

ORDINANCE NO. 960

AN ORDINANCE OF THE CITY OF WESTWOOD, KANSAS AMENDING THE FOLLOWING ARTICLES AND SECTIONS OF THE WESTWOOD ZONING ORDINANCE WHICH IS INCORPORATED BY REFERENCE WITHIN THE WESTWOOD CITY CODE BY CHAPTER 16, ARTICLE 1, SECTION 1.6, SECTION 1.7, ARTICLE 2, SECTION 2.3, ARTICLE 5, SECTION 5.1.2, ARTICLE 6, AND ARTICLE 8.

WHEREAS, on June 22, 2015, the Planning Commission of the City of Westwood conducted a public hearing to consider amendments to the Zoning Ordinance of the City of Westwood;

WHEREAS, following the public hearing by the Planning Commission on June 22, 2015, the Planning Commission provided a unanimous recommendation to the governing body that the following Articles and Sections of the City's Zoning Ordinance be amended as hereinafter provided: Article 1, Section 1.6, Section 1.7, Article 2, Section 2.3, Article 5, Section 5.1.2, Article 6, and Article 8;

WHEREAS, the Governing Body has determined to accept the recommendation of the Planning Commission and has determined to amend the Zoning Ordinance of the City as hereinafter provided;

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS:

SECTION 1. That Article 1, Section 1.6 of the Westwood Zoning Ordinance is hereby amended to read as follows:

1.6 Applications and Procedures

1.6.1 Who May Apply

- a. Application for a zoning text amendment may be filed only by the Governing Body or Planning Commission.
- b. An application for rezoning to a conventional zoning district may be filed by the Governing Body, the Planning Commission, the landowner, or the landowner's agent.
- c. An application for an appeal to the Board of Zoning Appeals may be filed by any person aggrieved, or by any officer of the City or any governmental agency or body affected by any decision of an official administering the provisions of Chapter 16 Westwood Zoning Code.
- d. All other applications provided for in this chapter may only be filed by the landowner or the landowner's agent.
- e. All applications shall be made on forms prescribed by the City and available by the City Clerk.

1.6.2 Application Fees

Fees for all applications provided for in this chapter shall be established by the Governing Body by resolution.

1.6.3 Application – Proof of Ownership and/or Authorization of Agent.

- a. Where an application has been filed by, or on behalf of, a landowner, an affidavit of ownership shall be submitted to the City.
- b. Where an application has been filed by an agent of a landowner, an affidavit of the landowner establishing the agent's authorization to act on behalf of the landowner shall also be submitted.
- c. The affidavits required by this section shall be on forms prescribed by the City or in such form as is acceptable to the City Clerk, and shall be submitted at the time of filing the application.

1.6.4 Preapplication Conference.

A preapplication conference with City staff may, at the discretion of the Mayor or Building Official, may be required prior to submission of any application for a rezoning request, special use permit, preliminary development plan or site plan. The purpose of this conference shall be to: acquaint the applicant with the procedural requirements of this title; provide for an exchange of information regarding the proposed development plan and applicable elements of this title, the city's Comprehensive Plan and other development requirements; advise the applicant of any public sources of information that may aid the application; identify policies and regulations that create opportunities or pose significant restraints for the proposed development; review any proposed concept plans and consider opportunities to increase development benefits and mitigate undesirable project consequences; and permit staff input into the general design of the project

1.6.5 Submission of Technical Studies.

- a. City staff may require applicants for rezoning requests, special use permits, preliminary development plans, site plans or plats to submit such technical studies as may be necessary to enable the Planning Commission or Governing Body to evaluate the application. Examples of technical studies that may be required shall include, but not be limited to, traffic studies, engineering studies, geologic or hydro-geologic studies, flood studies, environmental impact assessments, noise studies, market studies, or economic impact reports. The persons or firms preparing the studies shall be subject to the approval of city staff. The costs of all studies shall be borne by the applicant. Any decision of City staff to require any such study or to disapprove the persons or firms selected by the applicant to perform the study may be appealed to the Planning Commission. The decision of the Planning Commission on any such appeal shall be final.
- b. Notwithstanding the fact that City staff did not require submission of any technical studies in support of the application, either the Planning Commission or the Governing Body may require the submission of such studies prior to taking action on the application. In such case, the persons or firms selected to perform the studies shall be subject to the approval of the entity requesting that the studies be performed. Any decision of the Planning Commission or the Governing Body to require that studies be performed or to disapprove the persons or firms selected by the applicant to perform the studies shall be final.

1.6.6 When an Application is Deemed Complete.

No application shall be deemed complete until all items required to be submitted in support of the application have been submitted subject to the provisions of this chapter.

1.6.7 Application Submission Deadlines.

The Building Official or the Planning Commission may administratively provide for submission deadlines for materials required in support of any application provided for in this chapter. Compliance with such deadlines shall generally be required in order to have the application placed on an agenda to be heard by the Planning Commission. At the discretion of the Planning Commission Chairman, nonagenda items may be brought before the Planning Commission for consideration; provided, that the Planning Commission in its sole discretion may refuse to hear nonagenda items. The Planning Commission may consider items not on the agenda if a majority of the Commission members vote approval to do so.

1.6.8 Public Hearing Notices.

Unless otherwise specifically provided for in this chapter, all publication notices for public hearings required by this chapter shall be published in one issue of the official City newspaper, and at least 20 days prior to the date set for hearing. The publication notice shall fix the time and place for the public hearing. When the hearing is for consideration of changes in the text of this title, or a general revision of the boundaries of zoning districts, the notice shall contain a statement regarding the proposed changes in this title or in the boundaries of the zone or district. If the hearing is on an application which concerns specific property, the property shall be designated by a general location description and/or general street location.

