Structures shall be constructed and placed on the building site so as to cause an increase of less than one one-hundredth (0.01) foot increase in flood height off-site and offer minimum obstruction to the flow of flood waters. All piers in the floodways should have sufficient clearance between flood elevation and any horizontal portions of the bridge to avoid debris jams. The City's Director of Public Works shall approve all such crossings.
6. Structures shall be firmly anchored to prevent them from floating away or collapsing. Structures shall be certified by an engineer to withstand velocities and likely debris loadings at that point in the floodplain.
7. Where approved development shall meet the following standards:
  - a. design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - b. construction with materials resistant to flood damage;
  - c. utilization of methods and practices that minimize flood damages;
  - d. all electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
  - e. new or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination; and
  - f. subdivision proposals and other proposed new development located within special flood hazard areas are required to assure that:
    - (1) all such proposals are consistent with the need to minimize flood damage;
    - (2) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
    - (3) adequate drainage is provided so as to reduce exposure to flood hazards; and
    - (4) all proposals for development, including proposals for manufactured home parks and subdivisions, of five (5) acres or fifty (50) lots, whichever is lesser, must include within such proposals base flood elevation data.

## F. FILLS IN THE FLOODPLAIN.

The desired method of building in the floodplain is to elevate the structure on piers or columns. Fill material may be deposited provided all of the following are met:

1. It is approved as essential to the provision of a permitted or conditional property use (see Table 05.220). Such fills shall only be permitted in the floodplain and are prohibited in the floodway.
2. The fill shall be protected against erosion by riprap, vegetative cover, sheet piling, or bulk-heading sufficient to prevent erosion.
3. The fill shall be clean and compacted to minimize erosion potential.
4. There shall be sufficient culverts spaced along the length of fills for roads or other essential river crossings to allow flood waters to reach the other side of the fill. Longer bridge spans are preferred to fills. The intent is to maintain water flows through the structure in order to avoid increased floodway velocity.
5. Compensation shall be made for the volume of fill so that neither cross sectional area decreases nor flood level increases more than one one-hundredth (0.01) foot in off-site flood height.

## SECTION 16.003 PROVISIONS FOR FLOOD HAZARD REDUCTION

### A. GENERAL STANDARDS

1. No permit for floodplain development shall be granted for new construction, substantial-improvements, and other improvements, including the placement of manufactured homes, within any numbered or unnumbered A zones, AE, AO, and AH zones, unless the conditions of this section are satisfied.
2. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this ordinance. If Flood Insurance Study data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.
3. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any unnumbered or numbered A zones, or AE zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
4. All new construction, subdivision proposals, substantial-improvements, prefabricated structures, placement of manufactured homes, and other developments shall require:
  - a. Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

- b. Construction with materials resistant to flood damage;
- c. Utilization of methods and practices that minimize flood damages;
- d. All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- e. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination; and
- f. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:
  - (1) All such proposals are consistent with the need to minimize flood damage;
  - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
  - (3) Adequate drainage is provided so as to reduce exposure to flood hazards; and
  - (4) All proposals for development, including proposals for manufactured home parks and subdivisions, of five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals base flood elevation data.

5. *Storage, Material, and Equipment*

- a. The storage or processing of materials within the special flood hazard area that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.
- b. Storage of other material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

6. *Nonconforming Use*

A structure, or the use of a structure or premises that was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this ordinance, may be continued subject to the following conditions:

- a. If such structure, use, or utility service is discontinued for **six (6)** consecutive months, any future use of the building shall conform to this ordinance.

- b. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.

## B. SPECIFIC STANDARDS

- 1. In all areas identified as numbered and unnumbered A zones, AE, and AH Zones, where base flood elevation data have been provided, as set forth in Article 4, Section A(2), the following provisions are required:

- a. *Residential Construction*

New construction or substantial-improvement of any residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of **three (3) feet** above base flood elevation. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**

- b. *Non-Residential Construction*

New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of three (3) feet above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.** Such certification shall be provided to the floodplain administrator as set forth in Article 3, Section C(7)(8)(9).

- c. Require, for all new construction and substantial-improvements, that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- (1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided; and
- (2) The bottom of all opening shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

### C. MANUFACTURED HOMES

1. All manufactured homes to be placed within all unnumbered and numbered A zones, AE, and AH zones, on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
2. Require manufactured homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites:
  - a. Outside of a manufactured home park or subdivision;
  - b. In a new manufactured home park or subdivision;
  - c. In an expansion to an existing manufactured home park or subdivision; or
  - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of three (3) feet above the base flood elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**
3. Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE and AH zones, on the community's FIRM, that are not subject to the provisions of Article 4, Section C(2) of this ordinance, be elevated so that either:
  - a. The lowest floor of the manufactured home is a minimum of **three (3) feet** above the base flood level; or
  - b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than

thirty-six (36) inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**

#### D. AREAS OF SHALLOW FLOODING (AO and AH zones)

Located within the areas of special flood hazard as described in Article 2, Section A are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

##### 1. *AO Zones*

- a. All new construction and substantial-improvements of residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least **three (3)** feet if no depth number is specified).
- b. All new construction and substantial-improvements of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community FIRM (at least **three (3)** feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed to that so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- c. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

##### 2. *AH Zones*

- a. The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in Article 4, Section B.
- b. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

## E. FLOODWAY

Located within areas of special flood hazard established in Article 2, Section A, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply:

1. The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than **one one-hundredth (0.01) feet** at any point.
2. The community shall prohibit any encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in **any** increase in flood levels within the community during the occurrence of the base flood discharge.
3. If Article 4, Section E(2), is satisfied, all new construction and substantial-improvements shall comply with all applicable flood hazard reduction provisions of Article 4.
4. In unnumbered A zones, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in Article 4, Section A(2).

## F. RECREATIONAL VEHICLES

Require that recreational vehicles placed on sites within all unnumbered and numbered A Zones, AE, AH, and AO Zones on the community's FIRM either:

1. Be on the site for fewer than 180 consecutive days, *or*
2. Be fully licensed and ready for highway use\*; *or*
3. Meet the permitting, elevation, and anchoring requirements for manufactured homes of this ordinance.

\*A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

## **SECTION 16.004. FLOODPLAIN ADMINISTRATOR**

### A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The City Manager of Paola is hereby appointed to administer and implement the provisions of this ordinance.

## B. DUTIES AND RESPONSIBILITIES OF FLOODPLAIN ADMINISTRATOR

Duties of the Floodplain Administrator shall include, but not be limited to:

1. Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this ordinance have been satisfied;
2. Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required by Federal, State, or local law;
3. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
4. Issue floodplain development permits for all approved applications;
5. Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
6. Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse; and
7. Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;
8. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed;
9. When floodproofing techniques are utilized for a particular non-residential structure, the floodplain administrator shall require certification from a registered professional engineer or architect.

## **SECTION 16.005 FLOODPLAIN DEVELOPMENT PERMIT**

To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:

1. Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
2. Identify and describe the work to be covered by the floodplain development permit;
3. Indicate the use or occupancy for which the proposed work is intended;
7. Indicate the assessed value of the structure and the fair market value of the improvement;
5. Specify whether development is located in designated flood fringe or floodway;
6. Identify the existing base flood elevation and the elevation of the proposed development;
7. Give such other information as reasonably may be required by the floodplain administrator;
- 8.. Be accompanied by plans and specifications for proposed construction; and
9. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

## **SECTION 16.006 FLOODPLAIN VARIANCE**

### **A. ESTABLISHMENT OF APPEAL BOARD**

The Board of Zoning Appeals, as established by the City of Paola shall hear and decide appeals and requests for variances from the floodplain management requirements of this ordinance.

### **B. RESPONSIBILITY OF APPEAL BOARD**

Where an application for a floodplain development permit is denied by the Floodplain Administrator, the applicant may apply for such floodplain development permit directly to the Appeal Board, as defined in Section 21.404 A.

The Appeal Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

### **C. FURTHER APPEALS**

Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal such decision to the District Court as provided in K.S.A. 12-759 and 12-760.

#### **D. FLOODPLAIN MANAGEMENT VARIANCE CRITERIA**

In passing upon such applications for variances, the Appeal Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this ordinance, and the following criteria:

1. Danger to life and property due to flood damage;
2. Danger that materials may be swept onto other lands to the injury of others;
3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. Importance of the services provided by the proposed facility to the community;
5. Necessity to the facility of a waterfront location, where applicable;
6. Availability of alternative locations, not subject to flood damage, for the proposed use;
7. Compatibility of the proposed use with existing and anticipated development;
8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. Safety of access to the property in times of flood for ordinary and emergency vehicles;
10. Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,
11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.

#### **E. CONDITIONS FOR APPROVING FLOODPLAIN MANAGEMENT VARIANCES**

1. Generally, variances may be issued for new construction and substantial-improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items two (2) through six (6) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provide the proposed activity will not preclude the structure's continued historic designation.
3. Variances shall not be issued within any designated floodway if any significant increase in flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

5. Variances shall only be issued upon: (a) showing of good and sufficient cause, (b) determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
6. A community shall notify the applicant in writing over the signature of a community official that: (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.

## **SECTION 16.007. FLOODPLAIN DEFINITIONS**

This Division contains the definition of words used in this Ordinance pertaining to floodplains. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning they have in common usage and to give this ordinance its most reasonable application.

**"100-year Flood"** *see "base flood."*

**"Accessory Structure"** means the same as *"appurtenant structure."*

**"Actuarial Rates"** *see "risk premium rates."*

**"Administrator"** means the Federal Insurance Administrator.

**"Agency"** means the Federal Emergency Management Agency (FEMA).

**"Appeal"** means a request for review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

**"Appurtenant Structure"** means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

**"Area of Shallow Flooding"** means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**"Area of Special Flood Hazard"** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

**"Base Flood"** means the flood having a one percent chance of being equaled or exceeded in any given year.

**"Basement"** means any area of the structure having its floor subgrade (below ground level) on all sides.

**"Building"** *see "structure."*

**"Chief Engineer"** means the chief engineer of the division of water resources, Kansas Department Of Agriculture.

**"Chief Executive Officer" or "Chief Elected Official"** means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

**"Community"** means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

**"Development"** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**"Elevated Building"** means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**"Eligible Community" or "Participating Community"** means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

**"Existing Construction"** means for the purposes of determining rates, structures for which the *"start of construction"* commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. *"existing construction"* may also be referred to as *"existing structures."*

**"Existing Manufactured Home Park or Subdivision"** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**"Expansion to an Existing Manufactured Home Park or Subdivision"** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**"Flood" or "Flooding"** means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).

**"Flood Boundary and Floodway Map (FBFM)"** means an official map of a community on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

**"Flood Elevation Determination"** means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

**"Flood Elevation Study"** means an examination, evaluation and determination of flood hazards.

**"Flood Fringe"** means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

**"Flood Hazard Boundary Map (FHBM)"** means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

**"Flood Hazard Map"** means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.

**"Flood Insurance Rate Map (FIRM)"** means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**"Flood Insurance Study (FIS)"** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**"Floodplain" or "Flood-prone Area"** means any land area susceptible to being inundated by water from any source (*see "flooding"*).

**"Floodplain Management"** means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**"Floodplain Management Regulations"** means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

**"Floodproofing"** means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

**"Floodway" or "Regulatory Floodway"** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**"Floodway Encroachment Lines"** means the lines marking the limits of floodways on Federal, State and local floodplain maps.

**"Freeboard"** means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. *"Freeboard"* tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

**"Functionally Dependent Use"** means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

**"Highest Adjacent Grade"** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**"Historic Structure"** means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

**"Lowest Floor"** means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, **provided** that such enclosure is not built so as to render the structure in violation of the applicable floodproofing design requirements of this ordinance.

**"Manufactured Home"** means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term *"manufactured home"* **does not include** a *"recreational vehicle."*

**"Manufactured Home Park or Subdivision"** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**"Map"** means the Flood Hazard Boundary Map (FHB), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

**"Market Value" or "Fair Market Value"** means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

**"Mean Sea Level"** means, for purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

**"New Construction"** means, for the purposes of determining insurance rates, structures for which the *"start of construction"* commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *"new construction"* means structures for which the *"start of construction"* commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**"New Manufactured Home Park or Subdivision"** means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

**"(NFIP)"** means the National Flood Insurance Program (NFIP).

**"Participating Community"** also known as an *"eligible community,"* means a community in which the Administrator has authorized the sale of flood insurance.

**"Permit"** means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

**"Person"** includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

**"Principally Above Ground"** means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

**"Reasonably Safe From Flooding"** means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

**"Recreational Vehicle"** means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently able to be towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**"Remedy A Violation"** means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

**"Risk Premium Rates"** means those rates established by the Administrator pursuant to individual community studies and investigations, which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. *"Risk premium rates"* include provisions for operating costs and allowances.

**"Special Flood Hazard Area"** *see "area of special flood hazard."*

**"Special Hazard Area"** means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

**"Start of Construction"** includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The *actual start* means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers,

foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial-improvement, the ***actual start of construction*** means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**"State Coordinating Agency"** means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

**"Structure"** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. ***Structure*** for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

**"Substantial-Damage"** means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**"Substantial-Improvement"** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before ***start of construction*** of the improvement. This term includes structures, which have incurred ***substantial-damage***, regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a ***historic structure***, provided that the alteration will not preclude the structure's continued designation as a ***historic structure***.

**"Variance"** means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

**"Violation"** means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

**"Water Surface Elevation"** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain.

# **ARTICLE 20**

## **ADMINISTRATIVE BODIES**

### **DIVISION 20.000      PURPOSE**

This Article establishes the powers and duties of decision-making and administrative bodies under these regulations. Other powers and duties may exist under State law.

### **DIVISION 20.100      ADMINISTRATION**

#### **SECTION 20.110      RESPONSIBILITY**

The responsibility for major actions required by this Ordinance is set forth in this Article. The following codes are used in Table 20.110 to indicate responsibility. Regardless of the appeal notation, all decisions are appealable to the courts in accordance with state law.

#### **KEY:**

**R** = The body makes recommendations to the decision-makers.

**H** = The body must hold a public hearing.

**D** = The body makes the final decision.

**A** = The body hears an appeal to the decision.

**Table 20.110**  
**PROCEDURAL RESPONSIBILITIES**

Type of Action	Administrative Boards			Administrative Agents		
	City Council	Planning Commission	Board of Zoning Appeals	Staff	Zoning Officer	Hearing Officer
<b>Discretionary</b>						
Zoning Text Amendment	D	RH		R		
Zoning Amendment Map	D	RH		R		
Conditional Use	D	RH		R		
Environmental Impact Assessment Report	A	D		R		
Design Review	A	D		R		
Zoning Variance			DH	R		
Street Vacation	DH*			R		
<b>Ministerial</b>						
Plat Approval		R		R		
Land Development Review		R		R		
Variance - Plat/Land Development		D		R		
<b>Administrative</b>						
Limited Use			A	D		
Zoning Permit			A		D	
Occupancy Permit			A		D	
Sign Permit			A		D	
<b>Appeals</b>						
Interpretation			A		D	
Beneficial Use	D			R		HR
Appeal			DH	R		

\* The City Council may refer street vacations to the Planning Commission for comment and recommendation.

## **DIVISION 20.200 ADMINISTRATIVE BOARDS**

### **SECTION 20.210 CITY COUNCIL**

In addition to any responsibility indicated in Table 20.110, the City Council shall have the following powers under this Ordinance:

- A. To approve members of the Planning Commission nominated by the Mayor.
- B. To approve members of the Board of Zoning Appeals nominated by the Mayor.
- C. To designate and appoint Hearing Officers as recommended by the City Attorney and Zoning Officer.
- D. To take such other action not delegated to the Planning Commission, Board of Zoning Appeals, Hearing Officer, or heads of City departments, as the City Council may deem desirable and necessary to implement the provisions of the Comprehensive Plan and this Ordinance.

### **SECTION 20.220 PLANNING COMMISSION**

The Planning Commission shall have the following powers and duties:

- A. To review, hear, consider, and make recommendations to approve or disapprove applications for Zoning Map and Ordinance text amendments, and conditional use permits, as indicated in Table 20.110.
- B. To hear, review, consider, and to approve or disapprove preliminary and final plats for subdivisions, preliminary or final site plans, and concept plans.
- C. To initiate, prepare, or cause to be prepared zoning and subdivision regulations or amendments thereto.
- D. To prepare or cause to be prepared the Comprehensive Plan, or any element or portion thereof, and recommend its adoption.
- E. To initiate, review, hear, consider, and make recommendations to approve or disapprove amendments to the Comprehensive Plan.
- F. To adopt additional or amended rules of procedure consistent with this Section to govern the Planning Commission's proceedings.
- G. To make studies of the City's resources, possibilities, and needs and to report its findings and recommendations, with reference thereto, from time to time, to the City Council.

### **SECTION 20.221 PLANNING COMMISSION MEMBERSHIP**

- A. **Membership.** The Planning Commission shall consist of seven (7) members. Citizen members shall be appointed by the Mayor and approved by the City Council. Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall

be given to applicants who have experience or education in planning, law, architecture, natural resource management, real estate and related fields, and to representatives of neighborhood groups. Two (2) of the members shall reside within the unincorporated Community Growth Area.

B. **Terms of Office.** All citizen members shall be appointed for a term of four (4) years. The terms shall be staggered with one (1) or two (2) members appointed each year. A vacancy shall be filled for the unexpired portion of the term.

C. **Officers**

1. **Chair and Vice-Chair.** At an annual organizational meeting, the members of the Planning Commission shall elect a Chair and Vice-Chair from among its members. The Chair=s and Vice-Chair's terms shall be for one year. The Chair shall be in charge of all procedures before the Planning Commission, and shall take such action as shall be necessary to preserve order and the integrity of all proceedings before the Planning Commission. In the absence of the Chair, the Vice-Chair shall act as Chair.
2. **Secretary.** The Zoning Officer or the city manager=s designee shall serve as Secretary of the Planning Commission. The Secretary shall keep minutes of all proceedings. The minutes shall be a summary of all proceedings before the Planning Commission, which shall include the vote of all members upon every question, and be attested to by the Secretary. The minutes shall be approved by a majority of the Planning Commission members voting. In addition, the Secretary shall maintain all records of Planning Commission meetings, hearings, proceedings, and correspondence.
3. **Staff.** The city manager=s staff shall be the Planning Commission's professional staff.

D. **Quorum and Voting.** Four Planning Commission members shall constitute a quorum of the Planning Commission necessary to take action and transact business. Except where otherwise required by law, all actions shall require the affirmative vote of a simple majority of the quorum present.

E. **Removal from Office.** In the event that any member is no longer a resident, or has three (3) unexcused absences in one (1) year, the City Council shall terminate the appointment of such person as a member of the Planning Commission. For other reasons, the City Council may remove any member upon motion approved by a majority of those voting.

F. **Compensation.** The Planning Commission members shall serve without compensation, but may be reimbursed for such travel, mileage and/or per diem expenses as may be authorized.

## **SECTION 20.222 MEETINGS**

Planning Commission meetings shall be held on the third Tuesday of each month (as required) to dispense of matters properly before the Planning Commission. Additionally, meetings may be called by the Chairman or at the request of three (3) Planning Commission members. The regular meeting place for Planning Commission meetings shall be accessible to the public. The following shall apply to the conduct of all meetings:

- A. **Rules of Procedure.** The Planning Commission shall, by a majority vote of the entire membership, adopt rules of procedure for the transaction of business and shall keep a record of meetings, resolutions, findings, and determinations. The Planning Commission may provide for transcription of such hearings and proceedings, or portions of hearings and proceedings, as may be deemed necessary.
- B. **Open to Public.** All meetings and public hearings of the Planning Commission shall be conducted in accordance with the Kansas Open Meetings Act.
- C. **Recommendations or Decisions.** All recommendations shall be by roll-call votes of all members present. A tie vote or failure to take action shall constitute a denial recommendation. All recommendations shall be accompanied by a written summary of the action and recommendations.

## **SECTION 20.230        BOARD OF ZONING APPEALS**

The Board of Zoning Appeals shall hear and decide appeals to interpretations and variances as set forth in Table 21.110 and these regulations.

## **SECTION 20.231        BOARD OF ZONING APPEALS MEMBERSHIP**

- A. **Membership.** The Board of Zoning Appeals shall consist of the members of the Planning Commission (see Section 20.221).
- B. **Officers, Quorum, Rules of Procedure**
  - 1. **Chair and Vice-Chair.** At an annual organizational meeting, the members of the Board of Zoning Appeals shall elect a Chair and Vice-Chair from among its members. The Chairs and Vice-Chair's terms shall be for one (1) year. The Chair shall administer oaths, shall be in charge of all procedures before the Board of Zoning Appeals, and shall take such action as necessary to preserve order and the integrity of all proceedings before the Board of Zoning Appeals. In the absence of the Chair, the Vice-Chair shall act as Chair.
  - 2. **Secretary.** The Zoning Officer, or his or her designee, shall serve as Secretary of the Board of Zoning Appeals. The Secretary shall keep minutes of all proceedings. The minutes shall be a summary of all proceedings before the Board of Zoning Appeals, which shall include the vote of all members upon every question, and be attested to by the Secretary. The minutes shall be approved by a majority of the Board of Zoning Appeals members voting. In addition, the Secretary shall maintain all records of Board of Zoning Appeals meetings, hearings, proceedings, and the correspondence.
  - 3. **Staff.** The city manager=s staff shall be the professional staff for the Board of Zoning Appeals.
  - 4. **Quorum, Voting, Rules of Procedure.** Two-thirds (2/3) or more members of the Board of Zoning Appeals shall constitute a quorum necessary to take action and transact business. Four (4) affirmative votes shall be necessary for any variance to be adopted or for any interpretation of the Zoning Officer to be overturned or modified in any way. All other actions shall require a simple majority of the quorum present.
- C. **Removal from Office.** See Section 20.221 E.

D. **Compensation.** See Section 20.221 G.

#### **SECTION 20.232      BOARD OF ZONING APPEALS MEETINGS**

At a minimum, meetings of the Board of Zoning Appeals shall be held as required. Additionally, meetings may be called by the Chair or at the request of three (3) members of the Board of Zoning Appeals. The regular meeting place for Board of Zoning Appeals meetings shall be in a place accessible to the public.

- A. **Rules of Procedure.** The Board of Zoning Appeals shall, by a majority vote of the entire membership, adopt rules of procedure for the transaction of business and keep a record of meetings, resolutions, findings, and determinations. The Board of Zoning Appeals may provide for transcription of such hearings and proceedings, or portions of hearings and proceedings, as may be deemed necessary.
- B. **Open to Public.** All meetings and public hearings of the Board of Zoning Appeals shall be conducted in accordance with the Kansas Open Meetings Act.

#### **DIVISION 20.300      ADMINISTRATIVE AGENTS**

##### **SECTION 20.310      STAFF**

The City Manager, Zoning Officer, and such other employees or consultants as the City Manager designates shall constitute Staff. The City Manager or designated representative shall present Staff recommendations to the City Council, Planning Commission, or Board of Zoning Appeals. Staff shall have the following jurisdiction, authority, and duties under this Ordinance:

- A. To hear, consider and approve/disapprove applications for limited uses.
- B. To review and make recommendations for the disposition of applications for various permits or approvals as indicated in Table 20.110.