1.6.9 Notice to Surrounding Property Owners.

Unless otherwise specifically provided in this chapter, whenever notice to surrounding property owners is required for consideration of an application, such notice shall be given as follows: notices shall be mailed at least 20 days prior to the hearing, thus notifying such property owner of the opportunity to be heard. Notice shall be mailed to all owners of record of land within 200 feet of the property subject to the application. Such mailed notice shall be given by first class mail and shall be in letter form stating the time and place of the hearing, a general description of the proposal, a general street location of the property subject to the proposed change, and a statement explaining that the public may be heard at the public hearing. In cases of applications for which protest petitions may be submitted, the notice shall also contain a statement explaining that property owners required to be notified by this section shall have the opportunity to submit a protest petition, in conformance with this title, to be filed with the office of the City Clerk within 14 days after the conclusion of the public hearing. Mailed notices shall be addressed to the owners of the property, as provided by the applicable County department, and not to mere occupants thereof. When the notice has been properly addressed and deposited in the mail, failure to receive mailed notice shall not invalidate any action taken on the application.

1.6.10 Posting of Signs for Rezoning Requests and Initial Special Use Permits.

In the case of rezoning requests and initial special use permits, the applicant shall place a sign on the property informing the general public that a public hearing will be held at a specific time and place concerning proposed changes in use. The sign shall be furnished by the City to the applicant, and the applicant shall maintain the sign for at least the 20 days immediately preceding the date of the public hearing. The sign shall be firmly affixed and attached to a wood or metal backing or frame and placed so as to face each of the streets abutting thereto within five feet of the street right-of-way line in a central position on the lot, tract, or parcel of land so that the sign is free of any visual obstructions surrounding the sign. The applicant shall file an affidavit with the City Clerk at the time of the public hearing verifying that the sign has been maintained and posted as required by this title and applicable resolutions. Failure to submit the affidavit prior to the hearing may result in a continuance of the hearing. The sign may be removed at the conclusion of the public hearing and must be removed at the end of all proceedings on the application or upon withdrawal of the application.

1.6.11 Public Hearing Process.

When the consideration of an application requires a public hearing, the following provisions shall apply:

- a. The purpose of a public hearing is to allow the applicant and all other interested parties a reasonable and fair opportunity to be heard, to present evidence relevant to the application.
- b. An accurate written summary of the proceedings shall be made for all public hearings.
- c. The Governing Body, Planning Commission, and Board of Zoning Appeals may adopt rules of procedure for public hearings by resolution or bylaws.
- d. If an item which is subject to a public hearing is continued or otherwise carried over to a subsequent date and the public hearing has been opened, then the public hearing shall not be deemed concluded until the date on which the hearing is formally closed and the Planning Commission has taken action on the application. No additional notices shall be required once the public hearing is opened.

1.6.12 Continuances of Applications.

- a. Any applicant or authorized agent shall have the right to one continuance of a public hearing before the Planning Commission or Board of Zoning Appeals; provided, that a written request therefor is filed with the Secretary of the Planning Commission or Board of Zoning Appeals at least two business days prior to the date of the scheduled hearing. In any event, the applicant shall cause written notice of the rescheduled public hearing date to be sent to surrounding property owners in the same manner and in accordance with the same time schedule as required for notice of the original hearing.
- b. The Planning Commission, Board of Zoning Appeals, or the Governing Body may grant a continuance of an application for good cause shown. The record shall indicate the reason such continuance was made and any stipulations or conditions placed upon the continuance. All motions to grant a continuance shall state the date on which the

matter is to be heard. A majority vote of those members of the official body present at the meeting shall be required to grant a continuance. The Planning Commission or Board of Zoning Appeals shall not continue an application for more than six months from the published public hearing date.

1.6.13 Consideration of Text Amendments, Rezoning Requests, and Special Use Permits – Process.

- a. Public Hearing Required. Consideration of zoning text amendments, rezoning requests, and special use permits shall require a public hearing before the Planning Commission following publication notice as provided in **1.6.8** through **1.6.11**.
- b. Action by Planning Commission. A vote either for or against a zoning text amendment, rezoning request, or special use permit by a majority of all of the Planning Commissioners present and voting shall constitute a recommendation of the Planning Commission. If a motion for or against the zoning text amendment, rezoning request, or special use permit fails to receive a majority vote of the Planning Commission, the Planning Commission may entertain a new motion. A tie vote of the Planning Commission on any motion shall be deemed to be a failure of the Planning Commission to make a recommendation. The Planning Commission's recommendation to approve or disapprove shall be submitted to the Governing Body for action, accompanied by an accurate written summary of the hearing proceedings. A recommendation to approve a zoning text amendment shall be submitted in the form of an ordinance.
- c. Governing Body Action upon Planning Commission Recommendation of a Zoning Text Amendment, Rezoning Request, or Special Use Permit. The Governing Body may (1) approve such recommendations by the adoption of the same by ordinance or resolution; (2) override the Planning Commission's recommendation by a two-thirds majority vote of the membership of the Governing Body; or (3) return the same to the Planning Commission for further consideration, together with a statement specifying the basis for the Governing Body's failure to approve or disapprove.
- d. Applications returned to Planning Commission. Upon receipt of an application returned by the Governing Body, the Planning Commission may resubmit its original recommendation giving the reasons therefor or submit a new or amended recommendation. If the Planning Commission fails to deliver its recommendation to the Governing Body following the Planning Commission's next regular meeting after the receipt of the Governing Body's report, the Governing Body may consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.
- e. Reconsideration by Governing Body. Upon receipt of the Planning Commission's recommendation after reconsideration, the Governing Body, by a simple majority thereof, may take such action as it deems appropriate, including approval, disapproval or amendment of the application and adoption as amended, or the Governing Body may return the same to the Planning Commission for further

consideration. Unless the Governing Body returns the application to the Planning Commission for further consideration or continues its consideration of the matter to another date, the Governing Body's action on the application shall constitute a final decision.

1.6.14 Protest Petition Procedures.

- a. A protest against any rezoning request or special use permit shall be filed in the City Clerk's office not later than 4:00 p.m. on the fourteenth day following the date of the conclusion of the Planning Commission's public hearing held pursuant to the publication notice. For the purposes of calculating the 14-day period, weekends and holidays shall be counted. However, if the last day is a nonbusiness day for City offices, then the filing deadline shall be 4:00 p.m. on the next regular business day.
- b. In order to be considered a "valid" protest, a protest petition must be timely filed and duly signed and verified by the owners of record of 20 percent of the total area required to be notified, excepting public streets and rights-of-way and the subject property, located within or without the corporate limits of the City, in accordance with Section **1.6.9**.
- c. Verification of the genuineness and correctness of the signatures on the protest petition, either individually or collectively, shall be made by the City Clerk.
- d. Once a valid protest petition has been filed with the City, it may not be withdrawn unless every person that signed the original petition signs a verified affidavit which states and fully explains the rights being waived by the withdrawal of the protest petition. Such affidavits of withdrawal must be filed with the City Clerk on or before the last regular business day preceding the Governing Body meeting for which the protest applies.
- e. Adoption Where Protest Filed. Where a valid protest petition has been filed, an ordinance approving the rezoning request, conditional use permit, or special use permit shall not be passed except by the affirmative vote of at least three-quarters of the members of the Governing Body.

1.6.15 Consideration of Appeals.

- a. Appeals from the decision of any official administering the provisions of this ordinance shall be filed with the City Clerk within 30 days from the date of the decision by the officer whose decision is being appealed. A copy of the notice of appeal shall also be served upon the officer whose decision is being appealed. Thereafter, the officer whose decision is being appealed shall prepare and transmit to the Secretary of the Board of Zoning Appeals a complete record of all proceedings relating to the appeal.
- b. Consideration of appeals by the Board of Zoning Appeals shall be at a public hearing, following publication notice as provided by Section **1.6.8**.

1.6.16 Consideration of Variances.

- a. The Board of Zoning Appeals may grant a variance from the specific terms of this ordinance which would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship for the applicant, and provided that the spirit of this ordinance shall be observed, the public safety and welfare secured and substantial justice done of the applicant. Provided, however, that the Board shall not have jurisdiction to grant a variance for property zoned under a planned zoning district.
- b. Variances shall only be considered after a public hearing has been held, following publication notice and notice to surrounding property owners as provided by Section **1.6.8** through **1.6.9**.
- c. An application for a variance may only be granted upon a finding by the Board that all the provisions of Section **1.8.4** have been met.

1.6.17 Criteria for Considering Applications.

In considering any application for rezoning request, conditional use permit, or special use permit, the Planning Commission and the Governing Body may give consideration to the criteria stated below, to the extent they are pertinent to the particular application. In addition, the Planning Commission and Governing Body may consider other factors which may be relevant to a particular application.

- a. The conformance of the proposed use to the city's Comprehensive Plan and other adopted planning policies.
- b. The character of the neighborhood including, but not limited to: land use, zoning, density (residential), architectural style, building materials, height, structural mass, siting, open space, and floor-to-area ratio (commercial and industrial).
- c. The zonings and uses of nearby properties, and the extent to which the proposed use would be in harmony with such zonings and uses.
- d. The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations.
- e. The length of time the property has remained vacant as zoned.
- f. The extent to which approval of the application would detrimentally affect nearby properties.
- g. The extent to which the proposed use would substantially harm the value of nearby properties.
- h. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.
- i. The extent to which the proposed use would create excessive air pollution, water pollution, noise pollution, or other environmental harm.
- j. The economic impact of the proposed use on the community.
- k. The gain, if any, to the public health, safety, and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.
- l. The recommendation of professional staff.

1.6.18 Rezoning Applications – Submission Requirements.

The Planning Commission shall adopt a document outlining submission requirements for rezoning applications. This document shall require a legal description, adequate information to provide notice to surrounding property owners (pursuant to **1.6.9**), and shall list additional documents and information required to be submitted in support of the application. City staff may also require additional technical studies not listed on the application pursuant to **1.6.5**. The Building Official shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn.

1.6.19 Special Use Permit Applications – Submission Requirements.

The Planning Commission shall adopt a document outlining submission requirements for special use permit applications. This document shall require a site plan, a legal description, adequate information to provide notice to surrounding property owners, and shall list additional documents and information required to be submitted in support of the application. City staff may also require additional technical studies not listed on the application pursuant to Section **1.6.5**. The Building Official shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn.

1.6.20 Site Plan Approval.

A site plan is required for property zoned C-0, C-1, P-1, or for non-residential developments within an R-1 zoning district.

- a. The purpose and intent of requiring site plan approval is to encourage the compatible arrangement of buildings, off-street parking, lighting, landscaping, pedestrian walkways and sidewalks, ingress and egress, and drainage on the site and from the site, any or all of these, in a manner that will promote safety and convenience for the public and will preserve property values of surrounding properties.
- b. After the effective date of the ordinance codified in this title, no property which has a conventional zoning district classification or which requires approval of a site plan may be developed or significantly redeveloped without a site plan which has been submitted to and approved by the Planning Commission, or the Building Official indicating that site will conform to the current applicable requirements of City code. “Significant redevelopment” means alterations or changes to property in such manner that one or more of the following is applicable:
 1. The development results in the construction of a building, structure, or addition that increases the gross square footage of the existing development by more than 10 percent.