##### **SECTION 20.320      ZONING OFFICER**

The Zoning Officer shall serve as Staff to the City Manager, Planning Commission, and Board of Zoning Appeals. The Zoning Officer shall be hired by the City Manager. In addition to other powers and duties, the Zoning Officer shall have the following powers, and duties under this Ordinance:

- A. To receive applications for rezoning, development, occupancy, and signs, all other permits for processing pursuant to this Ordinance.
- B. To serve as the Secretary to the Planning Commission and Board of Zoning Appeals pursuant to this Ordinance.
- C. To ensure that adequate public notice is provided for development application pursuant to this Ordinance.

- D. To initiate requests to the City Attorney to institute proceedings against the violators of this Ordinance.
- E. To undertake the Planning Commission's current and long range comprehensive planning responsibilities.
- F. To review, as necessary, the Comprehensive Plan and this Ordinance and recommend amendments to the Planning Commission and City Council.
- G. To review, consider, and render interpretations of this Ordinance or the Zoning Map, and to issue sign permits as required by Table 20.110.
- J. To undertake the day-to-day administration of this Ordinance.
- K. To inspect buildings, uses, developments, or other activities for compliance with this Ordinance.

### **SECTION 20.330 HEARING OFFICER**

The City Council shall appoint one (1) or more Hearing Officer(s) to hear appeals for beneficial use determinations. The Hearing Officer(s) shall serve at the City Council's pleasure for such period as is determined necessary. Hearing Officer(s) shall be compensated at a rate to be determined by the City Council.

- A. **Minimum Qualifications.** A Hearing Officer shall:

1. Demonstrate knowledge of administrative, environmental, and land use planning law and procedures.
2. Hold no other appointed or elected public office or position in the City during the period of appointment.

- B. **Duties.** A Hearing Officer shall:

1. Conduct hearings on appeals for beneficial use determinations and recommend approval, approval with conditions, or disapproval to the City Council.
2. Tender to the City Council a written report containing a summary of the testimony and evidence given and findings and recommendations regarding the specific standards applicable to the particular matter.

- C. **Restrictions on Appearances.** Whoever shall accept an appointment as Hearing Officer shall, for a period of one (1) year from the date of termination as holder of such office, not act as agent or attorney in any proceeding, application, or other matter before any City decision-making body in any matter involving land that was the subject of a proceeding, or nearby properties, which was pending during the time served as Hearing Officer.

## **SECTION 20.340. CITY ATTORNEY**

In addition to all other powers and duties conferred upon the City Attorney he or she shall have the following powers and duties under this Ordinance:

- A. To review for form all written findings of fact and resolutions drafted by the Zoning Officer, Planning Commission, or Board of Zoning Appeals, in connection with any Ordinance requirement.
- B. To review for form all development agreements, easements, declarations of covenants, letters of credit, performance guarantees, or other such documentation in connection with any Ordinance requirement.
- C. To advise the City Council, Zoning Officer, Planning Commission, and Board of Zoning Appeals in regard to the legal issues which may arise during implementation of the Comprehensive Plan and this Ordinance.

## **SECTION 20.350. FLOODPLAIN ADMINISTRATOR**

The City Manager of Paola is hereby designated as the Floodplain Administrator under this ordinance. Duties of the Floodplain Administrator shall include, but not be limited to:

- 1. Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this ordinance have been satisfied;
- 2. Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required by Federal, State, or local law;
- 3. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
- 4. Issue floodplain development permits for all approved applications;
- 5. Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
- 6. Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse; and
- 7. Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;
- 8. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed;

9. When floodproofing techniques are utilized for a particular non-residential structure, the floodplain administrator shall require certification from a registered professional engineer or architect.

# ARTICLE 21

## PROCEDURES AND ADMINISTRATION

### **DIVISION 21.000      PURPOSE**

This Article establishes the procedures for all approvals, administrative reviews, and administrative relief required by this Ordinance. This Article provides the user with a guide to the procedures to be followed and the criteria that must be met for some types of applications. It also provides for appeals from decisions taken to the courts.

### **SECTION 21.010      PROCEDURAL AND ADMINISTRATIVE CHART**

Table 21.010 divides the various procedures into groups of reviews that follow a common format. The first column is the actual procedure. Then, each decision has three sub-columns. The first column, labeled "Req'd" indicates whether the procedure is required, optional, or not applicable. The second column, labeled "Days" is the time limit that the agency has to conduct the proceedings. All times are in working days. The third column, labeled "Agency" indicates the responsible agency or board.

**Table 21.010**  
**PROCEDURAL AND ADMINISTRATIVE CHART**

Types	Zoning Change Map, Zoning Change Text, Conditional Use, and Environmental Impact Assessment Report			Variance, and Appeal			Beneficial Use			Interpretation			Limited Use, Zoning Permit, Sign Permit			Occupancy Permit			Concept Plat or			Preliminary Plat, Final Plat, Preliminary Site Final Site Plan						
	Req'd	Days	Agency	Req'd	Days	Agency	Req'd	Days	Agency	Req'd	Days	Agency	Req'd	Days	Agency	Req'd	Days	Agency	Req'd	Days	Agency	Req'd	Days	Agency				
Preapplication Conference	O	10	Zoning Officer	O	3	Zoning Officer	O	10	Zoning Officer										O	10	Zoning Officer	Y	10	Zoning Officer				
Illustrations	Y	Plans or illustrations required, except for text amendments			O	Illustrations that demonstrate the issue recommended but not required			Y	Sec. 21.401						Y	Lot plan - zoning permit						Y	Concept Plat or Plan		Y	Plat or Site Plan	
Completeness Review	Y	3	Zoning Officer	Y	3	Zoning Officer	Y	3	City Attorney	Y	1	Zoning Officer	Y	3	Zoning Officer							Y	3	Zoning Officer	Y	3	Zoning Officer	
Fee	Y			Y		Y				Y			Y			Y			Y			Y			Y			
Application Review	Y	15	Zoning Officer	Y	15	Zoning Officer	Y	15	Zoning Officer	Y	5	Zoning Officer	Y	15	Zoning Officer	Y	at counter	Zoning Officer	Y	15	Zoning Officer	Y	15	Zoning Officer				
Notice	Y	Sec. 21.151		Y	Sec. 21.151		Y	Sec. 21.151																				
Public Hearing	Y		Planning Comm.	Y		Zoning Board	Y		Hearing Officer																			
Recommendation	Y	30	Planning Comm.	Y		Zoning Board	Y	30	Hearing Officer																Y	30	Planning Comm.	
Notice	Y	Sec. 21.151		Y	Sec. 21.151		Y	Sec. 21.151																				
Public Hearing	Y	20	City Council	Y		Zoning Board	Y		City Council																			
Decision	Y	60	City Council	Y	60	Zoning Board	Y	60	City Council	Y	5	Zoning Officer	Y		Zoning Officer	Y	5	Zoning Officer	Y	30	Planning Comm.	Y	30	City Council				
Appeal to Courts	As per Kansas Statutes																											

NOTES  
Y = required  
O = optional

all times in working days.

## **DIVISION 21.100 PROVISIONS OF GENERAL APPLICABILITY**

This Division shall be followed for procedures required by Table 21.010.

### **SECTION 21.110 PRE-APPLICATION CONFERENCE**

- A. **General.** A pre-application conference is mandatory prior to submitting certain applications. The pre-application conference's purpose is to familiarize the applicant with any City concerns and with the Ordinance's applicable provisions. Also, this conference permits Staff to assess the proposal and identify any service problems or concerns.
- B. **Initiation.** An applicant shall request a date for the pre-application conference with Staff. The request shall be accompanied by a description of the character, location, and magnitude of the proposed development and the type of approval sought. If a concept plat or plan is required, then it should be brought to the pre-application conference.
- C. **Scheduling.** Upon receipt of the request for a pre-application conference, the Zoning Officer shall schedule and hold the pre-application conference. The Zoning Officer shall notify the applicant of the time, date, and place of the pre-application conference.
- D. **Conference Determinations.** At the pre-application conference, the Zoning Officer and other Staff shall review the material, make recommendations, and indicate concerns, problems, or other factors the applicant should consider in pursuing the proposal.
- E. **Written Summary.** The Zoning Officer shall mail to the applicant a written summary of the pre-application conference within the time indicated in Table 21.010.

### **SECTION 21.120 APPLICATIONS**

- A. **Initiation.** Unless otherwise indicated in this Article, applications shall be submitted by the owner, or any other person having a contractual interest in the land for which the use is proposed, or an authorized agent.
- B. **Submission of Application.** An application shall be submitted to the Zoning Officer along with a fee established in Section 21.140. Applications received before 1:00 p.m. shall be dated the same working day. Applications received after 1:00 p.m. shall be dated the next working day.
- C. **Inspection and Access.** Accompanying any application for a permit, design review, or other administrative actions shall be a signed statement granting Staff right of reasonable access to view, enter, and inspect the property, or on-site uses or buildings, for compliance with this Ordinance.
- D. **Contents of Application.** The application shall be submitted in or on a form established by staff and made available to the public. An application form, describing the information each application must contain to be considered complete, is available from the Zoning Officer.

## **SECTION 21.121 APPLICATION COMPLETENESS REVIEW**

The Zoning Officer shall determine, within the time specified in Table 21.010, if the application is sufficient and includes data necessary to evaluate the application.

- A. If the Zoning Officer determines the application is not sufficient, a written notice shall be mailed to the applicant specifying deficiencies. No further action shall be taken on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies within thirty (30) working days, the application shall be considered withdrawn and the application fee refunded.
- B. When the application is determined sufficient, the Zoning Officer shall notify the applicant and begin the requisite reviews. If a public hearing is required, the date shall be set to hear the application and the applicant notified in writing.
- C. Any decision by the Zoning Officer regarding sufficiency of the application may be appealed by the applicant to the Board of Zoning Appeals.

## **SECTION 21.130 REVIEW AND RECOMMENDATION: ZONING OFFICER**

The following standards shall apply whenever the Zoning Officer is required to provide a review and recommendation or a decision concerning an application (see Table 21.010).

- A. **Application.** Upon receipt of a complete application, the Zoning Officer shall forward the application to and receive comment from all members of the Staff and any City consultants and inform the applicant when the Zoning Officer will meet with the applicant.
- B. **Recommendation.** Upon completion of the Zoning Officer's review, Staff shall meet with the applicant to review the recommendations. The developer shall be permitted to ask questions and respond to the comments. If revisions to a plat or site plan are required, an additional meeting shall be scheduled.

## **SECTION 21.140 FEES**

The City Council may pass an ordinance establishing fees as needed to defray application processing costs. All applications shall be accompanied by the applicable fee. The fee schedule shall be available for review in the Zoning Office. In addition, the applicant shall be required to post an escrow account with the City to pay all costs of publication, notification, and review by City consultants. The applicant shall maintain the escrow account with a minimum balance of two thousand (2,000) dollars. The city manager shall waive or reduce the amount of escrow upon determining such an escrow will not be required to cover costs. Failure to maintain the balance at the amount set by the city manager shall place the project on hold until such time as the escrow account is replenished. Time limits in Table 21.010 shall not apply during any period the project is on hold. Upon completion of a project, any balance in the escrow account shall be refunded to the developer within thirty (30) days.

## **SECTION 21.141 USE OF CONSULTANTS BY CITY; PAYMENT OF COSTS**

- A. Whenever the Zoning Officer determines it is necessary to obtain the expertise of outside professional consultants, such as traffic engineers or environmental engineers, the applicant shall be responsible for the City's actual costs incurred in obtaining such consultant's services.

- B. The applicant shall be advised by the Zoning Officer of the estimated, or contracted-for, cost of such consulting services prior to commencement of work by the consultant. All fees, charges and other expenses billed by the consultant to the City shall be paid by the applicant prior to approval of the application.
- C. Any decision by the Zoning Officer to utilize a consultant, and any charge that is proposed to be billed, or has been billed, to the applicant may be appealed to the Board of Zoning Appeals.

## **SECTION 21.150 PUBLIC HEARINGS**

All applications for development permits requiring public hearings shall follow this Section's provisions.

## **SECTION 21.151 NOTICE OF PUBLIC HEARINGS**

The Zoning Officer shall be responsible for ensuring notice in newspaper, posted notice, and mailed notice.

- A. **Public Notice in Official City Newspaper.** Notice of the Planning Commission public hearing on the application shall be published in the official City newspaper. Notice shall appear no more than thirty (30) days before and no less than twenty (20) calendar days prior to the public hearing date. In computing the time both the day of publication and the day of the public hearing shall be excluded. Notice shall contain the following information:
  1. The type of application sought: i.e. conditional use, variance, amendment to the Zoning Map, amendment to the Zoning Ordinance.
  2. A short description of the proposed action requested.
  3. A legal description of the parcel, the general street location or address, where possible, and the name of the person seeking the application.
  4. The location, address, date, and time of the public hearing.
  5. Information on where full details of the application may be obtained, including the location, business hours, and telephone number.
  6. The applicant shall be responsible for providing the Zoning Officer with the notice.
- B. **Notices to Surrounding Property Owners.**
  1. Unless otherwise specifically provided in this Article, whenever notice to surrounding property owners is required for consideration of an application, such notice shall be given as follows: The applicant shall mail all notices at least 20 days prior to the public hearing, thus notifying such property owners of the opportunity to be heard. Notice shall be mailed to all owners of record of land within 200 feet of the property subject to the application. If the subject property is located adjacent to unincorporated property outside the City's limits, including property within the City's Community Growth Area, then the area of notification shall be extended to include all unincorporated land within 1000 feet of the subject property. For the purposes of this Article, the phrase "adjacent to unincorporated property outside the City's limits" shall mean property which lies upon or touches (1) the City boundary line; or (2) a street or public way railway or watercourse which lies upon the City boundary line. Such mailed notice shall be given by certified mail, return receipt requested, and shall be in letter form stating the time and place of the hearing, a general description of the proposal, the legal description and general street location of the property subject to the proposed change, and a statement explaining that

the public may be heard at the public hearing. In cases of applications for which protest petitions may be submitted, the notice shall also contain a statement explaining that property owners required to be notified by this Section shall have the opportunity to submit a protest petition, in conformance with this ordinance, to be filed with the office of the City Clerk within 14 days after the conclusion of the public hearing. Mailed notices shall be addressed to the owners of the property and not to mere occupants thereof. When the notice has been properly addressed and deposited in the mail, failure to receive mailed notice shall not invalidate any action taken on the application. Mailed notice may be waived provided that a verified statement specifically indicating such waiver is signed by all property owners within the notification area and filed with the Planning Commission, or the Board of Zoning Appeals, as the case may be, at least two business days prior to the hearing. No fewer than seven days prior to the public hearing, the applicant shall file with the Planning Commission, or the Board of Zoning Appeals, as the case may be, the returned receipts from the certified mailings and an affidavit stating the names and addresses of the persons to whom notice was sent; failure to submit the affidavit prior to the hearing may result in a continuance of the hearing.

B. **Posted Notice.** The Zoning Officer shall post a public hearing notice (sign) on all subject properties at least fifteen (15) calendar days in advance of the public hearing.

1. One (1) sign shall be placed on the parcel for which the particular application was filed. The Zoning Officer shall determine the number of additional signs to be placed on the parcel necessary to carry out this Ordinance's intent.
2. Signs shall be readable and shall include that a public hearing will be held and the purpose, location, and time of the meeting.
3. The sign(s) shall be set back no more than five (5) feet from the street right-of-way.
4. All signs shall be placed in a conspicuous location so as to be clearly visible to the traveled portion of the respective street. Where the land does not have frontage on a public street, an additional sign shall be erected on the nearest street right-of-way with an attached notation indicating generally the direction and distance to the land subject to the application.
5. The sign shall be removed after the close of the hearing on the application.
6. The failure of any such posted notice to remain in place after the notice has been posted shall not be deemed a failure to comply with the standards or be grounds to challenge the validity of any decision made on the application.
7. Zoning regulation text amendments shall be exempt from the requirements of this subsection.

C. **Additional Notice.** Fifteen (15) days prior to the public hearing, the Zoning Officer shall furnish a copy of the hearing notice to Miami County, any rural water district serving the area of the subject property, and the Miami County Public Works Department.

## **SECTION 21.152 PUBLIC HEARING PROCEDURE**

A public hearing held pursuant to this Ordinance shall comply with the following procedures:

A. **Setting the Hearing.**

1. When the Zoning Officer determines an application is sufficient and a public hearing is required by this Ordinance, the Zoning Officer shall schedule a place and time for the public hearing.
2. Pursuant to Section 21.151, the hearing shall be scheduled for the first available regularly scheduled Planning Commission meeting by the time the public notice requirements can be satisfied or such time as is mutually agreed upon between the applicant and the Zoning Officer.

B. **Review and Recommendation of the Zoning Officer.**

1. The Zoning Officer shall review the application and file a Staff report including all consultant recommendations no later than five (5) working days before the scheduled public hearing on the application.
2. The Staff report shall recommend any changes in the application, as submitted, and the conditions for approval, if any, necessary to bring the application into compliance with this Ordinance.
3. The Zoning Officer shall provide a copy of the Staff report to the applicant no later than five (5) working days prior to the public hearing on the application.

C. **Examination and Copying of Application and Other Documents.** In accordance with the provisions of the Kansas Open Records Act, any person may examine any application and related materials in City Hall. A copy of such material may be obtained by any person upon applying to the Zoning Officer and paying the City's actual expenses in duplicating such material.

D. **Request for Mailing of Notification of Public Hearing.** Notification of public hearings shall be provided by the Zoning Officer to any person who requests notification, in accordance with the provisions of the Kansas Open Meetings law.

**SECTION 21.153 CONDUCT OF PUBLIC HEARING**

The public hearing shall be conducted in the following manner:

A. **Rights of All Persons.** Any person may appear at a public hearing and submit evidence.

1. If the person represents an organization, the Chairman may request written evidence of that person's authority to speak on behalf of the organization in regard to the matter under consideration.
2. Each person who appears at a public hearing shall be identified, state an address, and, if appearing on behalf of an organization, state the organization's name and mailing address.

B. **Due Order of Proceedings.** The body conducting the public hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial, or unduly repetitious. The order of the proceedings shall be as follows:

1. The Zoning Officer, or designated representative, shall present a written Staff report which includes a narrative and/or graphic description of the application and a recommendation that addresses each factor required by this Ordinance to be considered prior to application approval.
2. The applicant shall present any information the applicant deems appropriate.

3. Public testimony shall be heard.
4. The applicant may respond to any testimony or evidence presented by the public.
5. The Zoning Officer, Staff, and City Attorney may respond to any statement made by the applicant or any public comment.

C. **Testimony.** In the event any testimony or evidence is excluded as irrelevant, immaterial, or unduly repetitious, the person offering such testimony or evidence shall have an opportunity to make a proffer in regard to such testimony or evidence for the record. Such proffer shall be made at the public hearing.

D. **Continuance of Public Hearing.** The body conducting the public hearing may, on its own motion, continue the public hearing to a fixed date, time, and place. An applicant shall have the right to request and be granted one (1) continuance. Any subsequent continuances requested by any party shall be granted at the discretion of the body conducting the public hearing only upon demonstrating good cause.

E. **Close of Public Hearing.** Upon the completion of all testimony, the hearing shall be closed. No further direct or informal testimony shall be taken following close of the hearing. The applicant may be asked questions by members of the body, or allowed to comment on proposed conditions being considered by the body.

F. **Withdrawal of Application.** An applicant shall have the right to withdraw an application at any time prior to the decision-making body's action on the application. All application fees shall be forfeited.

G. **Record.**

1. The body conducting the public hearing shall record the public hearing. The written or taped record of oral proceedings, including testimony and statements of personal opinions; the minutes of the Secretary; all applications, exhibits and papers submitted in any proceeding before the decision-making body; the Staff report; and the decision of the decision-making body shall constitute the record.
2. All decision-making bodies' records shall be public records, open for inspection at the offices of the Zoning Officer during normal business hours upon reasonable notice.
3. A copy of the public hearing record may be obtained by any person upon applying to the Zoning Officer and paying the duplication cost of the record.

#### **SECTION 21.154        ACTIONS BY DECISION-MAKING BODIES**

After the close of the public hearing, the body conducting the hearing shall consider the application, relevant support materials, staff report, and testimony given at the public hearing. The body conducting the hearing shall render a decision or recommendations, as appropriate, either to approve, approve with conditions, or disapprove the application based on this Ordinance.

A. All decision-making bodies and persons shall act within the time limits established in this Ordinance. Action shall be taken as promptly as possible in consideration of the interests of Paola's citizens.

B. All decisions or recommendations shall be in writing and include the following:

1. A clear statement of specific findings of fact and a statement of the basis upon which such facts were determined, with specific reference to this Ordinance's relevant standards.
2. A clear statement of approval, approval with conditions, or disapproval. Conditions may only be required by the City on conditional uses, variances, beneficial uses, plat, or site plan approvals.
7. Any other information deemed necessary by the body.

## **SECTION 21.160 GENERAL CONSIDERATIONS IN RENDERING DECISIONS**

This Ordinance is intended to protect the interests of both present and future residents, landowners, neighbors, and the general public. In rendering a decision, the Planning Commission and City Council shall apply these regulations and other applicable regulations. The following rules shall govern decisions:

- A. Except as provided in B. and C., all decisions shall be based solely on this Ordinance and other relevant City codes or laws.
- B. In discretionary reviews, this Ordinance's minimum standards shall be met, but discretion is permitted to impose or rely on higher standards-necessary to protect public health, safety, and welfare.
- C. Where interpretation is required in rendering a decision, the legislative intent (Division 22.300) shall be used to guide decisions.

## **SECTION 21.161 ACTION BY CITY COUNCIL**

Upon receiving the recommendation from the Planning Commission, the Council shall take action as follows:

- A. On zoning map amendments, text amendments, or conditional uses the Council may:
  1. Adopt such recommendation by ordinance;
  2. Override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the Council; or
  3. Return such recommendation to the Planning Commission with a statement specifying the basis of the Council's failure to approve or disapprove the proposed amendment.

If the Council returns the Planning Commission's recommendations, the Planning Commission, after considering the same, may resubmit its original recommendation giving the reasons therefore, or submit a new and amended recommendation and findings of fact. Upon the receipt of such recommendation, the Council, by a simple majority vote, may adopt, revise, or may amend and adopt such recommendation and findings of fact by ordinance, or it need take no further action thereon.

If the Planning Commission fails to deliver its recommendation to the Council following the Planning Commission's next regular meeting after receipt of the Commission's report, the Council

shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.

B. On final plats and final site plans, the Council may:

1. Accept or refuse the dedication of land for public purposes.
2. Defer action for an additional 30 days for the purpose of allowing for modifications to comply with requirements established by the Council.

C. On all other matters that come before the Council, the Council shall consider the recommendations of the Planning Commission and take action by majority vote of the members present.