2. The estimated construction costs of all improvements to the development exceed 25 percent of the most recent appraised fair market value of the existing property as determined by the County Appraiser.
 3. The construction or paving of a parking lot or facility which covers ground previously not used as a parking lot or facility, or the construction or paving of any parking lot or facility which does not conform to City pavement standards.
 4. The intensification of property by a change of use which increases off-street parking requirements pursuant to Section **5.4**.
- c. Approved site plans are valid for two years. The Planning Commission may grant time extensions up to one additional year. The property owner may appeal disapproval or conditions of approval of a site plan by the Planning Commission to the Governing Body by filing a notice of appeal with the City Clerk within 10 days following the Planning Commission's decision. An approved site plan shall be required prior to the issuance of a building permit; provided, that single-family buildings are hereby expressly exempted.
 - d. Modifications to a valid site plan may be approved administratively by the Building Official if the changes proposed do not significantly deviate from the approved site plan. The following changes are not considered significant changes to the site plan:
 1. An increase in floor area not exceeding five percent.
 2. Substitution of landscape materials; provided, that the new materials are the same general size and type.
 3. Minor changes to elevation, building materials, parking lot design, screening fences or walls, building location, etc., that would improve the site or are needed because of circumstances not foreseen at the time the site plan was approved by the Planning Commission.

1.6.21 Site Plan Approval Criteria.

The Planning Commission shall review the site plan to determine if it demonstrates a satisfactory quality of design in the individual buildings and in its site, the appropriateness of the building or buildings to the intended use, and the aesthetic integration of the development into its surroundings. Satisfactory design quality and harmony will involve among other things:

- a. The site is capable of accommodating the building(s), parking areas and drives with appropriate open space.
- b. The plan is consistent with good land planning, good site engineering design principles, and good landscape architectural principles.
- c. An appropriate use of quality materials and harmony and proportion of the overall design.

- d. The architectural style should be appropriate for the project in question and compatible with the overall character of the neighborhood.
- e. The siting of the structure on the property, as compared to the siting of other structures in the immediate neighborhood.
- f. The bulk, height and color of the proposed structure as compared to the bulk, height and color of other structures in the immediate neighborhood.
- g. Landscaping to City standards shall be required on the site and shall be in keeping with the character or design of the site.
- h. Ingress, egress, internal traffic circulation, off-street parking facilities and pedestrian ways shall be so designed as to promote safety and convenience, and shall conform to City standards.
- i. The plan represents an overall development pattern that is consistent with the City's Comprehensive Plan, the official street map, and other adopted planning policies.

1.6.22 Site Plans and Final Development Plans – Contents and Submission Requirements.

The Planning Commission shall adopt a document outlining submission requirements for a site plan for a conventional zoning district classification, and for final development plan applications for planned zoning districts. This document shall require a specific number of copies of the site plan or final development plan, outline what information must be shown on the plan, and shall list additional documents or information required to be submitted in support of the application. City staff may also require additional technical studies not listed on the application, pursuant to Section **1.6.5**. The Building Official shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn.

1.6.23 Preliminary Development Plan – Submission Requirements.

The Planning Commission shall adopt a document outlining submission requirements for preliminary development plan applications. This document shall require a specific number of copies of the preliminary development plan, outline what information must be shown on the plan, require a legal description, require adequate information to provide notice to surrounding property owners (pursuant to Section **1.6.9**), and list additional documents or information required to be submitted in support of the application. City staff may also require additional technical studies not listed on the application, pursuant to Section **1.6.5**. The Building Official shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn.

1.6.24 Consideration of Preliminary Development Plans.

When property is requested to be rezoned to a planned zoning district, the preliminary development plan shall be considered and approved as part of the rezoning application. In the process of approving preliminary and final plans, the Planning Commission and Governing Body may approve deviations from the standard requirements set forth hereinafter or as set forth in an applicable Commercial Overlay District, provided any approved deviation is in keeping with accepted land planning principles and is clearly set

out in the minutes and on the exhibits in the record. When property has been approved for rezoning to a planned zoning district, changes in the preliminary development plan may be made only after approval of a revised preliminary development plan. Changes in the preliminary development plan which are not substantial or significant may be approved by the Building Official, and disapproval of such changes by the Building Official may be appealed to the Planning Commission. Substantial or significant changes in the preliminary development plan may only be approved after rehearing by the Planning Commission and Governing Body; such rehearing shall be subject to the notice and protest provisions set forth in **1.6.8** through **1.6.9**.

1.6.25 Substantial Changes.

- a. For purposes of this section, “substantial or significant changes” in the preliminary development plan shall mean any of the following:
 1. Increases in the density or intensity of residential uses by more than five percent.
 2. Increases in the total floor areas of all nonresidential buildings covered by the plan by more than ten (10) percent.
 3. Increases of lot coverage by more than five percent.
 4. Increases in the height of any buildings by more than ten (10) percent.
 5. Changes of architectural style which will make the project less compatible with surrounding uses.
 6. Changes in ownership patterns or stages of construction that will lead to a different development concept.
 7. Changes in ownership patterns or stages of construction that will impose substantially greater loads on streets and other public facilities.
 8. Decreases of any peripheral setbacks by more than 25 percent.
 9. Decreases of areas devoted to open space by more than five percent or the substantial relocation of such areas.
 10. Changes of traffic circulation patterns that will affect traffic outside of the project boundaries.
 11. Modifications or removal of conditions or stipulations to the preliminary development plan approval.
- b. The determination of whether a proposed revised preliminary development plan contains “substantial or significant changes” shall be made by the Building Official within five business days following the filing of the application. The determination of the Building Official may be appealed to the Planning Commission, whose decision shall be final.
- c. In the event that the application for the revised preliminary development plan is denied, the previously approved preliminary development plan will remain in effect.

1.6.26 Consideration of Final Development Plans.

- a. No property which has a planned zoning district classification or which requires approval of a final development plan may be developed or significantly redeveloped without a final development plan having been submitted to and approved by the

Planning Commission indicating that the site will conform to the current applicable requirements of City code. Final development plans for planned zoning districts which contain no modifications or additions from the approved preliminary development plan shall be approved by the Planning Commission if the Commission determines that the landscaping and screening plan is adequate and that all other submission requirements have been satisfied.

- b. A final development plan which contains modifications from the approved preliminary development plan, but is in substantial compliance with the preliminary plan, may be approved by the Planning Commission without a public hearing; provided, that the Commission determines that the landscaping and screening plan is adequate and that all other submission requirements have been satisfied. For purposes of this section, lack of “substantial compliance” shall have the same meaning as “substantial or significant changes” as set forth in Section **1.6.25**. Any determination made by the Planning Commission under this subsection shall be appealable to the Governing Body by the applicant within 10 days of the date of the Planning Commission determination.
- c. In the event of a determination that the proposed final development plan is not in substantial compliance with the approved preliminary development plan, the application may not be considered except at a public hearing, following publication notice and notice to surrounding property owners as provided in **1.6.8** through **1.6.9**.
- d. Revisions to approved final development plans which are insignificant in nature may be approved administratively by the Building Official. In no event may revisions to approved final development plans be approved administratively if the proposed revised final plan contains “substantial or significant changes” as defined in **1.6.25**.
- e. The Building Official may accept final development plans submitted concurrently with the preliminary development plan. The Planning Commission may approve a final development plan prior to the approval of a preliminary development plan by the Governing Body with the conditions on the final development plan approval that it is consistent with the approved preliminary development plan and subject to the preliminary development plan being approved by the Governing Body.

1.6.27 Abandonment of Final Development Plan.

In the event that a plan or a section thereof is given final approval and thereafter the landowner shall abandon said plan or section thereof and shall so notify the City in writing or the landowner shall fail to commence the planned development within two years after final approval has been granted, then such final approvals shall terminate and shall be deemed null and void unless such time period is extended by the Planning Commission upon written application by the landowner. Whenever a final plan or section thereof has been abandoned as provided in this section, no development shall take place on the property until a new final development plan has been approved.

1.6.28 Conditional Approvals.

When approving any application, the approving authority may stipulate that the approval is subject to compliance with certain specified conditions including, but not limited to, time of performance requirements, limitation on hours of operation, participation in transportation systems management programs, or participation in improvement districts or other programs for financing public facilities.

1.6.29 Written Findings.

Unless otherwise specifically provided in this title, written findings are not required for a final decision on any application. However, any decision may be expressly made subject to the subsequent adoption of written findings and, in such cases, the decision shall not be considered final until such findings are adopted. When an appeal of any quasi-judicial decision has been filed in the District Court of Johnson County pursuant of K.S.A. 12-760 or 60-2101(d) in cases where written findings have not been adopted, written findings shall be adopted by the approving authority within 45 days of service of the appeal on the City and thereafter shall be certified to the District Court as part of the administrative record. The 45-day time period for adoption and certification of findings may be extended with the permission of the District Court.

1.6.30 Final Decision When Ordinance Required.

In the case of approval of a zoning text amendment, rezoning request, special use permit, or other application where adoption of an ordinance is required, the decision approving the application shall not be deemed to be final until the ordinance has been published in an official City newspaper. In all other cases, the decision shall be deemed final as of the date that the approving authority votes to approve or deny the application.

1.6.31 Revocation of Special Use Permits.

- a. Any special use permit granted under the authority of this chapter is subject to revocation for any or all of the following reasons:
 1. Noncompliance with any specified applicable performance standard requirements.
 2. Noncompliance with any special conditions imposed at the time of approval of the special use permit or conditional use permit.
 3. Violation of any provisions of the Code pertaining to the use of the land, construction or uses of buildings or structures, or activities conducted on the premises by the permittee or agents of the permittee.
 4. When conditions in the neighborhood have changed to the extent that approval of the permit would be clearly unwarranted if being applied for at the time of revocation.
 5. Violation of any other applicable Code provisions or any state or federal laws or regulations by the permittee or agents of the permittee; provided, that such violations relate to the conduct or activity authorized by the permit or the qualifications of the permittee or its agents to engage in such conduct or activity.
- b. Revocation proceedings may be initiated by a majority vote of the Governing Body.
 1. The Governing Body shall hold a public hearing to consider the revocation of the special use permit. The City shall give the permittee and landowner notice of the

scheduled revocation hearing at least five days prior to the date scheduled for such hearing. If the permittee and landowner are present at the meeting of the Governing Body at which the revocation proceedings are initiated, no further notice shall be required; otherwise, notice shall be given by personal service or certified mail, return receipt requested. If the notice cannot be delivered or is not accepted, notice may be given by publishing a notice of hearing in the official City newspaper and by posting a notice of hearing on the property at least five days prior to the date scheduled for the hearing.

2. No special use permit shall be revoked unless a majority of the Governing Body is satisfied by a preponderance of the evidence that grounds for revocation exist. Any motion for the revocation of a special use permit shall clearly state the grounds for revocation. In addition, when the basis for revocation is “changed conditions,” revocation may only occur upon an explicit finding that revocation is necessary for the protection of the public health, safety, and welfare. Adoption of any motion to revoke a special use permit or conditional use permit may be made subject to subsequent adoption of written findings of fact and conclusions of law, at the discretion of the Governing Body.
3. An appeal of any decision of the Governing Body to revoke a special use permit may be filed in the District Court of Johnson County, Kansas, pursuant to K.S.A. 12-760, or amendments thereto. Any appeal taken shall not suspend the order of revocation during the pendency of the appeal unless so ordered by the District Court.

1.6.32 Appeals of Final Decisions.

Except where this title provides for an appeal to another quasi-judicial or administrative body, any person, official or agency aggrieved by a final decision on an application provided for in this title desiring to appeal said decision shall file the appeal in the District Court of Johnson County within 30 days of the making of the decision.