#### **SECTION 21.170        EFFECT OF APPROVAL**

Approving any application shall be deemed to authorize only the particular use, plan, or other specific activity for which the application was issued. Approvals shall run with the land.

A. **Time Limitations.** Permitted time frames for an approval do not change with changes in ownership and shall expire as indicated in Table 21.170 if any of the following occur:

1. No building permit has been issued to establish the use authorized in the approval.
8. The use does not require a building permit and the use is not established, ongoing, and in operation.
3. The approval is a step in a multi-stage approval process, and the next stage application has not been accepted as complete.
4. Any approval not listed in Table 21.170 shall have no time limit. Such approvals shall continue in force until superseded by an Ordinance change or specific action to alter it.

B. **Extensions.** Upon written request, one (1) time extension may be granted by the decision-making body for a period not to exceed that shown in Table 21.170, for good cause shown. No request for an extension shall be considered unless a written application requesting the extension is submitted to the Zoning Officer no later than one (1) month prior to expiration. Failure to submit an application for an extension within the time limits established by this Section may result in the approval's expiration as provided above.

**Table 21.170**  
**TIME LIMITS AND EXTENSIONS**

<b>Use</b>	<b>Time Limitation (months)</b>	<b>Extension (months)</b>
Conditional Use	12 <sup>1</sup>	6
Variance	12	6
Appeal	18	6
Limited Use	12	6
Sign Permit	6 <sup>2</sup>	3
Zoning Permit	12	6
Concept Plan	18	12
Preliminary Plat	12	6
Site Plan	12	6
NOTES		
<sup>1</sup> Unless specified otherwise in the Conditional Use Approval.		
<sup>2</sup> If part of a zoning permit or site plan, 12 months.		

## **DIVISION 21.200 DISCRETIONARY REVIEWS**

Discretionary reviews are reviews in which the applicant must meet all applicable standards, but in which the body retains some degree of discretion. In the exercise of that discretion, meeting additional conditions to protect an important public interest, to mitigate possible damage, or to ensure actions by the applicant may be imposed as part of the approval process.

## **SECTION 21.210 AMENDMENTS TO THE ZONING MAP OR TEXT**

This Section provides a means for changing the Zoning Map boundaries or this Ordinance's text. Such changes are not intended to relieve particular hardships or confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the City shall consider the factors set forth in this Section.

### **A. Initiation.**

1. **Zoning Map Amendment.** An application for a Zoning Map amendment may be proposed by a landowner, the City Council, or Planning Commission.

2. **Ordinance Text Amendment.** An application for an Ordinance text amendment may be proposed by the City Council, Planning Commission, or Zoning Officer.
- B. **General standards.** The applicant shall demonstrate findings that an amendment to the Zoning Map or an amendment to this Ordinance's text meets the standards in Section 21.211 or Section 21.212.

## **SECTION 21.211 STANDARDS FOR ZONING MAP AMENDMENT**

In evaluating a request for a Zoning Map Amendment the following standards shall be considered:

- A. The proposed change is consistent with the City's Comprehensive Plan and the purposes of this Ordinance. In areas of new development, consistency with the Comprehensive Plan shall be considered to meet the standards in B., C., and D. below, unless the proposed amendment would threaten public health, safety, and welfare if so designated as planned in the Comprehensive Plan.
- B. The proposed change is consistent with the character of the neighborhood.
- C. The extent to which the property is consistent with the zoning and use of nearby properties.
- D. The suitability of the property for the uses to which it has been proposed or restricted.
- E. The extent to which the proposed use would substantially harm the value of nearby property.
- F. The length of time a property has remained vacant as zoned, where the zoning is different from nearby developed properties.
- G. The gain, if any, to the public health, safety and welfare due to denial of the proposed amendment as compared to the hardship imposed upon the landowner, if any, as a result of denial of the proposed amendment.
- H. Recommendations of permanent or professional Staff.
- I. In approving a Zoning Map Amendment which is inconsistent with the Comprehensive Plan-a finding should be made that one (1) or more of the following applies:
  1. **Mistake.** The Comprehensive Plan contains a mistake. More specifically, the assumptions about the property, surrounding uses, population forecasts, the rate of land consumption, or other factors were in error. Therefore, the amendment is justified to correct the mistake.
  2. **Changes.** The assumptions on capital investments, road locations, population trends, land committed to development, density, use, or other Comprehensive Plan elements have changed and justify the amendment.
  3. **Plan Amendment.** A Comprehensive Plan amendment has occurred. Therefore, the amendment renders the Zoning Map consistent with the Comprehensive Plan.

## **SECTION 21.212 STANDARDS FOR ORDINANCE TEXT AMENDMENT**

In acting upon a text amendment the Planning Commission and Council shall consider whether the proposed amendment:

- A. Would implement a new portion of the Comprehensive Plan or amendment.
- B. Would implement and better achieve the Comprehensive Plan's goals and objectives that have proved difficult to achieve under the Ordinance's existing provisions.
- C. This Ordinance's provisions were inconsistent or unreasonable in light of standards for similar uses.
- D. Is necessary to respond to State and/or federal legislation.
- E. Provides additional flexibility in meeting this Ordinance's objectives without lowering the Ordinance's general standards.
- F. Addresses a new use(s), changing conditions, and/or clarifies existing language.
- G. Clarifies the Ordinance or makes adjustments to account for interpretations.

## **SECTION 21.213 REZONING FOR LESSER CHANGE**

The City may approve the rezoning in whole or in part. Rezoning for a lesser change is accomplished by approving a rezoning of less than the requested land area or a zoning district in the same class but with a lower intensity of use. Table 21.213 provides the necessary hierarchy of districts. Within a column, the first district (row) is the most intense; each successive district below has a lower intensity. The City may approve any lower intensity district (one in a lower row in Table 21.213) without re-advertising the public hearing. The City shall not approve any zoning of another class (a different column in Table 21.213) without proper notification and public hearing on the proposed change.

<b>Table 21.213 ZONING HIERARCHY</b>		
<b>General Districts</b>	<b>Neighborhood Conservation Districts</b>	<b>Industrial/Business Districts</b>
Downtown (D)	NC-R3	Industrial (I)
Thoroughfare Access (TA)	NC-R2	Business Park (BP)
Suburban (S)	NC-R1	
Estate (E)		

**NOTES**  
A property may be rezoned to a district in a lower row in the same column as the one for which the rezoning was advertised.

## **SECTION 21.214 STAFF REVIEW FOLLOWING REZONING**

It is the intent of these regulations that an approved rezoning will generally result in a change in use of the subject property. As a means of ongoing monitoring of the results of an approved rezoning, staff will review the use of property on the second anniversary of an approved rezoning and report on the status of the use or development to the Planning Commission.

## **SECTION 21.220 CONDITIONAL USES**

Certain land uses and developments present unique problems with respect to their property location. Such land uses and developments are identified as conditional uses in each particular zoning district (see Table 03.110). Analysis and judgment of the consequences of each use and development is necessary to preserve and promote the public health, safety, and welfare.

Approval of a conditional use application shall be dependent upon findings that the proposed use fully complies with this Ordinance. The applications shall be filed and duly advertised. A public hearing shall be held per this Article's requirements. In addition, conditional uses shall require a site plan or plat approval, as appropriate, which may be approved separately or concurrently. Also, the following additional standards shall be met:

- A. The proposed use shall be consistent with the Comprehensive Plan's purposes, goals, objectives, and policies, including standards for building and structural intensities and densities, and intensities of use.
- B. The proposed use shall be compatible with the character of land in the immediate vicinity.
- C. The proposed use's design shall minimize adverse effects, including visual impact of the proposed use on adjacent lands.
- D. The proposed use shall minimize adverse impacts on the environment, traffic and congestion, infrastructure, or governmental services.

## **SECTION 21.221 ACTION**

After the close of the public hearing, unless the matter is continued to a future meeting of the Planning Commission, the Planning Commission shall make a written set of findings and recommendations to the City Council.

## **SECTION 21.222 CONDITIONS AND RESTRICTIONS**

The City Council may impose restrictions and conditions on the approval of a conditional use, the proposed use, under the conditional use, and the premises to be developed or used pursuant to such approval of the conditional use. This action may be performed to accomplish any of the following:

- A. Ensure the conditional use is developed exactly as presented in drawings, exhibits, and assertions made at the hearings.
- B. Limit uses, reduce density, increase open space, landscaped surfaces, or environmental protection to ensure it meets the standards by which it is approved (Section 21.220).

- C. Limit the length of time a use may exist, or to provide for periodic review of the appropriateness of the use, or provide for elimination of the use.
- D. Impose conditions that ensure the general purposes, goals, and objectives of the Comprehensive Plan and this Ordinance are met.
- E. Prevent or minimize adverse effects from the proposed use and development on other properties in the neighborhood and on the public health, safety, and welfare.
- F. All conditions and restrictions shall be written and given to the developer within 14 days of approval. The developer shall submit a written statement agreeing to the approval and all conditions within 14 days. If no agreement is offered, the applications shall be considered denied.

#### **SECTION 21.223 MINOR DEVIATIONS**

The Zoning Officer may authorize minor deviations from conditional approvals that appear necessary in light of technical or engineering considerations first discovered during actual development and not reasonably anticipated during the initial approval process, as long as they comply with this Ordinance.

#### **SECTION 21.224 AMENDMENT TO A CONDITIONAL USE PERMIT**

A conditional use permit for a use may be amended, extended, varied, or altered only pursuant to the standards and procedures for the approval of the original use set forth in this Article.

#### **SECTION 21.225 REVOCATION OF CONDITIONAL USE PERMIT**

The City may institute revocation of a conditional use for violation of the conditions of approval, or because the permit has expired. The City shall provide notice to the landowner and public in the same manner as was provided for the establishment of the conditional use.

#### **SECTION 21.226 DISCONTINUANCE OF CONDITIONAL USE PERMITS**

- 1. Except where expressly provided otherwise in these regulations, all Conditional Use Permits shall have a date established at which time the permit shall expire.
- 2. A Conditional Use Permit may expire prior to the established expiration date upon any of the following:
  - (1) Revocation of the permit due to non-compliance with conditions established;
  - (2) Voluntary relinquishment of the permit by the permittee; or
  - (3) A finding of discontinuance by the Planning Commission, such finding requiring evidence of:
    - (1) discontinuance of the use permitted under the Conditional Use Permit for at least six consecutive months.
    - (2) intent to discontinue the use permitted.

#### **SECTION 21.230 ENVIRONMENTAL IMPACT ASSESSMENT REPORT**

Where required by this Ordinance (see Table 05.220), an environmental impact assessment (EIA) report shall be conducted and submitted as part of the application. The following shall be part of the report:

- A. Justify the proposed use or deviation from this Ordinance's strict standards. The report shall identify a need for the use, or a set of conflicting community goals that require the deviation.
- B. If the use requires an EIA report, alternative sites shall be considered to demonstrate the proposed site is indeed the best available site. A minimum of three (3) alternatives shall be provided. As part of this alternatives development process, developing the site for other uses shall be evaluated as part of the alternative process.
- C. Alternative designs or locations on the site shall be considered to determine that the proposed use minimizes the potential for adverse impacts.
- D. Identify any impacts on adjoining land uses and population, or users of public or private roads.
- E. Identify any increased risks of flooding, ground water depletion, water or air pollution, soil instability, or safety risks to site users.
- F. Inventory of federal and State threatened and endangered plant and animal species (as well as candidates for such designation) on-site and within five hundred (500) feet of the sites, and determine the proposed development's impacts and identify any mitigation.
- G. Inventory of federal, State, or local identified irreplaceable historical, archaeological, paleontological, or scenic resources on site and within five hundred (500) feet of the proposed sites; determine the proposed development's impacts on the resources and identify any mitigation.

#### **SECTION 21.231 ENVIRONMENTAL IMPACT ASSESSMENT REPORT APPROVAL**

The purpose of the report is to (1) determine if alternatives would avoid the adverse impacts, (2) determine that the plan selected minimizes the impact, and (3) identify mitigation measures that would off-set the impacts. The following standards shall determine the approval, denial, or recommended conditions:

- A. The developer must establish a need for the use that requires this review. The developer must also demonstrate that the site cannot be used for: (1) a permitted use that does not require an EIA report or (2) a permitted use which would have substantially less impact.
- B. The plans minimize-adverse impacts. The alternative plan with the least impact shall be a condition of approval.
- C. Mitigation shall be required that minimizes or off-sets adverse impacts.

#### **SECTION 21.240 PLAT VACATION**

The vacation of a plat, be it in its entirety or a lot, street, or other dedication associated with the plat shall follow this Section's standards.

- A. **Standards for All Vacations.** To authorize a plat vacation, the City Council shall find that:

- 1. The vacation does not deny access to any land, lot, or public use area in the subdivision or to adjoining property.

2. The vacation does not create a nonconformity, or make any nonconformity greater.
3. The vacation is for the public good and improves its health, safety, and welfare.
4. No public utilities or drainage facilities are deprived of adequate access easements. New easements may be required as part of the vacation.

B. **Whole Subdivisions.** To vacate an entire plat, all landowners of all lots in the plat shall be applicants for the vacation.

C. **Lots or Dedicated Land.** Where a lot, lots, or dedicated land is to be vacated, the plat of vacation shall combine the vacated land with adjoining lots. Vacated land shall not become a separate parcel except where the vacated land would be a conforming lot. The plat of vacation shall show all such lot combinations.

D. **The Vacated Land.** When dedicated land (roadway or other dedication) is vacated, it shall become part of the adjoining lots and be placed on the tax roles.

E. **Recordation.** A Plat Vacation shall not become effective until recorded with the Register of Deeds.

#### **SECTION 21.245 DEVIATIONS FROM SIGN REQUIREMENTS**

The Planning Commission shall consider the following criteria in acting upon a request for deviation:

**Purpose And Intent Of Code:** Is granting of the deviation in compliance with the general purpose and intent of the City's signage regulations?

- A. **Impacts On Adjacent Properties:** Will granting of the deviation adversely affect neighboring property owners or residents? Is the image presented by the sign or attention-attracting device consistent or compatible with that in the area as a whole?
- B. **Safety:** Will granting of the deviation adversely affect safety? For free-standing signs, a safe sight-distance setback is required, and the sign location must not encroach upon potential future right-of-way needs. The use of signs or attention-attracting devices should not significantly distract traffic on adjacent streets.
- C. **Visual Clutter:** Will granting of the proposed deviation significantly clutter the visual landscape of the area? The proposed deviation, in addition to all existing or potential future signs on nearby tracts, should be reviewed for their impact on cluttering the visual landscape. Reductions in the total number of signs or their size may be needed, or setbacks increased, to compensate for other signs and attention-attracting devices in the area.
- D. **Site Constraints:** In some situations, topography, landscaping, existing buildings or unusual building design may substantially block visibility of the applicant's existing or proposed signs from multiple directions. While visibility of a sign or attention-attracting device is not to be guaranteed from all directions, deviations may be appropriate to provide reasonable visibility of a business's main sign.

- E. **Lighting:** Sign or attention-attracting device lighting should not disturb residents of nearby residential land uses or adversely affect traffic on adjacent streets.
- F. **Promotion Of High Quality - Unique Design:** The proposed sign(s) should be of high quality and must be compatible and integrate aesthetically with daytime/nighttime color, lighting and signs of the development and adjacent buildings. Facade signs may include unique copy design including painting of walls or integration into canopies/awnings, shapes, materials, lighting and other design features compatible with the architecture of the development of surrounding area. Attention-attracting devices should be of a unique, high quality design, which accentuates the architecture of the building(s) served, versus functioning solely to draw attention to it.

(Ordinance #2772, 03/13/01)

#### **SECTION 21.247 HEIGHT EXCEPTIONS**

Roof structures that are not designed or used for human occupancy, such as church steeples and chimneys, and other non-habitable roof constructions defined in the Building Code shall be exempt from building height requirements established in Table 04.110A "Use and Lot Standards", except where they are deemed to interfere with aerial navigation. Maximum height of such structures, except chimneys, shall not exceed 75'. Chimneys shall not extend more than 5' above the highest peak of a structure.  
(Ordinance #2772, 03/13/01)

#### **SECTION 21.250 VARIANCES**

This Section establishes the procedures and conditions for a variance from this Ordinance's standards. This Section permits, under limited circumstances, a building or structure that does not comply with this Ordinance's standards when strict enforcement would represent a unique, undue, and unnecessary hardship.

#### **SECTION 21.251 STANDARDS FOR VARIANCES**

To approve a variance, the Board of Zoning Appeals shall apply the following standards:

- A. Under no conditions shall a variance permit a use that is not otherwise permitted in the district. The applicant shall be instructed to submit a zoning change request (Section 21.210) or a beneficial use appeal (Division 21.400), which are the only ways such a change of use may occur.
- B. Special circumstances or conditions exist peculiar to the land or building for which the variance is sought that do not apply generally to lots, land, or buildings in the neighborhood.
- C. The special circumstances and conditions have not resulted from any act of the applicant subsequent to this Ordinance's adoption.
- D. The special circumstances and conditions are such that strict application of this Ordinance's provisions would deprive the applicant of the reasonable use of the land or building.
- E. Granting the variance is necessary to relieve the applicant of an unnecessary hardship imposed by the regulations.

- F. The variance granted is the minimum necessary to relieve the unnecessary hardship and permit a reasonable use of the land.
- G. Granting the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare.
- H. Granting the variance is in harmony with this Ordinance's purposes and intent.
- I. Granting the variance is not inconsistent with the Comprehensive Plan.
- J. Variances on natural resources shall not be permitted; standards for mitigation are contained in Division 05.200. If relief is requested, the applicant shall be required to submit an application for beneficial use determination (Division 21.400).
- K. No variance shall be granted for development in the floodplain or floodway. In the event a landowner in Paola or Paola's Community Growth Area is of the opinion beneficial use of the landowner's property has been denied by applying this Ordinance, a remedy can be sought by following the procedures listed in DIVISION 21.400 BENEFICIAL USE APPEAL AND DETERMINATION.

#### **SECTION 21.252 CONDITIONS AND RESTRICTIONS ON VARIATIONS**

In approving the application for any variance, the Board of Zoning Appeals may impose additional restrictions and conditions on such approval. Restrictions and conditions may be limits on the use of the property, the standards for locating the use, standards for mitigating the impact on adjoining property owners who would lose protection as a result of permitting the variance, or standards to protect the general health, safety, and welfare. All conditions imposed upon any variance shall be expressly set forth in writing with the granting of such variance.

#### **SECTION 21.253 SUBSEQUENT DEVELOPMENT APPROVALS**

Development approved by the variance shall not be carried out until the applicant has secured all other development approvals required by this Ordinance. Approval of a variance shall apply only to that Section of the regulations for which it is approved and does not ensure the development shall receive subsequent approval unless the relevant and applicable portions of this or other ordinances are met.

#### **SECTION 21.254 AMENDMENT TO A VARIANCE**

A variance may be amended, extended, varied, or altered only pursuant to the standards and procedures for the original approval of a variance (see Sections 21.250-253).

#### **SECTION 21.255 FLOODPLAIN DEVELOPMENT PERMIT**

A floodplain development permit shall be required for all proposed construction or other development in all flood hazard areas. No person, firm, corporation, or unit of government shall initiate any development or substantial-improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.

To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:

1. Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
2. Identify and describe the work to be covered by the floodplain development permit;
3. Indicate the use or occupancy for which the proposed work is intended;
4. Indicate the assessed value of the structure and the fair market value of the improvement;
5. Specify whether development is located in designated flood fringe or floodway;
6. Identify the existing base flood elevation and the elevation of the proposed development;
7. Give such other information as reasonably may be required by the City Manager or his or her designee;
8. Be accompanied by plans and specifications for proposed construction; and
9. Be signed by the permittee or his or her authorized agent who may be required to submit evidence to indicate such authority.

## **DIVISION 21.300 APPEALS AND INTERPRETATIONS**

This Division contains rules and standards for appeals from actions taken under authority of this Ordinance and decisions made by various bodies. It contains the route of appeal to the courts, and procedures and standards for interpretations.

### **SECTION 21.310 APPEALS**

The two types of appeals are administrative appeals (an appeal from one decision-maker to another body as specified in Table 21.010), and appeals from the decision-maker or specified appeal body to the court.

### **SECTION 21.311 ADMINISTRATIVE APPEALS**

Administrative appeals shall be heard by the Board of Zoning Appeals based on the materials (plans, documents, reports, studies, drawings, and testimony) available to the official or body rendering the initial decision and advisory bodies prior to the decision.

### **SECTION 21.312 ADMINISTRATIVE APPEAL STANDARDS**

The body hearing the appeal shall make the following determinations:

- A. The decision-maker made an error in reviewing whether a standard was met. The record must indicate that an error in judgment occurred, or facts, plans, or regulations were misread in determining whether the particular standard was met.
- B. Where conflicting evidence exists, the body shall determine what evidence or testimony bears the greatest credibility in terms of documentation and qualifications of those making the study.
- C. The decision-maker made the decision on standards not contained in this or other City ordinances, regulations, or State law, or a standard more strict or broad was applied.
- D. An error in applying a standard or measuring a standard was made.
- E. An appeal shall not hear any evidence or make any decision based on hardships or special conditions. If such argument is made, it shall be heard either as a variance or conditional use (Sections 21.250 and 21.220, respectively).

## **SECTION 21.313 APPEALS TO THE COURTS**

The final decision on any application may be appealed to the courts, provided all administrative remedies have been exhausted. Specifically, denials that could be approved via a variance or beneficial use appeal shall be submitted to the courts only upon completing that respective procedure.

## **SECTION 21.320 INTERPRETATIONS**

An interpretation is required when this Ordinance is not clear or when a proposed use is not listed in Table 03.110. Sections 21.321-25 shall guide the Zoning Officer in rendering an official interpretation.

## **SECTION 21.321 UNLISTED USES**

Uses not listed in Article 03 or Article 23 shall be placed into the most similar category. For nonresidential use, the SIC code shall be the first guide. Where an SIC code is found in several categories, the interpretation shall seek similar characteristics, including the use's intensity and its likely adverse impacts. Where a choice remains after reviewing for adverse impacts, the use should be classified with the similar use that has the most adverse impacts.

## **SECTION 21.322 MEANING OR APPLICATION**

When evaluating an Ordinance provision as to its meaning or application, the provisions of Division 22.300 shall be applied. Interpretations shall not lessen protection, but may provide greater flexibility in meeting this Ordinance's objectives.

## **SECTION 21.323 PROCEDURE**

The Zoning Officer shall evaluate the request in light of the Comprehensive Plan, this Ordinance, and/or the Zoning Map, whichever is appropriate. The Zoning Officer may render a written interpretation. The interpretation shall be mailed to the applicant within twenty (20) days of receipt of a complete application.

## **SECTION 21.324 OFFICIAL RECORD**

The Zoning Officer shall maintain a record of all interpretations rendered.

## **SECTION 21.325 ANNUAL REVIEW**

The Zoning Officer shall annually report to the Planning Commission, Board of Zoning Appeals, and the City Council on interpretations made.