SECTION 2. That Article 1, Section 7 of the Westwood Zoning Ordinance is hereby amended to read as follows:

1.7 Reserved

SECTION 3. That Article 3, Section 2.3 of the Westwood Zoning Ordinance is hereby amended to read as follows:

2.3 Definitions

2.3.010 Accessory Structure: a structure subordinate in square footage and primary use to the primary structure on a lot. In some instances only in commercial and institutional development, an accessory structure may be larger in square footage than the primary structure and may serve in an auxiliary capacity to the primary structure’s primary use, e.g., the meeting hall of a church.

2.3.015 Accessory Use: a customary use incidental and subordinate to the primary use of a building, and located on the same lot with such primary use or building.

2.3.020 Alteration: any addition, removal, extension, or change in the location of any exterior surface of a primary building or accessory building.

2.3.025 Apartment House: (See Dwelling, Multiple-Family)

2.3.030 Appurtenance: a subordinate or accessory building or structure or portion of a primary structure, the use of which is incidental and customary to that of said primary structure.

2.3.035 APWA: American Public Works Association.

2.3.040 Arcade: any establishment housing 5 or more video games, pinball games, air hockey, or similar coin-operated amusement apparatus.

2.3.045 Assisted Living, Skilled Nursing, Continuing Care Retirement Facilities: a building, or a group of buildings, where for compensation, care is offered or provided for three (3) or more persons suffering from illness, other than a contagious disease, or sociopathic or psychopathic behavior, which is not of sufficient severity to require hospital attention, or for three (3) or more persons requiring further institutional care after being discharged from a hospital.

2.3.050 Automotive Repair: any building, premises, and land in which or upon which the primary use of land is a business which involves the maintenance or servicing of motorized vehicles.

2.3.055 Back Yard: (See Yard, Rear)

2.3.060 Baseline Elevation: the average elevation of a building, calculated by adding the elevations at each building corner, the elevations of a minimum of the quarter points between each corner, and the lowest elevation between corners regardless of location, then dividing the sum by the total number of elevations used in the summation.

2.3.065 Basement: any floor level four feet or more below grade which is beneath the first story in a building.

2.3.070 Board: the City of Westwood Board of Zoning Appeals.

2.3.075 Board of Zoning Appeals: a board appointed by the Westwood Governing Body, which hears and renders decisions regarding appeals and variances arising out of the Zoning Ordinance of the City of Westwood.

2.3.080 Body Shop: any building, premises, and land in which or upon which the primary use of land is a business which involves the painting of vehicles or the repair of exterior damage to vehicles.

2.3.085 Building: a structure having a roof supported by columns or walls, whether or not completely enclosed

2.3.090 Building Height: (See Height)

2.3.095 Building Line: the plane, parallel to the front property line, formed by the majority of the front facades of buildings in a given block.

2.3.100 Building Official: the person authorized by the City of Westwood to interpret and administer the building codes, the Zoning Ordinance and any other related ordinances or regulations of the City or designated by the Governing Body.

2.3.105 Build-Out: the completed construction of all phases of a development as allowed by all Ordinances that regulate an area. The scale of build-out can be from a single lot to multiple lots within the City.

2.3.110 Building Permit: written permission issued by the City of Westwood for construction, as required by the adopted codes and ordinances of the City.

2.3.115 Build-To Line: the line, parallel to the front property line, at which construction of a building is to occur on a lot.

2.3.120 Carrying Capacity: the amount of traffic which can be accommodated on a street without reducing the level of service the street provides as defined by the Kansas Department of Transportation or street design standards of the Westwood Ordinance. Carrying capacity is determined by the amount of traffic per lane per hour.

2.3.125 Certificate of Occupancy: a certificate allowing the occupancy or use of a commercial building and certifying that the structure of use has been constructed or will be used in compliance with this Ordinance and all other applicable codes and regulations.

2.3.130 Child Care Center: a facility which provides care and educational activities for 13 or more children two weeks to 16 years of age for more than three hours and less than 24 hours per day including day time, evening, and nighttime care; or which provides before and after school care for school-age children. A facility may have fewer than 13 children and be licensed as a center if the program and building meet child care center regulations set out in K.S.A. Chapter 65 and K.A.R. Chapter 28.

2.3.135 City Clerk: the person authorized by the City of Westwood to perform all the duties of his/her position as prescribed by statutes or ordinances.

2.3.140 Club: a Class A or Class B Club. Class A Club means a premises which is owned or leased by a corporation, partnership, business trust or association, and which is operated thereby as a bona fide nonprofit, social, fraternal or war veterans' club as determined by the Director of Alcoholic Beverage Control of the Kansas Department of Revenue, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates and their families and guests accompanying them. Class B Club means a premises operated for profit by a corporation, partnership, or individual to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment and less than fifty percent (50%) of the income is generated from the sale of food consumed on the premises, or less than fifty percent (50%) of the income is generated from athletic services provide on the premises.

2.3.145 Collector Street: within the City of Westwood, only Belinder Avenue, West 47th Place, and West 50th Street.

2.3.150 Commission: the City of Westwood Planning Commission.

2.3.155 Community Living Facility: any dwelling or building defined as "group living" or "semi-independent living" by the Kansas Department of Social and Rehabilitation Services (see KAR 30-22-31). This category provides residential care and treatment for patients with mental health and substance abuse illnesses. These establishments provide room, board, supervision, and counseling services. Medical services may be provided if they are incidental to the counseling, mental rehabilitation, and support services offered.

2.3.160 Conditional Use: a use subject to specific provisions or which requires the approval of the Board of Zoning Appeals before the issuance of a zoning permit.

2.3.165 Condominium Dwelling Residence: a building containing two or more dwelling units, which dwelling units are separated by a party wall and which dwelling units are designed and intended to be separately owned in fee under the condominium statutes of the state.