## **DIVISION 21.400 BENEFICIAL USE APPEAL AND DETERMINATION**

In the event a landowner in Paola or Paola's Community Growth Area is of the opinion beneficial use of said landowner's property has been unlawfully denied application of this Ordinance, the procedures listed in this Division shall be used prior to seeking relief from the courts in order that any denial of beneficial use of property may be remedied through a non-judicial forum. This Ordinance's purpose and intent is that all landowners should enjoy a beneficial use of their property. A beneficial use determination is a process by which the City evaluates the allegation that these regulations unreasonably deprive the landowner of economic viability, and can provide relief from the regulations by granting additional development potential. However, this Division also intends that such relief not increase the potential for damages to health, safety, or welfare of future users of the property or neighbors that might reasonably be anticipated from the proposed action of the landowner.

## **SECTION 21.401 SPECIAL APPLICATION DATA**

The nature of this appeal, that this Ordinance unlawfully denies the landowner economic viability, requires financial information on the property not typically required or desired in normal applications. The following data shall accompany all applications for a beneficial use appeal:

- A. Documentation of the purchase date and price of the property.
- B. A description of the property's physical features, total acreage, and present use, as well as the use of the property at the time of this Ordinance's adoption.
- C. A description of the specific portions of the regulations which allegedly eliminate beneficial use of the property, together with all appraisals, studies, any other supporting evidence, and any actions taken by the City related to the property.
- D. A description of the use which the landowner believes represents the property's minimum beneficial use and all documentation, studies, and other evidence supporting that position.

## **SECTION 21.402 DEPRIVATION STANDARDS**

In determining if a landowner has been deprived of beneficial use of property, the Hearing Officer and the City Council shall take into account the following factors:

- A. **Diminution in Value.** The property value, prior to this Ordinance's adoption, shall be compared to the property value with the regulations as applied. A mere diminution in value does not deprive the landowner of a beneficial use.
- B. **Unique Treatment.** Is the property is being singled out for different treatment than similarly situated properties under this Ordinance?
- C. **Adverse Impacts.** The extent to which the Ordinance protects users or neighbors from threats to health or safety shall be fully considered. A use that seriously threatens the health of future residents or neighbors is not a beneficial use.
- D. **Expectations.** Expectations backed by investments made prior to the adoption date of the regulations in question shall be considered.
- E. **Nuisances.** In no case shall a use that is a nuisance per se, be granted relief. Such uses are not legal uses of the land.

## **SECTION 21.403 GRANTING RELIEF**

If the finding is that a landowner has been effectively denied beneficial use of property the Hearing Officer shall recommend relief be granted. The Hearing Officer may recommend relief when there is strong evidence to support an allegation of denial of beneficial use. In that case, the Hearing Officer shall recommend the level of relief appropriate to eliminate doubt.

- A. **Minimum Increase.** In granting relief, the landowner shall be given at least the minimum increase in use intensity or other possible concessions from this Ordinance to permit a beneficial

use of the land. The following guidelines shall be used for determining the amount of relief granted a landowner in order to reach that minimum:

1. The standards of Section 21.402 shall be used to indicate the need for additional density or uses.
2. The reality of limited development potential, given the property's natural condition, shall not be attributed to the regulations applied to the property. If the property is such that it cannot accommodate development with normal grading and clearing practices, this fact shall be taken into account in identifying the best site for development that minimizes development costs.
3. Conditions shall be placed on sites where damage from building on hazardous conditions is likely. The conditions may include location restrictions, size limitations, and construction practices.

B. **Granting Relief.** City Council may grant the recommended relief by adopting a development order ordinance.

#### **DIVISION 21.500 ADMINISTRATIVE PROCEDURES**

The standards for granting or denying administrative approvals shall be based on the standards of this Ordinance. No discretion is permitted. The following sections also guide the approval of such permits or approvals.

#### **SECTION 21.510 LIMITED USE REVIEW**

The Zoning Officer shall make limited use reviews. Such reviews shall be limited solely to determining whether the conditions in Table 03.110 and Division 03.300 for limited uses have been met. If the conditions have been satisfied, that criteria for approval shall be deemed met. A report noting all conditions have been met shall be attached to the file on that use's approval.

#### **SECTION 21.520 SIGN PERMIT**

Before any sign is erected, the Zoning Officer shall review the plans and within ten (10) days make a determination whether the sign meets this Ordinance's requirements. If it does, a sign permit shall be issued. If it does not, the person requesting the sign permit shall be notified in writing as to the deficiencies.

#### **SECTION 21.530 ZONING PERMIT**

A Zoning Permit shall be required prior to receiving a building permit for all uses permitted by right.

#### **SECTION 21.540 OCCUPANCY PERMIT**

No new or existing building or structure shall be occupied or used, and no change in the character or use of land or of a building shall occur, until a certificate of occupancy has been issued by the City certifying that such building or use complies with all regulations of this Ordinance.

## **DIVISION 21.600 DESIGN REVIEWS**

Design reviews cover complying with zoning standards as well as land development practices. The land plan for the use, and its relationship to natural resources, internal and external uses, the circulation system, and utilities shall be reviewed. Design reviews include concept plat or plan reviews, subdivision (plat) reviews, and site plan reviews (land developments).

### **SECTION 21.610 CONCEPT PLAT OR PLAN REVIEW**

In addition to the general design standards of Articles 03, 04, and 10, concept plan reviews shall consider the phasing and organization of large-scale developments. The concept plan is a very general plan; it is a sketch-type plan that need not have all the design details but should permit the entire development to be assessed. The review shall assess the following elements:

- A. **Development Phasing.** Elements such as required land uses or land use mixes shall be addressed to ensure such requirements are developed. A phasing plan may be required as part of the concept plan approval.
- B. **Flexibility.** Building flexibility into long-term development is essential, since market conditions can change dramatically. In permitting flexibility, rules must govern the types of changes that will be considered consistent. Flexibility will not permit an increase in density, or decrease in open space or landscaped surface below this Ordinance's standards. Flexibility may be permitted in these areas where a safety margin is built into the original plan. It may also provide substitution provisions. The developer shall specify the types of flexibility desired or other requirements to ensure important requirements are not dropped.
- C. **Design.** This Ordinance's design review standards shall be covered at the concept plan approval stage.

### **SECTION 21.611 CONDITIONS**

The Planning Commission shall have the authority to impose such conditions on a concept plan approval that identify additional standards that will have to be met in subsequent plan submissions. Conditions as to the development's layout to meet the standards of Article 11, if any, shall be required at this stage.

### **SECTION 21.612 COMPLIANCE WITH THE CONCEPT PLAT OR PLAN**

Compliance with a concept plan in terms of the design details shall be general in nature; subsequent plans will be reviewed for compliance with this Ordinance. Dimensions and measurements of the concept plan are assumed to be illustrative; even the conditions are likely to be in general terms (percentages, for example). Subsequent stages should be expected to follow broad outlines. Detailed site planning and engineering are anticipated to result in significant changes in detail but not overall concept. Where a concept plan is required, its standards and conditions should be reviewed at plat or site plan approvals.

### **SECTION 21.613 AMENDMENTS**

A concept plan may be amended only pursuant to the standards and procedures established for the original approval of a concept plan pursuant to Sections 21.610-12.

### **SECTION 21.620 SUBDIVISION (PLAT) REVIEW**

Every landowner who intends to subdivide land into two (2) or more parts for the purpose of laying out lots, shall cause a plat of subdivision to be prepared in accordance with this Article and Article 10. The

types of subdivision include minor, major, special subdivisions (rural and staged), and subdividing the residual land from a special subdivision. Each type may require a pre-application conference, concept plan, preliminary, or final review as indicated in Table 21.620. Except as otherwise provided in these regulations, all land shall be platted prior to the subdivision of land or the issuance of a building permit. Also, nonresidential lots in subdivisions may require site plan review (Section 21.630).

<b>Table 21.620</b> <b>REQUIRED PLAT SUBMISSIONS</b>			
<b>Subdivision</b>	<b>Concept (Section 21.610)</b>	<b>Preliminary</b>	<b>Final</b>
Minor	Y		Y
Major	Y	Y	Y
Rural	Y		Y
Staged	Y	Y	Y
Residual	O	Y	Y
NOTES Y = required O = optional			

## **SECTION 21.621        EFFECT**

The three types of plats are concept, preliminary, and final; each one has a different effect. The concept and preliminary plats set guidelines for subsequent plat submissions. The final plat indicates how a development must be built. The effect of each approval is as follows:

- A. **Concept Plat.** The concept plat gives general guidance to prepare a preliminary or final plat. It is a rough plan, expected to be modified as more detailed planning and engineering are completed. Subsequent plans are expected to contain design improvements. Minor concerns regarding concept plats are not to be corrected in the concept plat but shall be incorporated into subsequent plats. If major redesign is required, a revised concept plat may be required.
- B. **Preliminary Plat.** The preliminary plat contains accurate preliminary planning and engineering. While not a survey, the accuracy is such that only minor changes are to be expected in the final plat. The final plat is expected to be in substantial compliance with the preliminary plat with only minor deviations created by final engineering, surveying, or other minor design enhancements. Major changes at the final plat stage may, at the discretion of the Planning Commission, be required to be reviewed again as a preliminary plat if the Commission feels the changes result in significant implications that adversely affect this Ordinance or the ability to adequately or safely provide services.

C. **Final Plat.** The final plat is to be recorded. It is also to be submitted in an electronic format as determined by Staff. All construction is to be in accordance with the final plat and engineering. Final engineering may be modified in the field, provided "as-built" drawings are submitted. As-built drawings must be acceptable to the Zoning Officer; if unacceptable, the work must be corrected at the developer's expense prior to accepting improvements and return of any surety. Should the lots not be laid out as specified, the lots shall be surveyed. Lots not meeting this Ordinance shall be considered illegal nonconforming lots and all development halted until revised plats meeting this Ordinance are submitted. Lots may have to be combined to correct the problem.

### **SECTION 21.622 RECORDATION**

Upon approval and submission in electronic format, the final plat shall be signed and dated by the Zoning Officer, certifying the action approving has been taken by the appropriate agency. The plat shall be filed with the Register of Deeds within sixty (60) days after approval by the City Council.

### **SECTION 21.625 SITE PLAN REVIEW**

Every land development of any tract or parcel, not in a lot in an approved residential subdivision, shall submit a site plan for approval. Lots meeting the standards in this Section in approved industrial or commercial subdivisions shall require individual site plan approvals. Site plans may require a pre-application conference, concept, preliminary, or final site plan as indicated in Table 21.620. No building permits shall be permitted until a final site plan is recorded for:

- A. Lots that take access to an existing arterial or collector road.
- B. Uses that have more than five thousand (5,000) square feet of floor area.
- C. Nonresidential parcels greater than three (3) acres.

<b>Table 21.620 REQUIRED PLAN SUBMISSIONS</b>			
<b>Land Development</b>	<b>Concept (Section 21.610)</b>	<b>Preliminary</b>	<b>Final</b>
Minor	Y		Y
Major	Y	Y	Y
NOTES Y = required			

### **SECTION 21.630 SITE PLAN REVIEW - EXISTING STRUCTURES**

A site plan review is not required for expansion of an existing structure except when the expansion:

1. Increases the density of residential uses more than 5%.

2. Increases the total floor area of all nonresidential buildings more than 10%.
3. Increases the lot coverage of more than 5%.
4. Increases the height of any building more than 100%.
5. Changes the architectural style which will make project less compatible with surrounding uses.
6. Changes the ownership patterns or the construction will impose substantially greater loads on streets or other public facilities.
7. Decreases any setback more than 5%.
8. Decreases areas devoted to open space more than 5% or substantially relocates open space areas.

## SECTION 21.631 EFFECT

The three types of site plans are concept, preliminary, and final; each one has a different effect. Concept and preliminary site plans set guidelines for subsequent plat submissions. The final site plan indicates how a development must be built. The effect of each approval is as follows:

- A. **Concept Site Plan.** The concept site plan gives general guidance to prepare a preliminary or final site plan. It is a rough plan, expected to be modified as more detailed planning and engineering are completed. Subsequent plans are expected to contain design improvements. The minor concerns regarding concept site plans are not to be corrected in the concept site plan but incorporated into subsequent plans. If major redesign is required, a revised concept site plan may be required.
- B. **Preliminary Site Plan.** The preliminary site plan contains dimensioned preliminary planning and engineering. While not a survey, the accuracy is such that only minor changes are to be expected in the final site plan. Where building tenants are not known, building envelopes may be used. Preliminary engineering should indicate that proper connections and improvements can be done. The final site plan is expected to be in substantial compliance with the preliminary site plan with only minor deviations created by final engineering, surveying, user desires, or other minor design enhancements. Major changes at final site plan may at the discretion of the Planning Commission be required to be reviewed again as a preliminary site plan should the Commission feel the changes result in significant implications adversely affecting this Ordinance or the ability to adequately or safely provide services.
- C. **Final Site Plan.** The final site plan is to be recorded. It is also to be submitted in an electronic format (.dxf file, compatible in Integraph Microstation and AutoCAD and containing State plane coordinates). All construction is to be in accordance with the final site plan and engineering. Final engineering may be modified in the field, provided "as-built" drawings are submitted and approved. Should the buildings not be laid out as specified, the Zoning Officer shall determine whether they still comply with this Ordinance. Where the buildings comply, as-builts shall be submitted.

**SECTION 21.632****RECORDATION**

Upon approval and submittal in electronic format, the final site plan shall be signed and dated by the Zoning Officer, certifying approval has been given by the appropriate agency. It shall be recorded in the Register of Deeds Office.

**DIVISION 21.700****PERFORMANCE GUARANTEES****SECTION 21.710****COST ESTIMATES AND SURETY**

All improvements required by this Division for roads, water, sewer, drainage, detention, as well as other improvements such as lighting, landscaping, and bufferyards, shall be subject to a performance guarantee. The developer's engineer shall submit a cost estimate for road, water, sewer, storm drainage, detention, lighting, and any off-site improvements. The designers of the landscapes, buffers, and/or other improvements shall submit cost estimates. Valid bids from contractors may be substituted for cost estimates. The Planning Commission shall review all bids, checking for consistency with similar bids or public bids to ensure they are reasonable. A surety shall be required in the amount of one hundred fifteen (115) percent of the cost estimates. surety shall be for a period established by the Planning Commission. (Ordinance #2772., 03/13/01)

**SECTION 21.711****IMPROVEMENTS IN LIEU OF SURETY**

In lieu of posting a one hundred fifteen (115) percent surety, the developer may obtain final engineering and plat approval, and construct all improvements by posting ten (10) percent surety. After inspection and acceptance by the City that all improvements are installed to City standards, Staff shall release the final plats for recording and return the surety amount to the developer. The developer may opt to install only some of the improvements. In this case, the developer shall post surety for the remaining improvements prior to Staffs plat release. (Ordinance 2893 08/23/05)

**SECTION 21.720****RELEASE OF SURETY**

Upon completing all or part of the improvement, the developer may request the Planning Commission order a reduction or closure of the surety. If all work is complete and a maintenance bond provided, the surety shall be closed. If twenty-five (25) percent of the work has been completed, or completed in stages as identified in the original cost estimates, the surety shall be reduced.

**SECTION 21.721****CALLING SURETY**

Under normal circumstances, the developer should complete improvements well before the surety expiration and will, on his or her own initiative, request reduction or closure of the surety. In the event construction has not been completed sixty (60) calendar days prior to the surety expiration, the Planning Commission shall inspect and send a report to the developer indicating items to be completed by thirty (30) calendar days prior to the expiration. Should the developer want additional time, a new surety covering the time (minimum six [6] months) shall be submitted to the Planning Commission. If all work is not completed or an extended surety has not been presented thirty (30) days prior to expiration, Staff shall notify the City Attorney to call the surety so the work can be completed.

**SECTION 21.730****MAINTENANCE GUARANTEE**

Upon completing the improvements, the surety will be reduced or eliminated. Prior to that event, a maintenance guarantee shall be taken out to cover one hundred (100) percent of the anticipated maintenance for a period of two (2) years after the completion of all improvements.

## **DIVISION 21.800      WARNING, NOTICE TO APPEAR, AND PENALTY FOR VIOLATION**

A. **Notice and Warning.** Upon the City's attention of a Zoning Ordinance violation, the Zoning Officer shall investigate the violation and prepare a report concerning the same. If a violation exists, a warning notice shall be delivered to any person occupying the property, whether the person is the owner, renter, or lessee. If no one is present or refuses to accept the notice, the Zoning Officer shall post the warning notice on the residence or building entrance.

1. The warning notice shall contain:
  - a. The address and legal description of the property.
  - b. The Ordinance section being violated.
  - c. The nature and location of the violation, and the date by which such violation shall be removed or abated.
  - d. A notice of the penalty for failing to remove or abate the violation, stating that if the violation continues or reoccurs, the City may commence an action to enforce these regulations.
2. A written notice containing the same information as the warning notice shall be sent, by restricted mail, to the owner or any other person having control of the property at the last known address of the owner, or at the address of the person having control.

B. **Penalty for Violation.**

The violation of any provision of this Ordinance is hereby declared to be a public offense and pursuant to the authority of K.S.A. 12-761, a misdemeanor, and any person, firm, association, partnership or corporation convicted thereof shall be punished by a fine not to exceed \$500 or by imprisonment for not more than six months for each offense or by both such fine and imprisonment. Each day's violation of this Ordinance shall constitute a separate offense.

The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Ordinance and to abate nuisances maintained in violation thereof. In the event that any building or structure is or is proposed to be erected, constructed, altered, converted or maintained in violation of this Ordinance, or any building, structure or land is proposed to be used in violation of this Ordinance, the City may, in addition to any other remedies, institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation, or to prevent the occupancy of such building, structure or land.

## ARTICLE 22

### ADOPTION AND PURPOSES

#### **DIVISION 22.000 PURPOSE**

This Ordinance implements the City of Paola Comprehensive Plan of 1983. Division 22.100 and Division 22.200 set forth specific goals and policies implemented by this Ordinance.

#### **DIVISION 22.100 COMPREHENSIVE PLANNING POLICY**

While it is the intent of the City that these regulations be in conformity with adopted comprehensive plans, it is further the intent of the City that these regulations shall not be challenged merely on the basis of an alleged nonconformity with such adopted plans. The following Sections provide a goal statement and a policy discussion.

#### **SECTION 22.110 GROWTH MANAGEMENT**

Goals:  
To protect the long-term future growth potential of the City's Community Growth Area.

To exercise zoning, subdivision, and land development controls over the Community Growth Area.

To provide for a rational and cost-effective program of utility extension to service the Community Growth Area.

Paola and Miami County have begun a period of suburban growth, as the Kansas City metropolitan area development has spread from Johnson County to Miami County. The County cannot provide the needed services to sustain growth. To the extent the goals and objectives of any Miami County Comprehensive Plan encourage growth in established, and establishing urban areas, these regulations support those goals. Like any city, Paola needs to have a growth area into which it can expand over an extended period of time. Working with Miami County, a Community Growth Area providing for approximately fifty (50) years growth has been established. The basic land use planning for residential, commercial, and employment for this long-term growth has been performed. The City's capital programming is providing a logical extension of utility services into these areas. This Land Development Ordinance provides zoning, subdivision, and land development controls over Paola's community growth area. Therefore, the City can coordinate land development in a fashion that encourages development in areas with adequate services. It is the desire of the City that the County establish a viable long-term strategy for improving County roads to serve regional needs. Water districts are better able to plan for service extensions because of the community growth areas.

A key to managing growth is extending services to newly developing areas in a cost effective and timely manner. Planned expansion of services ahead of need reduces the total cost of the services. The availability of adequate services ensures Paola expands where service is available rather than reacting and attempting to extend services to scattered random development. In addition, the approach ensures the City's capital facilities costs are held to a reasonable level.

The City recognizes that strict control of the pace of development can have consequences for property owners who may desire to develop or sell before the City can cost-effectively provide services. The City

has addressed this legitimate concern by providing development alternatives for landowners. These alternatives allow for interim development consistent with the Plans but does not endanger the public health, safety, or the City's long-term growth objectives.

## **SECTION 22.120      COMMUNITY CHARACTER**

Goals: To protect and enhance Paola's unique community character.

To provide residents with the assurances that the character of their neighborhoods will be protected.

To plan for the individual land uses using community character types.

Both Paola and Miami County are planning to use a community character system to establish the community's land use pattern. The City plans to provide a variety of community character types, ensuring a wide range of life-style choices. Urban character in and around the city square and County court house will be expanded to promote the special historical character of the City's center. Retail commercial, business parks, industrial areas, and some higher density residential are planned to have a thoroughfare access character -- each within individual zoning districts. The City is not content with the quality of many existing thoroughfare access areas, and these are to be upgraded. New thoroughfare access development will be designed to higher standards. Large areas of the City will have a suburban character. Small neighborhood service areas are needed to provide services in suburban areas and will have a suburban character by virtue of suburban commercial zoning. Lastly, areas of estate character will be provided where lower intensity development can be permitted while still ensuring adequate service delivery. These different community character types provide a full range of living environments within Paola.

Community character addresses the manner in which land uses are placed on the ground and how the use impacts its neighbors, the environment, or governmental services. Each community character type permits a range of land uses that are consistent and can be built on adjoining properties without destroying or altering the neighborhood's character. A series of intensity and design standards ensure that whatever use is built, the character is protected.

Three types of protection are provided. The first depends on design and intensity performance standards for each community character-based district. The district standards ensure a uniform community character regardless of the use. A second set of standards addresses the interface of different community character districts and provides for buffering and protection of the character of uses in the less intense district. A third set of standards recognizes that some uses have problems associated with them and provides additional protection standards that mitigate or otherwise avoid these problems.

SECTION 22.130 RESOURCE PROTECTION

Goals: To protect the quality of surface water in Paola's water supply reservoirs.

To reduce the potential for flooding and erosion.

To protect wildlife habitats.

Paola obtains its drinking water from surface water in Lake Miola. Additional water comes from Hillsdale Lake, but that lake is entirely outside the City's jurisdiction. Protecting the watersheds of Lake Miola to reduce siltation, nutrients, and other pollutants from reaching the lake or reducing the loading rates is a high priority for the City. Failure to do so results in increased costs of providing water and

health risks. Maintaining stream and lake buffers, preserving forested areas, afforestation, and protecting steep slopes and drainageways are the essential strategies to protect the quality of the City's water supply.

Paola is surrounded on three sides by large floodplains. Flooding represents a major threat to life and property. The City's development pattern could result in significant increases in total run-off. Resource protection standards and mitigation measures will minimize the adverse impacts of new development. Many of the same techniques used to protect water quality in lakes and rivers will reduce the amount of run-off associated with new development and reduce siltation that can impair the capacity of the floodplains or floodways to move water. Many of the lands that need protection are excellent wildlife habitats. The presence of diverse wildlife is a sign that the resources are being protected in a manner that permits natural cycles to function efficiently. Further, the presence of wildlife within the City enhances the City's overall character and attractiveness.