2.3.170 Conservatory: a greenhouse or other structure, primarily of glass or other transparent or translucent material, which encloses a pool, patio, or similar space.

2.3.175 Customary Home Occupation: any use conducted for gain entirely within a residence and carried on by the occupants thereof, which use is clearly incidental and subordinate to the residential use and which does not change the character thereof and in connection with which there is no display or signage. When observed from beyond the lot on which it is located, a home occupation shall not give visual, audible, sensory, or physical evidence that the property is used for any nonresidential purpose.

2.3.180 Day Care: the provision of supervision, training, food, lodging or medical services to persons for less than 24 hours a day.

2.3.185 Day Care Home: a structure designed and used as a one or two-family dwelling where day care is provided for a maximum of twelve (12) children, which is regulated under K.S.A. Chapter 65 and K.A.R. Chapter 28.

2.3.190 Deck: a deck is defined as a wooden flat-floored roofless structure, often attached to a building.

2.3.195 Detention: an engineered method or technique to temporarily store storm water on a site and control its rate of runoff.

2.3.200 Detached Building: a building completely surrounded by open space.

2.3.205 Disability, Disabled: physical, mental, or emotional incapacity as defined by State or Federal law.

2.3.210 Disturbed Ground: any area of ground on a site which during construction is broken, dug up, filled, graded, built on or used for storage or parking.

2.3.215 Drinking Establishment - Bar or Night Club: a premises which may be open to the general public, where alcoholic liquor by the individual drink is served and less than fifty percent (50%) of the income is generated from the sale of food consumed on the premises, or less than fifty percent (50%) of the income is generated from athletic services provide on the premises.

2.3.220 Dwelling: a building or portion thereof, designed exclusively for residential occupancy, including single-family and multiple-family dwellings, group homes, but not motels, hotels, or mobile homes.

2.3.225 Dwelling, Multi-Family: a residential building containing two or more dwelling units.

2.3.230 Dwelling, Senior Adult Independent Living: a building containing one or more living units which building and units are designed for exclusive occupancy by persons 55 years of age or older who are in generally good health. This type of residence does not contemplate continuous health care services but may include a resident nurse. The properties do not have central commercial kitchen facilities and generally do not provide meals to residents, but may offer community rooms, social activities, and other amenities.

2.3.235 Dwelling, Single-family: a detached dwelling designed for or occupied exclusively by one family, including residential-design manufactured homes.

2.3.240 Dwelling, Townhouse: a building containing more than one dwelling unit with such dwelling units being separated by common walls as opposed to one dwelling unit being over another.

2.3.245 Dwelling Unit: means one or more rooms in a residential building or residential portion of a building which are arranged, designed, used or intended for use by one family and which includes cooking space and lawful sanitary facilities reserved for the occupants thereof.

2.3.250 Eave: the overhang of the roof structure of a building beyond its supporting wall, at the point of intersection between the roof and the vertical building wall, typically the lowest part of the roof and where exterior or interior gutters are located.

2.3.255 Encroachment: the part of a structure which intrudes into a defined setback.

2.3.260 Facade: the vertical surface of a building facing any property line.

2.3.265 Family: one or more persons who are related by blood or marriage, living together and occupying a single housekeeping unit, or a group of not more than (3) three, not thusly related, living together by joint agreement and occupying a single housekeeping unit on a non-profit cost sharing basis; plus in either case, usual domestic servants and caregivers.

2.3.270 Fence: a vertical structure, including live material, which may provide privacy, divides or defines a boundary.

2.3.275 Flat Roof: roof lines or silhouettes with a pitch which is 4:12 or less; that is, a pitch which is less than or equal to four units of vertical change for every twelve units of horizontal change.

2.3.280 Floodplain, Flood Hazard Area: any area defined by the Federal Emergency Management Act and shown on its maps to be located in an area subject to flooding.

2.3.285 Footprint: the foundation outline of all buildings or structures.

2.3.290 Fountain-Privately Owned: a receptacle of stone, concrete, metal, or other similar material, designed for the aesthetic dispensing and pooling of water, with a reservoir depth not exceeding twelve inches.

2.3.295 Front Yard: (See Yard, Front)

2.3.300 Frontage: the lot boundary which coincides with a public thoroughfare or open space. The facade of a structure facing the street.

2.3.305 Frontage Build-out: the portion of lot frontage which has a building or wall running parallel to it.

2.3.310 Gable: that portion of a building roof comprised of two sloping roof segments, typically of equal slope, that join together at one end and project to a common point

vertically above the exterior building wall. A gable includes that portion of the exterior building wall which is directly beneath the roof, within the slope of the gable.

2.3.315 Garage, Commercial: any building, premises, and land in which or upon which the primary use of land is a business which involves the maintenance or servicing of vehicles but does not involve the painting of vehicles or the repair of exterior damage to vehicles.

2.3.320 Garage, Residential: the building or portions of building that fully encloses space for the storage of one or more vehicles. Garages may be attached or detached from the primary structure.

2.3.325 Gas Station: a retail establishment which sells gasoline and other fuels for motor vehicles and may sell and install other automotive products, such as lubricants, tires, batteries, and similar accessories, and which may perform minor vehicle maintenance and repairs.

2.3.330 Gazebo: a free standing, roofed structure with open sides.

2.3.335 General Commercial Use: business and retail establishments providing services and products.

2.3.340 Governing Body: the Mayor and Council of the City of Westwood, Kansas.

2.3.345 Grade: the elevation of the land or land level at any given point.

2.3.350 Group Home: any dwelling, licensed by a regulatory agency of the State of Kansas, which is occupied by no more than ten persons, including no more than eight persons with disabilities who need not be related by blood or marriage, and not more than two staff residents for whom the dwelling is not their primary residence.

2.3.355 Health and Welfare Facilities: all hospitals and institutions specializing in medical treatment, mental health treatment, physical therapy, alcohol and drug treatment, and/or assisted living for all ages.

2.3.360 Height: the vertical distance from the average ground elevation adjacent to a building or structure grade plane to the average height of the highest roof surface, including, but not limited to, any parapet, roof line, decking of a mansard roof, towers, spires, steeples, and any other roof-top appurtenances, including, but not limited to, mechanical equipment or structures. Height, where not regulated in feet, shall be regulated by stories. A story shall be equal to twelve feet for purposes of measuring structures other than buildings.

2.3.365 Irregularly Shaped Lot: any lot which is not square or rectangular in shape.

2.3.370 Laboratory: a place equipped for experimentation or observation in a field of study, or devoted to the application of scientific principles in testing and analysis. Quantities of biological or hazardous materials used on site shall be limited to those quantities established by the State and Federal Requirements.

2.3.375 Land Use Segregation: the practice of prohibiting mixed-use development or close proximity of residential and non-residential uses. This is accomplished through zoning standards which emphasize the separation of all uses, and the buffering and screening of dissimilar uses from one another.

2.3.380 Lot: a parcel of land, the boundaries of which have been established by some legal instrument such as a recorded deed or a recorded map, and which is recognized as a separate tract or legal unit of ownership for purposes of transfer of title. According to the recorded plat thereof, a lot shall be the parcel of land as presently platted. An interior lot is bounded on two opposite sides by other lots and on one side faces a single public right-of-way. A corner lot is bounded on two adjacent sides by two public rights-of-way.

2.3.385 Lot Coverage: the entire area on a tract or parcel that is covered by a structure, any impermeable surface, or is otherwise built upon, including, but not limited to, the footprint or foundation outline of all buildings and structures. Lot coverage does not include decks which do not have roofs and are less than thirty inches in height from the ground, and driveways, sidewalks, and patios which are flush with the surface of the ground. Decks which are not roofed and are thirty inches or higher from the ground are to be calculated at fifty percent of the area covered.

2.3.390 Machine Shop: a mechanized workshop which manufactures, sizes or assembles pieces of machinery.

2.3.395 Manufactured Structure: a residential or commercial building comprised of one or more component parts constructed in a manufacturing plant and transported to a site for final assembly on a permanent foundation. The City building code standards for traditional on-site construction are not strictly enforced for such structures.

2.3.400 Massing: the shapes, proportion and form of a building. The design elements that may affect the mass of a building may include the following:

- A. Building silhouette;
- B. Spacing between facades;
- C. Setback from property line;
- D. Proportion of windows, bays, and doorways;
- E. Proportion of primary facade;
- F. Location and treatment of entryway;
- G. Exterior materials used;
- H. Building scale;
- I. Geometric shapes offset to create the appearance of less mass.

2.3.405 Mechanical Equipment: heating, ventilation, and air conditioning (HVAC) units.

2.3.410 Mixed Use: the presence of residential and nonresidential uses within the same building or development complex. It may be different categories of nonresidential uses such as institutional, retail, and office within the same complex of buildings.

2.3.415 Mobile Home: a structure that: (1) Is transportable in one or more sections which, in the traveling mode, is eight body feet or more in width and 36 body feet or more in length and is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein; and (2) Is not subject to the federal manufactured home construction and safety standards established pursuant to 42 USC 5403.

2.3.420 Modular Home: a dwelling unit, a majority of which is assembled in an off-site manufacturing plant and transported to the building site for final assembly on a permanent foundation and constructed in compliance with the City's building codes.

2.3.425 Mother's Day Out: a day care program operating more than five (5) consecutive hours or more than one day per week and in which any one child is enrolled for not more than one session per week.

2.3.430 Multi-Family Dwelling: a building in which more than two families or households live independently of each other and cook within their own living quarters.

2.3.435 Nonconforming Use: any lawful use of any land, building, or structure which later becomes unlawful as a result of legal or regulatory changes in, or amendments to, this Ordinance.

2.3.440 Off-Street Parking: parking which occurs on a lot and not on a street or other public right-of-way.

2.3.445 Office Use: business, professional, service, or governmental occupations within a building or buildings.

2.3.450 Open Space: any area which does not consist of buildings, streets, rights-of-way, pavement, parking, or easements.

2.3.455 Overlay District: a set of regulations, which add an additional layer of building standards to a specific area within a zoning district.

2.3.460 Patio: a paved outdoor area adjoining a house.

2.3.465 Paved: covered by a contiguous, impervious, hard substance such as concrete, asphalt, brick, stone, or other material which is similar in durability, appearance, and permeability.

2.3.470 Parking Area: any portion of land designated for the parking of vehicles.

2.3.475 Pedestrian-Oriented Development: a land use plan which emphasizes the needs of pedestrians in addition to the needs of automotive traffic.

2.3.480 Permitted Uses: uses allowed to occur within a designated zoning district.

2.3.485 Planning Commission: a review board appointed by the Mayor and approved by the Governing Body to make recommendations on zoning issues provided herein (see Article 1.4 Planning Commission).

2.3.490 Platted Lot: a lot surveyed and recorded at the County Office of Records and Tax Administration.

2.3.495 Pool: any constructed, outdoor basin or tank designed to hold water greater than twelve inches in depth.

2.3.500 Porch: a structure, attached to the exterior of a building, which leads to an entrance and may be:

- A. Enclosed: roofed, with walls and a second door or doorway;
- B. Open: usually roofed, with no walls, which may have columns or other appurtenances to support the roof;
- C. Screened: roofed with screened sides and a second door or doorway.

2.3.505 Preschool: a day care facility providing educational experiences and operating in compliance with the definitions and regulations of the State of Kansas.

2.3.510 Primary Building: the structure on a multi-structured lot in which the majority of activities occur.