It is an objective of these regulations to protect resources and to serve as a means of assisting the County in resource protection. Land that is particularly sensitive is protected in two ways. First, specific natural resource protection standards limit development's impact on the resource. Secondly, intensive uses that require leveling of the entire site are not proposed for resource sensitive areas. This Land Development Ordinance contains standards for the amount of a resource that can be disturbed. These performance standards implement the protection of specific resources and provide an easily understood measure of the level of protection.

## **SECTION 22.140**

### **ECONOMIC DEVELOPMENT**

Goals:

To make Paola the commercial-retail center of Miami County.

To encourage redevelopment and investment in the downtown area and extend it.

To provide regional employment centers at the intersection of US 169 with Route 68, Baptiste Drive, and 327th Street.

The City has several economic development goals that apply to different areas within the City. Zoning is intended to implement these goals by providing specific development standards and reserving land for future development. The City has the only sub-regional shopping in the County; that is expected to expand. Paola's zoning should prohibit small-scale strip commercial development along Baptiste Drive from co-opting more desirable large scale development and ensure that the development pattern supports subregional retail opportunities.

Regional and subregional commercial retail centers have often led to the destruction of historic commercial centers in communities around the nation -- some has occurred in Paola. The revitalization and growth of the City square area will require its growth and expansion with a well-defined urban character. The City and County will have to play an active role in making this goal happen.

The interchanges at Route 68, Baptiste Drive, and 327th Street with US 169 are designated as regional employment centers. These areas are best used as business parks, having minimum acreages of at least one hundred (100) acres. Care must be taken not to permit premature development of a character that will discourage future growth. Some existing development in these areas is of very low quality. Recognizing that not all business and industrial development can be of high quality, the business park zoning requires an outer ring of development with higher standards to present a strong image to prospective businesses. The interior of the park provides for a wider range of development.

## **DIVISION 22.200      ORDINANCE PURPOSES**

In addition to implementing the policies of the City Plan as established in Division 22.100, this Ordinance promotes the health, safety, and general welfare of the City's present and future inhabitants and businesses by:

### **A. Land Use Patterns and Community Character.**

1. Establishing rational land use and growth patterns and encouraging the most appropriate use of individual pieces of land.
2. Dividing the City into districts of distinct community character according to the use of land and buildings, the intensity of such use (including bulk and height), and the surrounding open space, to promote health and safety.
3. Providing suitable transitions between different community character areas to minimize the amount of incompatible land use and adverse impacts on property value.
4. Regulating and restricting the location and use of buildings, structures, and land for trade, industry, residences, and other uses.
5. Providing protection from noise, glare, odor, or vibration through buffers and other regulations.
6. Securing adequate natural light, clean air, privacy, convenient and safe access to property, and a safe environment.
7. Limiting the bulk, scale, and density of new and existing structures to preserve the desired character of Paola and its various neighborhoods for residents and promote and encourage the community's growth and economic health.
8. Encouraging high-quality, attractive, and marketable development for the present and future population and businesses.

### **B. Natural and Cultural Resources.**

1. Protecting watershed and surface water resources for safe and secure drinking water upon which the City's population depends.
2. Controlling the density, open space, land use, and vegetative cover to prevent surface water contamination.
3. Protecting life and property by avoiding or lessening the hazards of flooding, stormwater accumulation, runoff, or destabilization of soils by district or performance standards.
4. Avoiding or lessening soil erosion hazards.
5. Preserving and protecting areas with limited development potential due to topography, hydrology, soils, or other natural conditions as habitats for wildlife.
6. Respecting the area's history by preserving archaeological, historical, and architectural resources.

### **C. Public Infrastructure.**

1. Creating an environment safe from fire, flood, and other dangers.
2. Ensuring adequate and safe roads and facilities by limiting land use intensity to the capacity of the roads or facilities and controlling access.
3. Protecting and enhancing a pattern of streets, arterial streets, and highways that produces a unified, safe, and efficient system for movement.
4. Reducing the danger and congestion of traffic on roads and highways by both limiting the number of friction points, such as intersections and driveways, and minimizing other hazards.
5. Protecting residential streets from degradation by nonresidential traffic.
6. Establishing and regulating setback lines along streets and highways, property lines, and drainage facilities to ensure adequate and safe facilities.

7. Promoting economy in governmental expenditures.
8. Promoting and encouraging basic public services which meet the needs of Paola's citizens and providing for public safety and services that ensure the health of residents and businesses.

**D. Growth Management.**

1. Providing for the zoning of the long-term fifty (50) year Community Growth Area to protect the City's long-term growth and economic prospects.
2. Encouraging cost effective provision of utilities by regulating or phasing development to prevent premature development that creates land use, health, or economic problems for the City.
3. Encouraging development patterns that permit interim land uses that do not preclude the desirable ultimate development in the period when utilities are not available.

**E. Justifiable Expectations.**

1. Protecting and enhancing the value of land and buildings.
2. Seeking to balance the regulations' impact by permitting clustering and a greater variety of uses to offset restrictions.
3. Protecting landowners from adverse impacts of adjoining developments.
4. Protecting and respecting the justifiable reliance of existing residents and businesses on the continuation of existing, established, and planned land use patterns.
5. Abating nuisances by regulating proximate uses' compatibility using quantifiable performance standards.
6. Maintaining a desirable lifestyle for residents.

**F. Administration.**

1. Defining the powers and duties of administrative officers and bodies necessary to administer this Ordinance.
2. Prescribing penalties for violating this Ordinance's provisions.

Each purpose listed above serves to balance the interests of the general public of Paola with those of individual property owners.

**DIVISION 22.300 LEGISLATIVE INTENT**

This Ordinance is intended to protect the interests of both present and future neighbors and the general public from adverse impacts of land uses. Each standard is developed as a regulatory response to an identifiable negative impact or potential. At the same time, the Ordinance is intended to respect landowners' right to a beneficial use of their property. Regulations were designed to use greater flexibility and more development options to protect public rights while minimizing impact on property owners to the greatest extent consistent with good planning principles. A sound interpretation of any standard cannot be ensured without a careful analysis of the end to which the regulation is directed. Administrators and other persons shall interpret this Ordinance based on an understanding of the purposes intended. The intent of the standards and supporting definitions is to protect both individual property owners and the general public from adverse impacts which might otherwise be the result of a proposed land use. To this end, those called upon to interpret this Ordinance shall proceed as follows:

**A. Public Purpose.** Before any decision is made, the purposes for which the regulation or standard was initially imposed by the legislative body must be explicitly identified. This should include

the purposes stated in this Ordinance and its relevant Article, Division, or Section, and an examination of the Comprehensive Plan.

B. **Impact.** Two questions must be asked to determine the actual impact of various proposed interpretations:

1. Does the interpretation reduce protection to the public or site's occupants?
2. Does the interpretation provide greater freedom to the landowner to use the property?

C. **Decision Criteria.** The decision should permit flexibility in design provided it shall not lower the protection afforded to the public. An interpretation which permits increased design freedom is to be encouraged. An interpretation which provides for any of the following is prohibited, to the extent such is permitted under the law:

1. Permits a use prohibited in the district or one similar to a prohibited use.
2. An intensity increase in the use beyond the degree specified in this Ordinance.
3. A decrease in a standard that reduces the protection afforded neighbors, the amount of open space, the environment, or the general public.
4. A decrease in a standard that endangers users of a property or others.

D. **Balancing Rights.** This Ordinance has been carefully designed to avoid regulations that either sacrifice legitimate public goals, including protecting adjoining property owners, or require undue limitations on property owners ability to use their land in manners consistent with the City of Paola Comprehensive Plan's goals. Great care has been taken to balance competing groups' rights and achieve maximum protection with flexibility and a range of use options.

#### **DIVISION 22.400 SEVERABILITY**

If any Division, Section, paragraph, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected.

#### **DIVISION 22.500. REPEALER**

This Ordinance No. 2698 repeals Ordinance No. 2678 and all amendments thereto.

## ARTICLE 23

### DEFINITIONS

#### **DIVISION 23.000 PURPOSE**

This Article defines words, terms, and phrases found in this Ordinance.

#### **DIVISION 23.100 WORD USAGE**

This Article=s provisions and rules shall be observed and applied when interpreting this Ordinance, except when the context clearly requires otherwise:

- A. Words used or defined in one tense or form shall include other tenses or forms.
- B. Words in the singular number shall include the plural number. Words in the plural number shall include the singular number.
- C. The masculine gender shall include the feminine. The feminine gender shall include the masculine.
- D. The word "shall" is mandatory.
- E. The word "may" is permissive.
- F. The word "person" includes individuals, partnerships, firms, corporations, associations, trusts, and any other similar entities or combination of individuals.
- G. The word "Attorney" shall mean the Paola City Attorney.
- H. The words "Building Code" shall mean the current Paola Building Code.
- I. The word "City" shall mean the City of Paola, Kansas.
- J. The word ACity Hall= shall mean the City of Paola City Hall, 19 East Peoria Street, Paola, Kansas, 66071.
- K. The word "Comprehensive Plan" shall mean the Comprehensive Plan of the City of Paola. Depending on the context of the text. AComprehensive Plan= may also refer to the Miami County Comprehensive Plan.
- L. The word "Council" shall mean the Paola City Council.
- M. The words "Planning Commission" shall mean the Paola Planning Commission.
- N. The words "Register of Deeds" shall mean the Miami County Office of Register of Deeds.

- O. The words "Registered Engineer" shall mean an engineer registered in the State of Kansas.
- P. The word AStaff $\equiv$  shall mean the City Manager and such other employees or consultants designated by the City Manager.
- Q. The word "State" shall mean the State of Kansas.
- R. The words "Zoning Board" shall mean the Paola Board of Zoning Appeals.

## **SECTION 23.110 ABBREVIATIONS**

The following abbreviations are used in this Ordinance:

AASHTO	American Association of State Highway and Transportation Officials
ac.	acre
DBH	diameter at breast height for a tree
du or du's	dwelling unit(s)
FAR	floor area ratio
FEMA	Federal Emergency Management Agency
ft.	feet
GD	gross density
GFAR	gross floor area ratio
LSR	landscape surface ratio
max.	maximum
min.	minimum
na.	not applicable
ND	net density
NFAR	net floor area ratio
OSR	open space ratio
s.f. or sq.ft.	square feet
S.F.	single-family

## **DIVISION 23.200 USE DEFINITIONS**

The uses found in Table 03.110 are defined in this Division. Specific uses may be further defined in Division 23.300. If a use is not enumerated in either of these Divisions, see Section 21.320 for interpretations. Any use not specifically listed in Table 03.110 and defined in this Article is expressly prohibited, unless the interpretation is that the use is similar to a permitted use. The Standard Industrial Classification (SIC) codes (as listed in the 1987 manual printed by the Executive Office of the President, Office of Management and Budget) are used to define many uses.

## **SECTION 23.210 AGRICULTURAL USES**

- A. **Agriculture.** (SIC 011-017, 019, 021-025, 0272, 0811) These uses include:

1. Farms (with and without farm residences), orchards, aquaculture, and truck farming.

2. The raising or breeding of livestock, cattle, horses, poultry and bees. No more than one (1) animal unit per acre is allowed.
3. Nurseries that sell only plants. Tree farms, forestry, and nurseries selling gardening or other supplies are not considered agricultural uses under this paragraph.

B. **Farmstead.** This is a residential-agricultural unit in which the land is used for agriculture and residential purposes by the owner operator of the agricultural operation.

C. **Intensive Agriculture.** (SIC 0182, 02 part) These uses include:

1. Any agricultural uses such as feed lots, hog farms, and poultry operations where animals are tightly confined in buildings or outdoor pens or pastures with more than one (1) animal unit per acre. Intensive agriculture does not include concentrated confinement of animals attributable to customary livestock practices including but not limited to calving, inoculations, and winter feeding and sheltering.
2. Greenhouses (wholesale only).

D. **Clearing.** This use may include:

1. Forestry (SIC 0811) involving the management, harvesting, and use of a forest or woodland, or the clearing of area so that eighty (80) percent of the land shall at all times be in forest or woodland cover. It requires a management plan for the regrowth of the harvested areas; or
2. Involves the clearing, destruction, and cutting of forested areas in excess of twenty (20) percent for agricultural or other purposes than forestry. Clear cutting, burning, or other methods of eliminating the vegetative cover are included.

E. **Nursery.** Nurseries and ornamental floriculture (SIC 0181).

F. **Kennels and Commercial Stables.** The boarding, breeding, training, or selling of domestic dogs or cats. This shall include the keeping of more than four (4) dogs or six (6) cats over the age of four (4) months, or the keeping of a total of more than five (5) dogs and cats. Also, the stabling, training, feeding, of horses or the provision of riding facilities for other than the use of the resident of the property excluding Pet Grooming Services (SIC 0752 and 0273 part).

G. **Pet Grooming Services.** Establishments primarily engaged in providing 'pet grooming services' where animals are not boarded overnight (SIC 0752 part) (Ordinance 2918, 05/23/06)

## **SECTION 23.220 RESIDENTIAL USES**

A. **Single-family Detached.** These are all detached dwelling units constructed on lots and intended for only one (1) family.

B. **Equestrian.** This form of cluster development provides lots intended to permit keeping horses and providing common open space for equestrian activities such as common pasture, trails, riding rings, or common stables.

- C. **Single-Family Cluster.** These are single-family residential uses that include, as part of the subdivision design, common open space that meets the standards in Section 04.110.
- D. **Single-family Attached.** These are all attached dwelling units including twin, atrium, weak-link and town house types. The unit type permitted and open space standards are specified in Section 04.110.
- E. **Planned.** This describes a development that consists of one (1) or more of the following housing types: single-family, single-family lot line, village houses, duplex houses, patio houses, atrium houses, z-lots, town houses of several types, multiplexes, and apartments. Such developments shall be planned as a unit and shall meet all the open space standards in Section 04.110. The largest percent of dwelling unit type used must be allowed by right in the subject zoning district (Table 3.110A). (Ordinance #2835, 08/26/03)
- F. **Multi-Family.** This use permits apartments only.
- G. **Commercial Apartment.** This is from one (1) to four (4) dwelling units located above, along side, or to the rear of a nonresidential structure on the same lot.
- H. **Manufactured Home Park.** A parcel of land divided into two (2) or more manufactured home lots for lease or sale. This use also includes a parcel of land divided into two (2) or more manufactured home lots for sale. All single-wide manufactured homes shall be in manufactured home parks.
- I. **Group Home.** A group home is a building that would otherwise be categorized as a single-family home, except for the fact that the number of unrelated individuals living in the unit does not qualify under the definition of family. The operation of a group home shall be a family living environment, not an institutional environment where staff manages the living and controls activities. If the unit would otherwise qualify as other types of dwelling units defined in this Ordinance, such as apartment or attached housing, then the use shall be treated as such. Co-ops, nursing homes, other institutional residential, and boarding house type of operations are expressly excluded since these are institutional or commercial lodging uses.

## SECTION 23.230 INSTITUTIONAL USES

- A. **Assembly and Worship.** This use includes museums, aquariums, cultural or arts centers, conference centers (with no lodging), and churches with schools (except Sunday schools occupying no more than fifty [50] percent of the floor area) as part of the complex.
- B. **Institutional, Community.** Libraries, public or private junior high and high schools without residential living facilities (SIC 8211 part), child care (SIC 8351), and all other public or private indoor institutional uses.
- C. **Institutional, Neighborhood.** These uses include cemeteries, churches having less than fifteen thousand (15,000) square feet of floor area, day care centers (day or nursery schools), public or private elementary schools (SIC 8211 part), and all other public or private indoor institutional uses serving the neighborhood. Except for elementary schools, there is a maximum size and scale permitted to ensure it is neighborhood scaled.

D. **Hospitals.** General medical and surgical hospitals (SIC 8062) and specialty hospitals (SIC 8064) except alcoholism, drug, rehabilitation from those problems.

E. **Colleges.** Colleges, universities, and professional schools (SIC 8221); other advanced education (SIC 8222).

F. **Institutional, Residential.** (SIC 805, 808, 836) These uses include:

1. Convents, monasteries, and nursing homes.
2. Sheltered care facilities or group living facilities where the residents live in an institutional environment and are generally under the care or control of staff. All sheltered care, group care, group homes, and residential substance abuse facilities where total occupancy is more than eight (8) shall be considered institutional residential use. The residents would be members of an institution, or would have institutional care, or would be treated by staff in an institutional setting rather than living independently. Drug and alcoholism hospitals and rehabilitation (SIC 8064 part).
3. Institutional housing where there is commercial rental or condominium ownership combined with any of the following: common food service, nursing, or health care.
4. Dormitories, fraternities, sororities, or co-ops.
5. Schools with live-in facilities on site, other than universities, colleges, or preparatory schools (SIC 8211 part, 8222 part).

G. **Protective Care.** (SIC 9223, 8744 part) This is housing where the residents are assigned to the facility and are under the protective care of the city, county, state, or federal government. This use includes jails, prisons, work release, other similar facilities, and psychiatric hospitals (SIC 8063).

H. **Public Service.** These uses include emergency service, buildings, or garages (e.g., ambulance, fire, police, rescue), conservation agencies, and postal service buildings except major distribution centers (SIC 431 [part], 9221, 9222, 9512) where vehicles are stored and dispatched (Office uses are under Section 23.240).

I. **Utilities, Local.** (SIC 49 [part]) Utility substations or transmission and local distribution facilities, including telephone, and all government-owned utilities. Generation, storage of combustibles, and regional facilities and landfills or mining facilities are not included here; see Division 23.270.

## SECTION 23.240 COMMERCIAL USES

A. **Office.** Office uses include:

- Accounting services (8721)
- Banking and other credit agencies (offices only) (SIC 60, 61)
- Security, commodity brokers and services (SIC 62)
- Insurance carriers, agents, brokers, and service (SIC 63, 64)
- Real estate (SIC 65)
- Holding and other investments (SIC 67)

Business services (SIC 73)  
Health services (SIC 801-804, 807)  
Legal services (SIC 81)  
Social services (SIC 83) (except care facilities SIC 835-836)  
Membership organizations (SIC 86)  
Miscellaneous services (SIC 89)  
Engineering and management services (SIC 87)  
Agricultural support and services (offices only) (SIC 07)  
Governmental offices (SIC 91-97 excluding 9223, public service)

B. **Shopping Center.** A group of commercial retail, service, and other commercial uses, located in a single planned unit and having minimal exterior activities.

C. **Commercial Retail.** Commercial and retail uses include the following, provided no general storage or sales occur on the exterior on a regular basis and/or exceed five (5) percent of the interior floor area:

Paint, glass, wallpaper, hardware (SIC 523, 525)  
General merchandise stores (SIC 53)  
Food stores (SIC 54)  
Apparel and accessory stores (SIC 56)  
Home furnishing (SIC 5714, 5719), floor covering except carpets (SIC 5713) Cabinets (SIC 5211 part)  
Consumer electronics (SIC 573)  
Restaurants (SIC 58)  
Miscellaneous retail, including: art, gifts, sporting goods, drug stores, liquor, books, toys, camera stores (except fuel dealers) (SIC 59)  
Garden centers  
Video rental (SIC 7841)  
Movie theaters (SIC 7832)  
Bars and taverns

D. **Home Furnishing & Appliances.** Furniture and home furnishings stores (SIC 5712), household appliances (SIC 5722), and carpet stores (SIC 5731 part).

E. **Light Automobile Service.** This includes:

1. Gasoline service stations, gas-convenience marts, and quick service oil, tune-up, brake, and muffler shops where repairs are made in fully enclosed bays, the repairs are completed in less than two (2) hours, and no vehicles are stored overnight (SIC 75 part). A single-bay car wash associated with a gas convenience mart is permitted.
2. Auto malls with a number of the uses as listed in E.1. contained in a single building. When the total floor area is greater than thirty thousand (30,000) square feet, car washes shall be permitted as part of the mall.

F. **Services.** These uses include a wide variety of personal and commercial services. This category does not include those services for customers in vehicles, such as a drive-in banking facility.

Business services (excluding outdoor advertising services, disinfecting, and pest control services, and heavy construction equipment rental and leasing) (SIC 73)  
Personal services (Exluding Crematories) (Ordinance 2893 08/23/05) (SIC 72)  
Hospitals and medical laboratories (SIC 806-807)  
Miscellaneous repair services and shops (SIC 76)  
Educational services (SIC 824, 829)  
Health and exercise; dance studios (SIC 7991, 7911)

G. **Drive-in Facility.** These uses include all drive-in establishments providing service to customers in vehicles: drive-in restaurants, banking facilities; other uses with drive-up windows where the drive-up facility is the principal use and not an accessory use.

H. **Hotels and Motels.** (SIC 701& 704) These uses include hotels, motels, including those with convention facilities and facilities that cater to members of the organization owning them.

I. **Boarding House.** (SIC 702) This is a lodging facility having less than eleven (11) rooms for rent for short or long periods.

J. **Bed and Breakfast.** (SIC 7011 part) This is any place of lodging that provides five (5) or fewer rooms for rent, is the owner's personal residence, and is occupied by the owner at the time of rental.

K. **Heavy Retail and Service.** These are retail and/or service activities that have regular exterior service or storage areas or partially enclosed structures as listed below. For new and used vehicle sales, all vehicles must be operable and in road/water ready condition.

Any commercial retail use (Section 23.240 B.) having exterior activities  
Lumber and other building materials (SIC 521)  
Automobile, boat, motorcycle, recreational vehicle dealers, auto repair (SIC 55 also see Section 23.240 E.)  
Vehicle repair services & parking (SIC 751,752,7532,7536,7538,7539,7549; also see Section 23.240 E.)  
Car washes (SIC 7542 except as in Section 23.240 E.)  
Fuel dealers (SIC 598)  
Greenhouses (retail) and greenhouses with garden supplies (SIC 526)  
Mini warehouses (SIC 4225)

L. **Agricultural Support and Services.** This use includes farm supply services, equipment dealers, grain storage, veterinary uses (SIC 0741).

M. **Mixed Use.** This is:

1. A building containing two (2) or more use categories with five (5) or more residential dwelling units comprising a minimum of twenty (25) percent of the floor area.

2. A building or group of buildings arranged around a pedestrian precinct, containing four (4) or more uses including: commercial retail, commercial lodging, office, service, residential, institutional, or exhibition center. Residential shall be one of the uses.

## **SECTION 23.250 AMUSEMENT AND RESORT USES**

A. **Outdoor Recreation.** These uses include:

1. Public areas (open to community or development residents) for active recreational activities including, but not limited to: jogging, cycling, tot-lots, playing fields, playgrounds, outdoor swimming pools, and tennis courts (SIC 7999 part); golf courses, (full-sized (nine [9] holes, regulation length) regardless of ownership (SIC 7992) and membership golf, country, and shooting clubs (SIC 7997).
2. Passive recreational uses including, but not limited to: arboretums, wildlife sanctuaries, forests, areas for hiking, nature areas, and other passive recreation-oriented parks.
3. Picnic areas, garden plots, and beaches.
4. Fairgrounds as defined by this Ordinance. (Ord. 2990 05/26/09)

B. **Indoor Recreation.** This use includes:

1. Recreational uses that are public (open to community or development residents) including community recreation centers, gymnasiums, indoor swimming pools, or tennis, racquetball, or handball courts (SIC 7999 part).
2. Specifically excluded are health and exercise clubs (SIC 7991) and uses listed as commercial amusement uses.

C. **Commercial Amusement, Outdoor.** (SIC 7833, 7929, 794, 7996, 7997, 7999) This use includes, but is not limited to: fairgrounds, outdoor stadiums, racing facilities, rodeos, music arenas, theme parks, amusement parks, miniature golf establishments, water slides, batting cages, and shooting ranges.

D. **Commercial Amusement, Indoor.** (SIC 7832, 792, 793, 7941, 7993, 7997, 7999) This use includes, but is not limited to, all indoor commercial amusement facilities: bowling alleys, indoor sports arenas, movie theaters, indoor skating rinks (ice or roller), video arcades, pool halls, and shooting arcades.

E. **Campgrounds.** This is a form of commercial lodging where guests bring tents, travel trailers, campers, or other similar forms of shelter. The campground rents pads to the guests.

F. **Resorts.**

1. This use applies only to resorts or commercial lodgings which are located and designed with some combination of recreational uses or natural areas that provide a minimum of seventy-five (75) percent open space on the site.
2. Such uses shall provide a full range of recreation opportunities such as marinas, beaches or pools, tennis or golf, equestrian, or other special recreation opportunities.
3. Such uses shall contain several restaurants and shops to serve the guests.

G. **Fairgrounds.** This is a place where the County Fair is held, as well as utilized as a meeting hall for social, fraternal, civic, public and similar organizations. It may also be utilized as an event venue for spectator and non-spectator field events and activities such as concerts, tractor pulls, rodeos, circuses, festivals, arts and craft shows, family reunions, wedding receptions and similar receptions, and other community-related arts, cultural, agricultural, and educational activities. Any such activities are permitted uses of the fairgrounds and exempt from the requirement of obtaining a Special Use Permit as set forth in §03.337 Special Events. (Ord. 2990 05/26/09)

## **SECTION 23.260 HOME USES**

A. **Home Occupations.** This refers to any service, professional, or art occupation which is customarily, in whole or in part, conducted in a residence, which does not change the essential character of the residential use. A maximum of two employees, not including family members, are permitted. No commercial vehicles are permitted. No stock and trade are permitted. No merchandising equipment is permitted except as customary for domestic or household purposes.

B. **Day Care, Family.** Home day care, family uses providing for no more than five (5) unrelated children or adults. Day care providing for six (6) or more unrelated children are day care *centers*. See Section 23.230.

## **SECTION 23.270 INDUSTRIAL USES**

A. **Light Industry.** This use includes manufacturing, transportation, and wholesale uses where all operations are inside the building, where there is up to 5,000 sq. ft. of exterior storage, except as may be expanded as provided in Section 03.312, and where the maximum building size is two hundred thousand (200,000) square feet of more. This includes the following uses, except where the use produces emissions exceeding sixty (60) percent of Kansas standard:

General building contractors (SIC 15)  
Special trade contractors (SIC 17) (except storage of any equipment that is more than twelve [12] feet in height)  
Food products (SIC 20) (except SIC 2011,2015,2077, & 2082-2085 other than micro-breweries)  
Textiles and apparel (SIC 22 & 23)  
Furniture and fixtures (SIC 25)  
Printing and publishing (SIC 27)  
Office and computing machines (SIC 357)  
Electric and electronic equipment (SIC 36) (except electronic distribution and electrical industrial [SIC 361 & 362])  
Instruments and related products (SIC 38)  
Miscellaneous manufacturing industries (SIC 59)  
Transportation services (SIC 47)  
Communications (SIC 48)  
Wholesale trade durable and nondurable (SIC 50&51) (except farm products [SIC 515])  
Mini-warehouses (part SIC 4225)  
Regional utility substation or distribution station (SIC 491, 492) on at least two (2) acres or more

A use otherwise classified as a junkyard occurring in a fully enclosed building (Ordinance 2845 03/10/04).

B. **Heavy Industry.** This category includes construction, mining, manufacturing, transportation, and public utilities due to the land use intensity impacts typically associated with large industrial uses, their accessory outdoor storage uses, and large building areas.

1. All light industrial uses that require outdoor storage or which exceed five thousand (5,000) square feet except as may be expanded as provided in Section 03.312 (Ordinance 2845 03/10/04).
2. Any light industrial use not meeting the noise, odor, vibration standards, or producing emissions that exceed sixty (60) percent within or adjoining the building shall also be considered a heavy industry regardless of use.
3. The following uses are permitted:

Heavy construction contractors (SIC 16)  
Meat products (SIC 201)  
Alcoholic beverages (SIC 2082-85)  
Stone, clay, and glass products (SIC 32)  
Steel mills, foundries, smelter (SIC 33)  
Trucking and warehousing (SIC 42)  
Transportation equipment (SIC 37)  
Utility--production or processing facilities, but not office or transmission or distribution (SIC 49)  
Welding, sheet metal, blacksmith (SIC 76)

C. **Warehousing.** This category includes all warehousing (SIC 42 except mini or self storage warehouses) that is not incidental to a manufacturing facility and occupying less than twenty-five (25) percent of the total floor area.

D. **Utilities, Community/Region.** This use includes generation, storage of combustibles, and regional facilities, such as regional switching stations, pump storage, and other facilities not housed inside normal buildings (SIC 49 part).

E. **Extraction.** This category includes extraction uses such as mining and quarrying and any other extraction use (SIC 14).

F. **Recycling or Storage.** This use includes any land or structure used for salvaging, recycling, junkyards, or storing of waste paper, rags, scrap metal, and discarded materials and the collection, dismantlement, storage, and salvage of two (2) or more inoperative vehicles, automobiles, boats, trucks, or farm vehicles or equipment, or other types of machinery. This includes the aggregate storage of manmade equipment, machinery, scrap, or other used materials having a total cubic volume of seven hundred (700) cubic feet. Where there is no exterior storage, and all the material is stored inside buildings with impervious floors, the use shall be considered light industry.

G. **Disposal.** This category includes disposal uses such as: sanitary landfills, sludge disposal or storage; resource recovery facilities; energy recovery or generating from waste material; and any other form of waste management facilities (SIC 4953 excluding disposal of radioactive waste materials, all of which are prohibited). Sewer facilities are regulated as utilities.

## **SECTION 23.280 SPECIAL USES**

A. **Airports.** This use includes all airports (SIC 45), including those for the private use of an individual and those used by ultra-light aircraft.

B. **Commercial Communication Towers.** This category includes radio or television broadcasting towers, telecommunications towers, and antenna arrays (except residential satellite dishes).

## **SECTION 23.290 TEMPORARY USES**

A. **Christmas Tree Sales.** Outdoor sale of evergreen trees during the Christmas holiday season.

B. **Contractor's Office.** This includes watchman's trailers, construction equipment sheds, contractor's trailers and similar uses incidental to a construction project. Sleeping and/or cooking facilities may also be permitted.

C. **Outdoor Sales.** Outdoor sales or merchandise, by either the store owner/occupant, outside the store in question on either the public sidewalk, a private sidewalk, or pedestrian area. It also includes sales in the Paola Square. This use excludes sales associated with a public interest or special event.

D. **Public Interest Event.** Outdoor gatherings, auctions, art sales, and bake sales for the benefit of the community or community service or non-profit organizations.

E. **Special Event.** These events may include, but are not limited to, outdoor concerts, auctions, tractor pulls, carnivals, circuses, outdoor religious meetings, rodeos, and special entertainment at commercial properties. Such uses often travel to various communities or involve noisy events regardless of purpose. Only events that are not related to the primary use of the property require compliance with §03.337. For example, a wedding or wedding reception occurring at a church is related to the primary use of the property and would not require a Special Use Permit. (Ord. 2990 05/26/09)

F. **Model Homes/Sales Office.** A dwelling unit in a subdivision used as a sales office, or a modular unit used as a sales office for a subdivision.

G. **Farmstand.** This is a temporary or vehicle used in the sale of agricultural produce, in season, at least fifty (50) percent of which is grown by the seller.

H. **Concrete/Asphalt Batch Plant.** A concrete or asphalt batch plant assembled on a site for the construction of a particular road improvement. The location of the site shall be a condition of the permit.

I. **Truck Load Sale.** This use includes those activities which bring goods to a retail use in trucks and sell that merchandise from the trucks or a temporary outdoor or tented sales area.

#### **DIVISION 23.300. DEFINITIONS**

This Division contains the definition of words used in this Ordinance.

**Abutting.** Two lots sharing the same, or common, property lines, including lots separated by an alley. See Figure 23.301.

**Abandonment.** That the use, structure, or sign is not used, occupied, or otherwise operating for the intended nonconforming activity for the period specified in Section 09.320. Periods of active remodeling during which the use is closed for repairs do not count, provided the remodeling is completed within a reasonable time period as indicated on the zoning permit issued for remodeling nonconforming use. Abandonment of signs shall mean having electricity disconnected for lighted signs, no message, or the failure to repair damaged signs.

**Access.** An area designated as a way for vehicles to enter or leave a property or lot to a public or private street or alley. Access is intended to permit residents to bring their vehicles onto the property, customers or tenants to park, and provide for public access in emergencies. See Figure 23.301.

**Accessory Building or Use.** A building or use that contributes to, and is subordinate and secondary to, the principal building or use in function and area. It provides comfort, convenience, and necessities to the principal building or use. It shall be on the same lot as the principal building. See also *Principal Building or Use*.

**Active Recreation.** Recreational uses, areas, and activities oriented toward potential competition and involving special equipment. Playgrounds, sports fields and courts, swimming pools, picnic areas, and golf courses are examples of active recreation uses. Also see *Passive Recreation*.

**Addition.** Any construction which adds or enlarges the size of an existing building. Additions also include any extension or increase in floor area or height of a building or structure. Examples of an addition are: a porch, carport, new room, roof configuration, etc. Also see *Conversion, Building or Use* and *Structural Alteration*.

**Alley.** A secondary means of ingress and egress serving more than one (1) tract of land and used primarily for vehicular service, and which may be used for public utility purposes. Alleys are not maintained by the City and are normally located adjacent to the rear of property lines.

**Alteration.** See *Addition, Conversion, Building or Use, or Structural Alteration*.

**Amortization.** Process by which nonconforming signs are required to be discontinued or made conforming within a specified period of time.

**Animal, Dangerous.** Any mammal, amphibian, reptile, or fowl which is wild by nature and of a species which, due to size, vicious nature, or other characteristics would constitute a danger to human life, physical well-being, or property including, but not limited to: lions, tigers, leopards, panthers, bears,

raccoons, skunks, wild and exotic cats, any animal having poisonous bites, wolves, apes, gorillas, monkeys of a species whose average adult weight is twenty (20) pounds or more, foxes, elephants, alligators, crocodiles, rats, and snakes which are poisonous or otherwise present a risk of a serious physical harm or death to human beings as a result of their nature of physical makeup, including all constrictors. Any dog or cat having a disposition or propensity to attack or bite any person or animal without provocation is a dangerous animal. For purposes of these regulations, where the official records of the City Clerk indicate that a dog or cat has bitten any person or persons or animal on two (2) or more separate occasions, it shall be *prima facie* evidence that said dog or cat is a dangerous animal. (Ordinance 2799, 06/11/02)

**Animal, Domestic Exotic.** A domesticated animal that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad". (Ordinance 2799, 06/11/02)

**Animal, Farm.** A domestic animal typically associated with agricultural uses, including any domestic species of cattle, sheep, swine, goats, llamas, horses, poultry or other animal, which are normally and have historically, been kept and raised on farms in the United States. (Ordinance 2799, 06/11/02)

**Animal Unit.** A measure which defines the carrying capacity of land for domestic or farm animals. The animal unit represents the number of animals that can be supported (the carrying capacity) on one (1) acre of land and is related to the amount of feed various species consume and the amount of waste they produce. Table 23.301 lists the number of common farm species which comprise a single animal unit.

**Table 23.301**  
**ANIMAL UNITS**

Type of Livestock	No. Animals Per Animal Unit
Horse (2 years or older)	2.4
Colt (under 2 years)	4.9
Cattle (2 years or older)	2.4
Cattle (1 to 2 years)	4.9
Calves (under 1 year)	9.8
Brood Sow or Boar	6.1
Hogs (up to 99.8 kilograms)	12.3
Sheep	17.3
Lambs	34.5
Chickens	494.0
Other Poultry	494.0

Source: *The Stockman's Handbook*

**Apartment.** A multi-family dwelling unit contained in a building comprised of three (3) or more dwelling units, each having an entrance to a hallway or balcony in common with at least one (1) other dwelling unit. See Figure 04.110.

**Appeal.** A way to obtain review of a decision, determination, order, or act of an administrative agency pursuant to the terms of this Ordinance.

**Applicant.** The government agency, utility company, contractor, developer, or individual seeking approval of a permit or other approval from the City of Paola or other agency having authority to issue the permit or approval in Paola.

**Arterial Street.** A highway intended to carry a mix of regional and local traffic. It provides access to regional and community scaled land uses. It should be anticipated to ultimately require a minimum of four (4) traffic lanes. See Figure 11.120 for streets designated as arterial streets.

**Atrium House.** An attached, one (1) story dwelling unit with private individual access for a single family. Each unit shall have a private yard called an atrium. The entire lot area of atrium and house shall be

enclosed by a wall. All living spaces (that is, living rooms, dens, or bedrooms) shall face an atrium. See Figure 04.110.

**Attic.** The area between roof framing and the ceiling of the rooms below and that is not habitable, but may be reached by ladder and used for storage or mechanical equipment. Improvement to habitable status shall make it a story.

**Auto-Urban Character.** See the City of Paola Issue Paper No. 2, dated August 10, 1995.

**Awning or Canopy.** A structure partially attached or entirely supported by a wall and which is covered by canvas, cloth, plastic, other similar material, used as a protective cover for a door, entrances, window, walkway, or service area.

**Banner.** A non-illuminated, elongated plastic, metal foil, fabric, or other flexible material, sign, or string of flags or pennants that is usually temporary or semi-permanent. See also *Flag*.

**Base Flood.** The 100-year flood, the base flood, is a measure of flooding of a specific magnitude used as a standard in the National Flood Insurance Program. The base flood has a one (1) percent chance of occurrence in any given year. The depicted one (1) percent chance flood has one (1) chance in one hundred (100) of being equaled or exceeded in any future one (1) year period.

**Base Site Area.** A calculated area obtained by subtracting various land areas from the gross site area. See Section 05.120.

**Basement.** The lowest level or story of a structure which has its floor below grade and which is at least fifty (50) percent below the average finished grade of the building, and does not permit direct access to the outside.

**Benchmark.** A definite point of known elevation and location and of more or less permanent character. The identity and elevation shall be based on United States Geological Survey (U.S.G.S.) Data.

**Block.** A piece of land surrounded on all sides by streets or other transportation rights-of-way or by physical barriers such as water bodies or public open spaces. Blocks are normally divided into lots. See Figure 23.302.

**Bufferyard.** A strip of land on the periphery of a property, created to separate one type of land use or zoning district from another when they are incompatible or in conflict. Bufferyards include street bufferyards that protect the use from road related nuisances or screen undesirable uses. See Figure 23.303.

**Buffer, Waterbody.** See *Waterbody Buffer*.

**Buffer, Lake Miola Waterbody.** See *Waterbody Buffer, Lake Miola*.

**Buildable Area.** The space remaining on a lot after the minimum open space or landscape surface requirements, bufferyards, and setbacks have been met. See Figure 23.304 and *Net Buildable Site Area*.

**Building.** A structure built on a lot, having a roof and intended to shelter people, animals, property, or business activity. Any structure used or intended to be used for supporting or sheltering any use or occupancy. The word *building* shall be construed as if followed by the words "or part or parts thereof and all equipment therein."

**Building Code.** See Division 23.100.

**Building Front.** That exterior wall of a building which faces the front lot line.

**Building Height.** See *Height, Building*.

**Building Line.** That line formed by the rear, side, and street setbacks. Also see *Buildable Area*.

**Building Volume Ratio (BVR).** The building volume ratio is calculated as follows:

$$\text{Building Volume Ratio} = \frac{Bv + Pv + Lv + Sv}{(\text{lot area}/10)}$$

Where:  $Bv$  = Total volume of the building measured at the exterior walls and roof including all mechanical enclosures.

$Pv$  = Total area of parking lots multiplied by five (5) feet.

$Lv$  = Total area of loading docks not within the building multiplied by twelve (12) feet.

$Sv$  = Total area of exterior storage multiplied by the maximum height of the materials to be stored or any fence or wall whichever is greater.

**Bulk Regulations.** Controls which establish the maximum size (in total square feet), height, and setback of a building on its lot. Bulk regulations maintain compatibility and pleasing appearance of all buildings. They ensure enough light, air, and open space on the ground and all levels of the building.

**Caliper.** The size of new landscape plantings measured six (6) inches above ground. See *Diameter at Breast Height*.

**Candlepower.** The amount of light that will illuminate a surface that is one (1) foot distant from a light source to an intensity of one (1) footcandle. Maximum (peak) candlepower is the largest amount of candlepower emitted by any lamp, light source, or luminaire.

**Canopy Tree.** See *Tree, Canopy*

**Capacity.** When referring to off-street parking requirements, this means the maximum number of persons which may be accommodated by the use as determined by its design or by applicable building codes, whichever is greater.

**Certificate of Occupancy.** An official certification indicating that a use or building (as built) conforms to the provision of this Ordinance and may be used or occupied.

**Clearcutting.** The practice of wholesale, complete removal of all trees, disturbing shrubs, or other vegetation in the process. This definition does not include the selective removal of trees on a building pad or normal maintenance of vegetation.

**Cluster Development.** A development pattern or design technique in which lots are grouped together rather than spread evenly throughout a parcel as in conventional subdivision development. Cluster development allows the remaining land to be used for recreation, open space, and the preservation of natural resources. See Figure 23.305.

**Cluster Lot.** A detached single-family lot located within a "cluster" development as permitted in Articles 3 and 4. Also see Figure 23.305.

**Collector Street.** A street intended to provide access to nonresidential land uses, collect traffic from local streets, and convey traffic to higher levels of streets and highways. See Figure 11.120 for streets designated as collector streets.

**Collector, Residential.** A street intended to gather traffic from local residential streets and convey it to higher level streets. It serves more than 240 dwelling units. It is not intended to serve individual residential lots. It is found only in residential areas or developments. Note that new developments may create such streets.

**Commercial Use.** Any use, occupation, employment, or enterprise, other than residential, carried owner, lessee, or licensee of a structure.

**Common Land.** That land set aside for open space, including stormwater, retention lakes, ponding, or recreational use for the owners of lots in a subdivision, which land is conveyed in trust for the benefit, use, and enjoyment of the lot owners.

**Community Character.** See the City of Paola Issue Paper No. 2, dated August 10, 1995.

**Community Growth Area.** The unincorporated area established pursuant to the Interlocal Agreement between the City of Paola and Miami County in which this Ordinance controls land use and subdivision.

**Condominium.** The ownership of a single unit in a multi-unit project together with an undivided interest in common in the common areas and facilities of the property. (Ordinance 2994, 07/28/09)

**Condominium Project.** A plan or project whereby two or more units, together with an undivided interest in the common area or facility, are separately offered or proposed to be offered for sale. This definition shall apply to existing or proposed apartments, attached single family housing, commercial or industrial buildings, or structures. Condominium project shall also mean the property when the context so requires. (Ordinance 2994, 07/28/09)

**Conflict of Interest.** Any member of an administrative body having an interest which might influence their vote on a particular proceeding. Conflicts of interest include, but are not limited to, financial, personal, or family relationship to the applicant or a party that was legally noticed as to the proposed action.

**Conservation Easement.** A portion of a lot that is covered by an easement, running in favor of the City of Paola, providing that such land shall be left in a natural state or open space access easement. The area of the lot exclusive of the easement shall meet the minimum lot area requirements of Article 4.

**Conversion, Building or Use.** The process by which the original use of a building or land is changed to a different use. See also *Addition* and *Structural Alteration*.

**Copy.** The wording on a sign surface in either permanent or removable letter form.

**Copy, Changeable.** A sign message where the copy may be changed, manually or electrically.

**Cul-de-Sac.** A short, independent, minor street having only one (1) point of ingress and egress, terminating in a circular turn-around or other approved termination.

**Cut-off.** The point at which all light rays emitted by a lamp, light source, or luminaire are intercepted by a shield preventing their continuation. For signs, the term *cut-off* simply refers to the use of shields to direct the light so light rays shine exclusively on the sign.

**Cut-off Angle.** The angle, formed by a line drawn from the light source to the ground and a line perpendicular to the ground from the light source, above which no light is emitted.

**Cut-off-type Luminaire.** An outdoor lighting fixture, or luminaire, with shields, reflectors, or refractor panels which direct and cut off the light at an angle that is less than ninety (90) degrees. See Figure 12.520.

**Day-Night Level (DNL).** A measure of noise that is an outdoor, day-night average A-weighted sound level.

**Dedication.** The transfer of private property to public or common ownership for a public purpose. The transfer may be in fee simple interest or less than fee simple interest including easements. Dedication requires the acceptance of the interest to be complete.

**Density.** The average number of dwelling units allowed on an acre of land. It may also measure the families, housing units, rental rooms, or persons. For example, Figure 23.306 shows two types of land uses on an acre of land. The first shows a density of three (3) homes per acre. The second shows a density of twenty (20) apartment units per acre.

**Density, Gross (GD).** The total number of dwelling units on a site divided by the base site area. See Figure 23.307.

**Density, Net (ND).** The number of units per net buildable area of the site. See Figure 23.307.

**Detention.** The temporary storage of the differential runoff, between pre-developed and developed conditions, of stormwater by the provision of permanent facilities, such as dry reservoirs, ponds, wetlands, or other acceptable facilities.

**Developer.** That person, firm, or corporation by whom a tract will be subdivided and improved pursuant to the requirements of this Ordinance.

**Development.** Any of the following shall constitute development:

1. The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any buildings, structures, or accessory structures.
2. Any use or change in use of any buildings or land.
3. Any extension of any use of land.
4. Mining, dredging, filling, grading, paving, excavation, or drilling operations.
5. The storage, deposition, or extraction of materials; or public or private sewage disposal systems or water supply facilities; for which permission may be required pursuant to this Ordinance.

**Diameter at Breast Height (DBH).** A measurement of the size of tree equal to the diameter of its trunk measured four and one-half (4.5) feet above the adjacent natural grade. See also *Caliper*.

**Dog Kennel/Breeder.** See Section 23.210.

**Domestic Animals.** The normal farm animals and house pets. Wild animals, birds, reptiles or other species are expressly excluded. The keeping of all rare, threatened and endangered species without proper licenses is a crime.

**Dormitory.** A building with many rooms providing sleeping and living accommodations for a number of usually unrelated persons; usually associated with an educational institution. See Section 23.230 F.

**Downzoning.** Any amendment to the Zoning Map or text of this Ordinance that meets the following criteria constitutes a downzoning for the purposes of the Interlocal Agreement between the City and Miami County to establish the City's Community Growth Area:

1. Any zoning amendment involving a development of regional impact which would result in the reclassification of land from office or industrial use to a residential use.
2. Any zoning amendment involving a development of regional impact which would result in a reclassification of land from office or industrial use to a fast food, convenience commercial, automotive service or sales, gas or service station use, or neighborhood or local shopping center.
3. Any zoning amendment involving reclassification of land within a one-mile radius of the County airport from industrial or office use to residential or from agriculture to residential.
4. Any zoning amendment altering standards of access to arterial or collector roads.
5. Any zoning amendment altering standards intended to protect water supply lakes.
6. Any variation involving conditions 1. through 5. above.

**DNL.** See *Day-Night Level*.

**Drainage.** The process by which surface water (usually from rainfall) moves across the land surface. See *Stormwater Management*.

**Drainage Facility.** Any system of artificially constructed drains, including open channels and separate stormwater sewers, used to convey stormwater, surface, or ground water, either continuously or intermittently, to natural water courses.

**Drainageway.** A watercourse identified by the presence of an intermittent flow, or a swale whose drainage area is a minimum of two (2) acres and for which no floodplain is mapped. Manmade drainage or irrigation ditches shall be included as drainage. The drainageway shall constitute that area, as defined on both sides of the actual drainage course, which is a fixed distance on either side of the centerline of the watercourse.

First order watercourse	15 feet
Second order watercourse	25 feet
Third order or greater watercourse	50 feet

**Duplex.** A form of multifamily dwelling with no more than two (2) units per structure, located one (1) over the other.

**Dwelling.** Any building, or portion thereof, used exclusively for human habitation, except hotels, motels, or house trailers.

**Dwelling, Attached.** Two (2) or more dwelling units in a single structure or attached structures, each of which could have a single lot, which are separated from each other by a dividing wall. Such units may be side-by-side, back-to-back, or both. This includes two (2) family dwellings.

**Dwelling, Multiple Family.** A building designed for or containing more than one (1) dwelling unit, sharing access from a common hall, stair, or balcony.

**Dwelling, Single-Family Detached.** A dwelling unit designed for and occupied by not more than one (1) family and having no roof, wall, or floor in common with any other dwelling unit. Such dwelling units also include the conventional single-family dwelling unit type.

**Dwelling Unit.** A room or group of rooms that provide, or are intended to provide, living quarters for not more than one (1) family. A dwelling unit may be a building or portion thereof which contains two (2) or more rooms, including a bathroom, and an area providing stove and/or oven, and sink (a kitchen) which need not be a separate room.

**Easement.** A right or authorization from a property owner to another for a specific and limited use of his property. For example, a property owner may give or be compensated for a small portion of his property to allow installation of power lines or pipelines or to allow access to another property. See *Conservation Easement*.

**Engineer.** An engineer licensed in the State of Kansas. Unless otherwise indicated, it would be a civil engineer with the appropriate specialty.

**Erosion.** The wearing away of soil or rock fragments by water, rain, wind, or earth gravity.

**Escrow Agent.** A title company, bank, savings and loan association, trust company, attorney, or any other person or agency approved by the City Attorney to act as escrow agent.

**Essential Access.** An access that must cross a resource restricted area, such as a wetland or steep slope, to reach an area of the site that is otherwise buildable, and would result in damage to the restricted resource.

**Exterior Storage.** Outdoor storage of fuel, raw materials, products, equipment, and other materials used in industrial activities. Retail or wholesale sales areas, or product storage including automobile sales areas, building materials, lumberyards, or similar uses. Exterior storage includes all building materials or waste or scrap materials stored outdoors. Truck trailers held on the site for more than a night storing materials or awaiting pick-up shall be considered exterior storage. In the case of truck terminals, exterior storage includes all trucks, truck beds, and truck trailers that are not involved in active loading.

**Facade.** The elevational surface of a building.

**Family.** One (1) or more persons related by blood, marriage, adoption, or guardianship, or not more than five (5) persons not so related, occupying a dwelling unit and living as a single housekeeping unit. Fraternities, sororities, and other social or institutional residential units are excluded.

**Farm.** The land, buildings, structures, and machinery which are primarily adapted and used for agricultural purposes.

**Fascia.** A band located at the top edge of a building but below the actual roofline and above the building wall. Fascia material is often of a different type than either the actual roof or the building wall.

**Fence.** A barrier of posts, wire, rails, boards, metal sheets, masonry, or other material which is used as a boundary or means of protection or confinement.

**Filling.** The depositing on land, whether submerged or not, of sand, gravel, earth, or other materials. Biodegradable materials and other materials subject to decomposition or significant settling (such as garbage and other organic matter) shall not be considered filling. See *Landfill*.

**Filling Station.** Gasoline service stations, gas convenience marts, and quick service oil, tune-up, brake, and muffler shops where repairs are made in fully enclosed bays, the repairs are completed in less than (2) hours, and no vehicles are stored overnight (SIC 75, part). A single-bay car wash associated with a gas convenience mart is permitted. See *Gas Service Station* and Section 23.240.

**Flag.** Device generally made of flexible materials, such as cloth, paper, or plastic, and displayed individually on poles or as groups on poles, strings, or wires. See also *Banner*.

**Flag Lot.** A tract of land having insufficient lot width along a road or at the minimum setback line to meet Article 04 requirements but with sufficient area to meet all lot requirements further back on the lot. The area to the rear shall meet the minimum lot area requirements. See Figure 23.308.

**Flood Fringe.** Those portions of the floodplain, outside the floodway, subject to inundation by the 100-year recurrence interval flood and generally associated with standing or slowly moving water rather than rapidly flowing water.

**Floodplain.** Land which is covered by flood water during or as a result of a storm event. The limits of the floodplain are defined by the high-water mark of a 100-year storm event, as shown on the most recent FEMA Flood Hazard and Flood Insurance Rate Maps.

**Floodproofing.** Measures designed to prevent and reduce flood damage to uses or structures located in the floodplain. They include: measures to prevent floodwaters from entering the structures; reinforced walls without openings less than two (2) feet above the maximum flood elevation; installation of doors or windows sealed to prevent the entry of water in structures designed to withstand the water velocities at that point.

**Flood Protection Elevation.** A point two (2) feet above the water surface elevation of the 100-year flood.

**Floodway.** A designated portion of the 100-year flood area in which waters are rapidly moving. It includes the stream channel and other areas designated on the most recent FEMA Flood Hazard and Flood Insurance Rate Maps.

**Floor Area, Gross.** The sum of the gross horizontal area of all floors of a building including basement areas, as measured from the interior perimeter of exterior walls. Such area shall not include interior loading and parking areas, atriums except the first floor area, rooftop mechanical equipment enclosures, and the enclosed mall areas of shopping centers.

**Floor Area Ratio (FAR).** A measure of the allowed size of floor area on a lot compared to the size of the lot. FAR gives developers flexibility in deciding whether to construct a low building covering most of the lot or a tall building covering only a small part of the lot, as long as the total allowable floor area coverage is not exceeded. See Figure 23.309.

**Floor Area Ratio, Gross (GFAR).** The total floor area of a building or structure divided by the base site area.

**Floor Area Ratio, Net (NFAR).** The total floor area (FA) of a building or structure divided by the net buildable site area (BSA). See Figure 23.310.

**Footcandle.** A unit measuring the amount of illumination produced on a surface. One (1) footcandle is the amount of illumination falling on all points which are one (1) foot from a uniform point source of one (1) candle.

**Forest.** An area covered by a canopy of woody plants (trees) that qualifies as mature or young. It may also be a woodland, woodlot, grove, or stand of trees having meeting the specifications of the forest type.

**Forester.** A person trained in forestry, botany, biology, or ecology knowledgeable in the area of Mid-western forests.

**Forest, Mature.** An area of forest covering a minimum of one (1) acre, with a canopy composed of trees having a DBH of sixteen (16) inches or greater covering seventy-five (75) percent of that area. Also, any stand or grove of eight (8) or more trees having a DBH of twenty (20) inches or more whose canopy covers fifty (50) percent or more of the area.

**Forest, Young.** An area of forest covering a minimum of one (1) acre, with a canopy composed of trees having a DBH of six (6) inches or greater covering sixty (60) percent of that area.

**Front Lot Line.** See *Lot Line*.

**Frontage.** For signs only, the length of a street lot line. See *Lot Width* for meaning as it applies to lot dimensions or access.

**Garage or Carport.** An accessory building used primarily for parking or storing a motor vehicle on residential lots. *See also Parking Garage.*

**Gas Service Station.** An establishment providing sales of vehicle fuel and services such as lubrication, oil and tire changes, and minor engine repairs. This use does not include paint spraying or vehicle body repair. See *Filling Station* and Section 23.240.

**Grade.** The natural level of the ground adjoining the object whose height is to be measured. Where grade refers to a street or road, it is the existing grade at that point.

**Grade Separated.** An intersection or pedestrian precinct where the road or walkway is separated by one level so no at-grade cross traffic or movement is present. One element goes over the other.

**Guest House.** A small detached accessory dwelling unit located on the same lot as a primary single-family detached dwelling unit that is intended to provide living quarters for nonpaying personal guests of the owner(s) of the principal residence. Such quarters shall be a single unit and shall not have separate utility meters. (Ordinance 2789, 11/27/01)

**Height, Building.** The maximum height of a building permitted on a lot. Building height is determined from the vertical distance as measured from the lowest ground elevation on the building to the highest point on the building. See Figure 23.311 and Section 04.110.

**Height, Sign.** The vertical distance measured from the highest of the adjacent sidewalk grade, adjacent street grade, or upper surface of the street curb to the highest point of the sign. Elevated roadways shall not be used to measure sign height.

**Highway.** A general term denoting a public or private way which affords the principal means of vehicular access of abutting property. The term includes all facilities which normally occur within the right-of-way; it shall also include such other designations as highway, thoroughfare, parkway, throughway, road, pike, avenue, boulevard, lane, place, court, but shall not include an alley or a pedestrian-way.

**Home Occupation.** See Section 23.260.

**Hotel.** See Section 23.240.

**Impoundment/Auto Storage.** This includes any land or structure related to a heavy auto repair or towing service that has regular outdoor storage/impoundment of two or more inoperative vehicles. Vehicles shall not be stored for more than twelve months. (Ordinance 2783, 08/28/01)

**Intensity.** The degree to which land is allowed to be used for development. See *Density* and *Floor Area Ratio*.

**Interlocal Agreement.** The agreement signed by the City of Paola and Miami County, dated February 6, 1996, which gives Paola zoning and subdivision powers within the City=s Community Growth Area.

**Land.** Areas above the ordinary high-water mark.

**Land Development.** The division or development of a nonresidential lot or tract for the purpose of creating additional lots, a building with more than one (1) use or tenant, the dedication of a street, alley, pedestrian precinct, or the linking of circulation to adjoining property.

**Land Development, Major.** See *Major Land Development*.

**Land Development, Minor.** See *Minor Land Development*.

**Land, Improved.** Vacant land which has been provided with power, water, sewage, streets and sidewalks, other infrastructure.

**Landfill.** A disposal site employing an engineering method of disposing solid wastes in a manner that minimizes environmental hazards by spreading, compacting to the smallest volume, and applying cover material over all exposed waste at the end of each operating day. Landfills shall specifically be designed subject to a permit by the State of Kansas or City and should not be not be confused with a dump. See Section 23.270.

**Landscape Surface Area.** Surface area of land not covered by any buildings, storage areas, or impervious surface. These areas shall be maintained as lawn or a natural area and may be left undisturbed. See Figure 23.312.

**Landscape Surface Ratio (LSR).** The area of landscaped surface divided by the base site area.

**Landscape Volume Ratio (LSR).** The landscape volume is calculated as follows:

$$\text{Landscape Volume Ratio} = \frac{Fv + Lv + Bv + Cv}{(\text{lot area}/10)}$$

Where: Fv = Average height of forest canopy multiplied by the forest area to be preserved after development.

Lv = The total number of plant units planted multiplied by 10,000.

**Bv** = The average height of the berm divided by 2, the result of which is multiplied by the average width and then the length of the berm.

**Gv** = The height of the groundcover in feet multiplied by the area not in forest.

**Landscaping.** The design and installation of plant material such as lawns, groundcover, trees, bushes, etc., in formal, informal, or natural arrangements.

**Lessee.** Any person who leases all or a portion of a premises on a day-to-day, week-to-week, or month-to-month basis.

**Loading Space.** A durably paved, properly designed for drainage, off-street space used for the loading and unloading of vehicles, except passenger vehicles in connection with the use of the property on which such space is located.

**Local Street.** A street that provides access to individual land uses.

**Local Residential Access Street.** A street that provides access to individual residential lots.

**Local Nonresidential Access Street.** A street that provides access to individual nonresidential lots.

**Lot.** An area of land which is part of a subdivision, the plat of which has been legally approved and recorded in the Office of the Register of Deeds of Miami County and is intended to be separately owned, developed, or otherwise used as a unit or an area of land which was legally approved and the deed recorded in the Office of the Register of Deeds. See Figure 23.313.

**Lot Area.** The area covered by a lot, not including any public or private street right-of-way, or any conservation or open space easement.

**Lot, Corner.** A lot abutting two (2) or more streets at their intersection.

**Lot, Double Frontage.** A lot having frontage on two (2) nonintersecting streets, as distinguished from a corner lot.

**Lot, Flag.** See *Flag Lot*.

**Lot Line.** A line or boundary that surrounds a lot. There are basically four types of lot lines--front, rear, side, and street. See Figure 23.313.

1. Front lot line. The street lot line from which the unit takes access; or where more than one (1) street yard could safely provide this access, the street serving the smallest traffic volume.
2. Rear lot line. The lot line opposite the front lot line.
3. Side lot line. The lot line that runs generally perpendicular or at angles to the street.
4. Street lot line. Any lot line that is also a street right-of-way line.

**Lot-Line House.** A dwelling type consisting of a single-family, fully detached residence located on an individual lot with only one (1) side yard. No windows are permitted on the zero lot line wall of the house. The zero lot line may be achieved by:

1. Placing the house on a side lot line and providing a maintenance easement six (6) feet wide on the adjoining lot; or,
2. Locating the house so as to provide two (2) side yards, one (1) of which shall be a six (6) foot side yard with a use easement for the neighboring property.

**Lot of Record.** Any validly recorded lot or parcel of land which at the time of its recording with the Office of the Register of Deeds of Miami County complied with all applicable laws and regulations then in effect.

**Lot Width.** The distance across the lot (side lot line to side lot line) at the minimum front setback line or at the midpoint of the buildable area, whichever is less. Lot width is also the measure of frontage for lots (For signs, see *Frontage*). See Figure 23.314.

**Luminaire.** A complete lighting unit consisting of a light source and all necessary mechanical, electrical, and decorative parts ready to be mounted on pole or other location.

**Luminaire, Cut-off-type.** See *Cut-off-type Luminaire*.

**Maintenance Guarantee.** A guarantee of facilities or work to ensure the correction of any failures of any improvements required pursuant to this Ordinance, or to maintain same.

**Major Change.** A change to the plan that increases density or floor area, decreases open space, bufferyards, or parking, or which alters the alignment or layout of streets by more than five (5) feet. For conditional approvals granted prior to the adoption of this Ordinance, any use proposed not contained in the original advertisement shall be considered a major change.

**Major Collector Street.** A street intended to gather traffic from local nonresidential access streets and convey it to higher level streets. Note this street does not serve individual nonresidential lots. Located in nonresidential areas or developments, this street type collects and moves a high volume of traffic from local nonresidential access streets. See Figure 11.120 for streets designated as major collector streets.

**Major Land Development.** A land development consisting of one (1) or more principle uses whose combined gross floor area is twenty thousand (20,000) square feet or more.

**Major Subdivision.** A subdivision consisting of more than five (5) lots.

**Manufactured Home.** This is a structure that is transportable in one or more sections, built on a permanent chassis, that is designed to be towed to the site on removable wheels. It shall be mounted on a permanent foundation. The term includes, but is not limited to, the definition of "mobile home" as set forth in regulations governing the Mobile Home Safety and Construction Standards Program (24 C.F.R. 3282.7 (a)). Double wide factory built homes meeting the building code and manufactured homes mounted on permanent foundations shall be considered single-family homes.

**Marina.** A facility for storing, servicing, fueling, berthing and securing, and launching private boats. It may have facilities for the sale of fuel and incidental supplies for boating activities.

**Maximum Permitted Illumination.** The most illumination, measured in footcandles, that is allowed at the interior lot line or bufferyard line, if a bufferyard is required, at ground level.

**Minor Change.** A change to the plan that does not increase density or floor area, does not decrease open space, bufferyards, or parking, or which alters the alignment or layout of streets by less than five (5) feet.

**Minor Collector Street.** A street intended to gather traffic from local nonresidential access streets and convey it to higher level streets. Note this street does not serve individual nonresidential lots. Located in nonresidential areas or developments, this street type collects and moves a low volume of traffic from local nonresidential access streets.

**Minor Deviations.** Such deviations shall not include increasing the use's intensity, introducing uses not previously approved, or decreasing the amount of open space or resource protection.

**Minor Land Development.** A land development consisting of no more than one (1) principle use whose gross floor area is less than twenty thousand (20,000) square feet.

**Minor Subdivision.** A subdivision consisting of no more than five (5) lots.

**Mixed Use.** See Section 23.240.

**Monument.** A marker to be made of materials and placed by a land surveyor at locations specified in Section 10.134.

**Monument Sign.** See Ground Sign.

**Motel.** See Section 23.240.

**Multiplex.** A multiple-family building type. Units may have either private or shared access. The units may be arranged in a variety of configurations, including back-to-back, side-to-side, or vertical. However, no fewer than two (2) and no more than eight (8) units shall be attached in any single building. A multiplex is permitted only in planned developments as provided in Articles 03 and 04. See Figure 04.110.

**National Geodetic Vertical Datum (NGVD).** Elevations referenced to mean sea level datum of the 1929 U.S. Geological Survey.

**Net Buildable Site Area.** A calculated value, determined by the calculations specified in Division 05.100.

**Nonconforming Building.** Any building or structure, other than a sign, legally established prior to the adoption of this Ordinance, which does not fully comply with this Ordinance. This would involve the placement of the building or other uses of the property on the lot, the intensity of use, or other requirements of this Ordinance.

**Nonconforming Lot.** A lot, legally established prior to the adoption of this Ordinance, which does not meet the standards of the district in which it is located. This can involve minimum area, buildable area, or dimensional requirements of the lot.

**Nonconforming Sign.** Any sign, legally established prior to the adoption of this Ordinance, which does not fully comply with the standards of this Ordinance.

**Nonconforming Structure.** See *Nonconforming Building*.

**Nonconforming Use.** Any use, legally established prior to the adoption of this Ordinance, which is not permitted in the district in which is located. This would also include uses that are permitted after further review or as conditional uses that have not met those standards of review.

**Nonconformities.** Lots, signs, structures, buildings, or uses of land, which are prohibited by this Ordinance, or otherwise fail to meet the standards of this Ordinance but were lawful prior to the enactment of this Ordinance. May also be referred to as a legal nonconformity.

**Notice of Disturbance.** This shall indicate that the Zoning Officer (limited uses) or City Council (conditional uses) has approved a disturbance of a certain acreage of natural resources. Each shall be listed along with the acres involved. The notice shall contain an indication of resources that may be further disturbed or any areas where resources will have to be restored if the site is developed.

**Obstruction.** Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Division 04.100 of this Ordinance.

**On-Site.** Located on the lot in question. However, when referring to on-site detention, it means within the boundaries of the development site as a whole.

**Opacity.** The measurement of the screening effectiveness of a bufferyard or fence expressed as the percent of vision that the screen blocked. The impact of visual perspective is also taken account.

**Open Space.** Land required to be left undeveloped as part of a natural resource preservation or open space provision of this Ordinance. Such required open space excludes areas in lots, street rights-of-way, or parking. An exception shall be made for lots whose areas are in excess of the minimum open space required and are protected under a conservation easement. See Figure 23.315.

**Open Space, Common.** Open space within a development, or outlots designated for open space, which are designed and intended for common use or the enjoyment of the residents of the development.

**Open Space Ratio (OSR).** The portion of a development required to be left in open space. It is determined by dividing the area in open space by the base site area. When applied to resource protection, the open space ratio shall mean that percentage of the resource feature to be protected and/or preserved in the total land area in that resource.

**Outparcel.** A lot used for drainage, detention, agriculture, or open space, with distinct boundaries, which shall not be used for residential or nonresidential uses, that is created in the process of subdivision.

**Overlay District.** A district that is applied over other zoning districts, and which may modify the permitted uses or intensity of use.

**Owner.** The person, persons, or corporate entity having the legal title to, beneficial interest in, or a contractual right to use or purchase a lot or parcel of land, whether or not such lot or parcel of land is held in common by joint owners.

**Parcel.** A separately designated area of land delineated by identifiable legally recorded boundary lines.

**Park.** An area open to the general public and reserved for recreational, educational, or scenic purposes.

**Parking Bay.** A paved vehicle storage area directly adjacent to the access street or privately controlled pavement.

**Parking Garage.** A building that provides parking for a number of vehicles laid out as a parking lot on one (1) or more levels with at least one (1) level being under roof.

**Parking Lot.** An area within a lot, and outside of the public right-of-way, where motor vehicles may be parked. This use may or may not be the sole use of the lot.

**Parking Space/Stall.** A durably dustproofed, properly graded for drainage, usable space enclosed in a main building or in an accessory building, or unenclosed, reserved for the temporary storage of one (1) vehicle, and connected to a street, alley, or other designated roadway by a surfaced aisle or driveway. Each such designated space shall comply with the dimensional requirements set forth in Section 12.410.

**Passive Recreation.** Recreational uses, areas, or activities oriented to noncompetitive activities which either require no special equipment or are natural areas. Bicycle riding, hiking, and bird watching are examples of passive recreation activities.

**Patio House.** A dwelling type that is a detached or semi-detached unit (i.e. attached by a common wall to another dwelling unit) for a single family, with one (1) dwelling unit from ground to roof. Each dwelling unit's lot shall be fully enclosed by a wall located at the lot line, thus creating a private yard, referred to as a patio, between the house and the wall. A "minimum patio area" rather than setbacks is used to determine minimum yard area. All living spaces, such as living rooms, dens, and bedrooms, shall face into the yard or patio. A patio house is permitted only in planned developments as provided in Articles 03 and 04. See Figure 04.110.

**Pavement.** The act or result of applying a hard, water-tight material to any ground surface in such a manner as to present a uniform surface over large areas.

**Pedestrian Ways.** Paths, sidewalks, plazas, courts, squares, typically used for walking.

**Pennants.** See *Flags and Banners*.

**Performance Guarantee.** See *Surety*.

**Performance Standards.** The portions of this Ordinance that state the requirements that must be met by a development in order for it to receive development approval.

**Permit.** An official document or certificate issued by the authority having jurisdiction which authorizes performance of a specific level of activity.

**Permitted Use.** A use which is authorized by right in a given zoning district.

**Person.** Individuals, partnerships, firms, corporations, associations, trusts, and any other similar entities or combination of individuals.

**Person, Having Control.** Any occupant, agent, servant, representative of employee of any owner, lessee, or renter of any property who exercises any control on behalf of the owner, lessee, or renter.

**Plan, Site.** A drawing showing plan and section views of the existing conditions and proposed improvements.

**Plans, Construction.** The engineering drawings showing the construction details and the types of material for the physical structures and facilities, excluding dwelling units, to be installed in conjunction with the development of the project.

**Planned Development.** A form of cluster development, and residential use type. See Section 23.220.

**Plat.** A drawing showing the location, boundaries, and ownership of individual properties. The drawing depicting the subdivision of land into lots and the location of streets and other elements as required by Section 21.620.

**Plot.** See *Parcel*.

**Preapplication Conference.** Discussions held between property owners or developers and the Zoning Officer before a formal submission of a development project. See Section 21.110.

**Property Line.** The legally recorded boundary of a lot, tract, or other parcel of land.

**Principal Building or Use.** The main use on a piece of property in terms of size, area, and function. See *Accessory Building or Use*.

**Public Improvement.** Any improvement, facility, or service, together with customary improvements and appurtenances thereto, necessary to provide for public needs such as: streets, alleys, pedestrian walks or paths; storm sewers, flood control improvements, water supply and distribution facilities, sanitary sewage disposal and treatment; public utility and energy services.

**Public Utilities.** Publicly owned or regulated utilities including water, sewer, telephone, gas, and electric. See Division 23.230.

**Recreation.** See *Active Recreation* and *Passive Recreation*.

**Recreational Vehicle.** A vehicle designed or used as living quarters for recreational, camping, vacation, or travel use, such as house trailers, trucks, trailers, pickup trucks, and vans.

**Renter.** Any person who rents all or a part of the premises on a day-to-day, week-to-week, or month-to-month basis. For purposes of this Ordinance, a person over the age of eighteen (18) years who is living in a household with a parent but who is neither the owner, the lessee, the head of the household, or the person having control, shall be considered to be a "renter," regardless of whether they pay rent for such occupancy in money.

**Residential Collector Street.** A new street intended to gather traffic from local residential access streets and convey it to higher level streets. Note this street does not serve individual residential lots. Located in residential areas or developments, this street type collects and moves the traffic from local residential access streets whose total dwelling unit count exceeds 240. See Figure 11.120 for streets designated as residential collector streets.

**Retaining Wall.** A wall or similar structural devise used at a grade change to hold the soil on the up-hill side from slumping, sliding, or falling.

**Rezoning.** An amendment to this Ordinance or a change to the Zoning Map. Such action can only be performed as set forth in the procedures in Division 21.200.

**Riding Stable.** A building and designated site intended or used as a shelter for horses or ponies, which provides for commercial boarding, hire, sale, or training of such animals. See Section 23.210.

**Right-of-Way.** A strip of land occupied or intended to be occupied by a public or private street on which a right-of-passage has been recorded or is required to be recorded for the use of vehicles, pedestrians, and

necessary public utility infrastructure (including, but not limited to, water lines, sewer lines, power lines, gas lines).

**Road, Arterial.** See *Arterial Street*.

**Road, Collector.** See *Collector Street*.

**Road, Local.** See *Local Residential Access Street* or *Local Nonresidential Access Street*.

**Road, Major Collector.** See *Major Collector Street*.

**Road, Minor Collector.** See *Minor Collector Street*.

**Roadway.** See *Right-of Way*.

**Roadway Right-of-Way Line.** The boundary dividing a lot from a public or private roadway.

**Roofline.** The top of a roof or building parapet, excluding any cupolas, pylons, chimneys, or other minor projections.

**Runoff.** The rainfall, snowmelt, or irrigation water flowing over the ground surface.

**Screen, Visual.** A physical device and/or landscaping, such as berms, walls, or hedges, used to hide or conceal a use or structure from sight.

**Service Station.** See *Gas Service Station* and Section 23.240.

**Setback.** The required distance between every structure and the lot lines of the lot on which it is located. Setbacks are illustrated by a line parallel to and at the specified minimum distance from the rear, side, or street lot line (see Figure 23.316). Rear, side, and street setbacks are specified in Article 04. This may also be referred to as a yard requirement.

**Sheltered Care.** Group care homes and group homes where the residents and any staff, up to a maximum of eight (8) people, live together in a family-type environment. The residents shall participate and live as a family unit. Such units shall be treated as single-family units. Each unit shall be either an existing single-family unit or a new unit constructed to resemble a single-family unit in internal layout, architecture, scale, and character specified in Article 04 rather than as an institutional facility.

**Shopping Center.** A group of commercial establishments planned, developed, and managed as a unit with off-street parking provided on the property.

**Sight Distance Triangle.** A specified amount of clear visibility provided at the intersection of two or more roads or access points to ensure drivers entering traffic have unencumbered views of such traffic. See Section 11.260.

**Sign.** Any object, device, display, structure, or part thereof, situated outdoors or viewed from outdoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, religious group, product, service, event, or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images. See Article 07.

**Sign, Awning/Canopy.** A sign that is mounted on, painted on, or attached to, an awning, canopy or marquee. No such signs shall project above, below or beyond the awning or canopy.

**Sign, Bulletin Board/Marquee.** A sign that indicates the name of an institution or organization on whose premises it is located and which contains the name of the institution or organization, the name or names of persons connected with it, and announcement of persons, events or activities occurring at the institution. Such sign may also present a greeting or similar message.

**Sign, Business.** A sign which directs attention to a business or profession conducted, or to products, services or entertainment sold or offered upon the premises where such sign is located, or to which it is affixed.

**Sign, Canopy or Awning.** A sign that is located or printed on a canopy or awning.

**Sign, Construction.** A temporary sign indicating the names of the architects, engineers, landscape architects, contractors and similar artisans involved in the design and construction of a structure, complex or project. This sign is permitted only during the construction period and only on the premises on which the construction is taking place.

**Sign, Gross Area.** Gross area shall include the entire area within a single continuous perimeter enclosing the extreme limits of the sign, exclusive of the base on which it is mounted or from which it is suspended. If more than one side of a sign is utilized as a sign, then only the largest side shall be computed and shall be counted as a portion of the gross area. On lots where more than one sign is located, the total gross area of all the signs shall not exceed the maximum gross area permitted by this Article. For computing the gross area of any wall sign which consists of letters mounted or painted on a wall, the area shall be deemed to be the area of the smallest rectangular figure which can encompass all of the letters.

**Sign, Ground.** A permanent detached sign made of masonry, wood, stone, concrete, or exterior insulated finish system. The ground sign copy area must be attached in a continuous fashion to a proportionate base. The proportionate base must be continuous and the width of the base must be at least one-half the width of the widest part of the sign or the base may consist of two or more supports where the sign face is not more than two feet above the average grade of the ground. See Figure 23.317. (Ordinance #2772, 03/13/01)

**Sign, Height.** The distance measured from the ground elevation at the base of the sign to the highest element of the sign.

**Sign, Identification.** A sign giving the name and address of a building, business, development or establishment. Such signs may be wholly or partly devoted to a readily recognized symbol.

**Sign, Illuminated.** A sign designed to give forth artificial light or designed to reflect light derived from any source.

**Sign, Metal.** Signs constructed of metal and illuminated by any means requiring internal wiring, including electrically wired accessory fixtures attached to a metal sign.

**Sign, Name Plate.** A sign giving the name and/or address of the owner or occupant of a building or premises on which it is located, and where applicable, a professional status.

**Sign, Nonconforming.** See *Nonconforming Sign*

**Sign, Off-premise/Advertising.** A sign which directs the attention of the public to any goods, merchandise, property, business, service, entertainment or amusement conducted or produced which is bought or sold, furnished, offered or dealt in elsewhere than on the premises where such sign is located or to which it is affixed.

**Sign, Pole.** A detached sign where the width of the base of the sign is less than one half the width of the widest part of the sign face. See Figure 23.317.

**Sign, Portable.** Any sign that is not permanently affixed to a building, structure, or the ground.

**Sign, Projecting.** A sign that is wholly or partly dependent upon a building for support and which projects more than 12 inches from such building. Projecting signs shall not extend above the parapet or eave line of the building and the furthermost extension of the sign shall not project more than 4 feet from the structure. The sides of a projecting sign shall be parallel back to back and shall not exceed 12 inches in thickness.

**Sign, Real Estate.** A sign pertaining to the sale or lease of a lot or tract of land on which the sign is located, or to the sale or lease of one or more structures, or a portion thereof on which the sign is located.

**Sign, Roof.** A sign totally supported on the roof of a structure. Roof signs shall not project more than 12 inches beyond the face of the building.

**Sign, Structure.** Any devise or material which supports, has supported, or is capable of supporting a sign in a stationary position, including decorative covers or sign roofs.

**Sign, Temporary.** A sign or advertising display constructed of cloth, canvas, fabric, paper, plywood, or other light material. It shall be displayed for only a short period of time.

**Sign, Travelers Convenience.** A sign giving the distance and direction to customary travelers service such as gasoline, lodging, and food.

**Sign, Wall.** A sign fastened to or painted on a wall of a building or structure in such a manner that the wall becomes merely the supporting structure or forms the background surface, and which does not project more than 12 inches from such building.

**Siltation Control.** The installation of such devices as sediment ponds, bales of straw, fencing, siltation webbing, sodding, seeding and mulching, or other devices to prevent silting of abutting properties and roadways during the period of construction and up to and including such times as permanent ground cover is attained.

**Single Lot Development.** A development consisting of one (1) or more buildings to be erected on a platted parcel of land or a single lot which is part of a subdivision, intended to be separately owned, developed, and otherwise used as a unit.

**Site.** A plot of land that can be used for a development.

**Site Plan.** A plan of the area to be developed, drawn to scale. The plan shows uses and structures proposed for a parcel of land as required by Division 21.600 and City check lists.

**Site Plan Review.** The review of a land development's site plan for compliance with this Ordinance.

**Site Volume Ratio (SVR).** A calculated value resulting from subtracting the building volume ratio from the landscape volume ratio.

**Slope.** The change in the vertical measurement divided by the change in the horizontal measurement. The figure is written as a ratio or a percentage. See Figure 23.318.

**Slope, Steep.** Two (2) categories of steep slopes are use in this Ordinance based upon the relative degree of the steepness of the slope (see Table 05.210). No land area shall be considered a steep slope unless it has at least a fifteen (15) foot vertical drop and has a minimum area of 10,000 square feet. If two (2) slope categories have the area and drop combined across their total area, they shall be considered a slope of the lesser class. See Figure 23.317.

**Specimen Tree.** Any tree eight (8) inches DBH or greater and being in good health.

**Stable, Private.** A detached building accessory to a residential use for the keeping of horses owned by the occupants of the premises and which shall not be used for any commercial purpose including the boarding, hire, sale, or training of horses.

**Steep Grade.** Roadway grades in excess of eight (8) percent.

**Stormwater Management.** The management of drainage to ensure that water moves in a manner that protects people and property from damage or flooding. It includes man-made and natural channels, drainage structures, storage areas, sedimentation control, and erosion control.

**Storage.** See *Exterior Storage*.

**Story.** That portion of a building, other than a basement or attic, included between the surface of any floor and the surface of the floor or roof above.

**Street.** A public or private road designed for use and travel by motor vehicles.

**Street, Access.** See *Access*.

**Street, Alley.** See *Alley*.

**Street, Arterial.** See *Arterial Street*.

**Street, Collector.** See *Collector Street*.

**Street, Cul-de-Sac.** See *Cul-de-Sac*.

**Street, Frontage or Service.** A minor street generally parallel to and adjacent to arterial streets and highways, which provides access to abutting properties and protection from through traffic.

**Street, Local.** See *Local Residential Access Street* and *Local Nonresidential Access Street*.

**Street, Loop.** A short, independent street which usually terminates along the same collector street of its origin.

**Street, Major Collector.** See *Major Collector Street*.

**Street, Minor Collector.** See *Minor Collector Street*.

**Street, Private.** A private way which affords the principle means of vehicular access to abutting property.

**Street, Public.** A street maintained by the City of Paola Department of Public Works, Miami County Department of Public Works, or the State of Kansas Department of Transportation.

**Street, Residential Collector.** See *Residential Collector Street*.

**Streetscape.** A nonresidential design form in which individual buildings are set parallel to the street and built at the setback line.

**Structure.** Anything constructed or erected in a fixed location for occupancy or use or any such object with a height greater than three (3) feet or having a volume greater than fifty (50) cubic feet.

**Structural Alteration.** Any change in the supporting members of a building, such as the bearing walls, beams, columns, or girders. See *Addition* and *Conversion, Building or Use*.

**Structure, Permanent.** A structure placed on or in the ground, or attached to another structure in a fixed position, and intended to remain in place for more than one (1) month.

**Structure, Temporary.** A structure that is designed to be repeatedly erected or inflated, tents and inflatable structures, or buildings that are picked up and moved, which shall remain on site for no more than one (1) month.

**Subdivision.** Any subdivision or redivision of a plat, tract, parcel, or lot of land into two (2) or more parts by means of mapping, platting by either metes and bounds or subdivision, conveyance, change, or rearrangement of boundaries. All subdivisions are also developments.

**Subdivision, Major.** See *Major Subdivision*.

**Subdivision, Minor.** See *Minor Subdivision*.

**Subdivision, Nonresidential.** See *Land Development*.

**Superblock.** An area bounded by arterial or collector streets, or cut off by a body of water.

**Surety.** A form of financial guarantee that required improvements will be made by providing the City with the resources to install the improvements should the developer fail to do so. These include, bonds, cash, letters of credit, or other financial instruments approved by the City Attorney.

**Swale.** A linear depression in the land's surface in which sheet runoff would collect and form a temporary watercourse. See Figure 23.319.

**Townhouse.** A single-family attached unit, with a single unit going from ground to roof, and with individual outside access. Rows of attached townhouses shall average no more than ten (10) dwelling units. A townhouse is permitted only in attached single-family or planned developments as provided in Articles 03 and 04. See Figure 04.110.

**Townhouse, Weak-Link.** An attached dwelling unit, a single unit from ground to roof, with individual outside access housing a single family. Each unit shall have both a one (1) and two (2) story section. A group of attached, weak-link townhouses shall average no more than eight (8) dwelling units per group. A weak-link townhouse is permitted only in attached single-family or planned developments as provided in Articles 03 and 04. See Figure 04.110.

**Tract.** See *Parcel*.

**Tree, Canopy.** A tree whose leaves would occupy the upper level of a forest in a natural ecological situation. These trees are also called shade trees, and typically reach heights of fifty (50) to one hundred (100) feet at maturity. See tree lists available from Staff.

**Tree, Understory.** A tree whose leaves would occupy the intermediate level of a forest in a natural ecological situation. They are also found as dominant species in old field succession. These trees are also called ornamental trees. See tree lists available from Staff.

**Twin House.** A dwelling that is attached by a common wall to one (1) other dwelling unit. It has only one (1) dwelling unit from ground to roof and only one (1) wall in common with another dwelling unit. One family lives in it. A twin house is permitted only in planned developments as provided in Articles 04 and 05. See Figure 04.110.

**Understory Tree.** See *Tree, Understory*.

**Use.** The purpose or activity conducted in a building or structure or on a piece of land. Some examples of land uses are: residential, retail, hotel, industrial.

**Use, Permitted.** Uses permitted by this Ordinance.

**Use, Principal.** The specific primary purpose for which land is used. It shall be dominant in size, area, and use.

**Variance.** The process by which a property owner is granted relief from certain provisions of this Ordinance. See Section 21.250.

**Vehicle Repair Facility.** Section 23.240.

**Village House.** A single-family residence which is fully detached from neighboring structures. A village house has very small front yards with special landscape requirements. Homes shall be built to the build-to line. A village house is permitted only in planned developments as provided in Articles 03 and 04. See Figure 04.110.

**Volume.** The smallest prism or parallelopiped that may be drawn around a sculpture. See *Building Volume Ratio, Landscape Volume Ratio, and Site Volume Ratio*.

**Wall, Retaining.** See *Retaining Wall*.

**Waterbody Buffer.** An area of land one hundred (100) feet in width surrounding lakes, ponds, and lagoons over ten thousand (10,000) square feet in area, and streams and rivers with channels greater than twenty (20) feet in width. The area shall be measured at the normal high-water mark of lakes or ponds or the top of the stream bank.

**Waterbody Buffer, Lake Miola.** An area of land three hundred (300) feet in width surrounding lakes, ponds, and lagoons over ten thousand (10,000) square feet in area, and perennial and ephemeral streams that have established channels (natural or manmade) within the Lake Miola watershed as shown on the Zoning Map. The area shall be measured at the normal high-water mark of lakes or ponds or the top of the stream bank.

**Watershed.** The area contributing to runoff water to a channel, drainage system or detention basin. Also commonly referred to as a drainage area.

**Wetland.** An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation types typically adapted for life in saturated soil conditions. Wetlands include bogs (peat dependent), marshes (herbaceous plants), swamps (woody plants), and portions of floodplains. Preliminary definition may be from the most recent official Wetland Inventory Maps. However, wetlands must be field delineated and approved in accordance with this definition or that of the U.S. Army Corps of Engineers, whichever is more stringent.

**Yard.** Those portions of a lot outside the buildable area which are for the use of the occupants. Such areas are unobstructed from the ground up, except for permitted accessory buildings or architectural features. Such areas are required regardless of ownership type. The types of yards are front, rear, side, and street. See Figure 23.320.

**Zero Lot Line.** This is where a lot line is co-terminus with the residential building line, or where a lot contains an easement of access to the adjoining property that runs up to the building line. See *Lot Line House*.

**Zoning District.** A designation shown on the Zoning Map as being in a district enumerated in Article 02 in which a specific set of zoning standards apply. It may refer to the standards or an area so mapped.

**Zoning Map.** The map and/or detailed maps showing the location and boundaries of the zoning districts established by this Ordinance. These maps are entitled, "Official Zoning Map of the City of Paola.≈

**Zoning Permit.** A written permit issued by the Zoning Officer that certifies that the proposed use of the land will be in compliance with this Ordinance.

**Zoo.** A permanent cultural institution accredited by the American Zoo and Aquarium Association, which owns and maintains wildlife that represent more than a token collection and, under the direction of professional staff, provides its collection with appropriate care and exhibits them in an aesthetic manner to the public on a regularly scheduled basis, more than 1,000 hours a year. (Ordinance 2799, 06/11/02)

#### **DIVISION 23.400. FLOODPLAIN DEFINITIONS**

This Division contains the definition of words used in this Ordinance pertaining to floodplains.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning they have in common usage and to give this ordinance its most reasonable application.

**"100-year Flood"** *see "base flood."*

**"Accessory Structure"** means the same as *"appurtenant structure."*

**"Actuarial Rates"** *see "risk premium rates."*

**"Administrator"** means the Federal Insurance Administrator.

**"Agency"** means the Federal Emergency Management Agency (FEMA).

**"Appeal"** means a request for review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

**"Appurtenant Structure"** means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

**"Area of Shallow Flooding"** means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**"Area of Special Flood Hazard"** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

**"Base Flood"** means the flood having a one percent chance of being equaled or exceeded in any given year.

**"Basement"** means any area of the structure having its floor subgrade (below ground level) on all sides.

**"Building"** *see "structure."*

**"Chief Engineer"** **means the chief engineer of the division of water resources, Kansas Department Of Agriculture.**

**"Chief Executive Officer" or "Chief Elected Official"** means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

**"Community"** means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

**"Development"** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**"Elevated Building"** means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**"Eligible Community" or "Participating Community"** means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

**"Existing Construction"** means for the purposes of determining rates, structures for which the *"start of construction"* commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. *"existing construction"* may also be referred to as *"existing structures."*

**"Existing Manufactured Home Park or Subdivision"** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**"Expansion to an Existing Manufactured Home Park or Subdivision"** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**"Flood" or "Flooding"** means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).

**"Flood Boundary and Floodway Map (FBFM)"** means an official map of a community on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

**"Flood Elevation Determination"** means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

**"Flood Elevation Study"** means an examination, evaluation and determination of flood hazards.

**"Flood Fringe"** means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

**"Flood Hazard Boundary Map (FHBH)"** means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

**"Flood Hazard Map"** means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.

**"Flood Insurance Rate Map (FIRM)"** means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**"Flood Insurance Study (FIS)"** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**"Floodplain" or "Flood-prone Area"** means any land area susceptible to being inundated by water from any source (*see "flooding"*).

**"Floodplain Management"** means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**"Floodplain Management Regulations"** means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

**"Floodproofing"** means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

**"Floodway" or "Regulatory Floodway"** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**"Floodway Encroachment Lines"** means the lines marking the limits of floodways on Federal, State and local floodplain maps.

**"Freeboard"** means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. *"Freeboard"* tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

**"Functionally Dependent Use"** means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

**"Highest Adjacent Grade"** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**"Historic Structure"** means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

**"Lowest Floor"** means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, **provided** that such enclosure is not built so as to render the structure in violation of the applicable floodproofing design requirements of this ordinance.

**"Manufactured Home"** means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term *"manufactured home"* **does not include** a *"recreational vehicle."*

**"Manufactured Home Park or Subdivision"** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**"Map"** means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

**"Market Value" or "Fair Market Value"** means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

**"Mean Sea Level"** means, for purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

**"New Construction"** means, for the purposes of determining insurance rates, structures for which the *"start of construction"* commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *"new construction"* means structures for which the *"start of construction"* commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**"New Manufactured Home Park or Subdivision"** means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

**"(NFIP)"** means the National Flood Insurance Program (NFIP).

**"Participating Community"** also known as an *"eligible community,"* means a community in which the Administrator has authorized the sale of flood insurance.

**"Permit"** means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

**"Person"** includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

**"Principally Above Ground"** means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

**"Reasonably Safe From Flooding"** means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

**"Recreational Vehicle"** means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently able to

be towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**"Remedy A Violation"** means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

**"Risk Premium Rates"** means those rates established by the Administrator pursuant to individual community studies and investigations, which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. *"Risk premium rates"* include provisions for operating costs and allowances.

**"Special Flood Hazard Area"** *see "area of special flood hazard."*

**"Special Hazard Area"** means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

**"Start of Construction"** includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The *actual start* means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial-improvement, the *actual start of construction* means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**"State Coordinating Agency"** means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

**"Structure"** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *"Structure"* for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

**"Substantial-Damage"** means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**"Substantial-Improvement"** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before *"start of construction"* of the improvement. This term includes structures, which have incurred *"substantial-damage,"* regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a *"historic structure,"* provided that the alteration will not preclude the structure's continued designation as a *"historic structure."*

**"Variance"** means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

**"Violation"** means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

**"Water Surface Elevation"** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain.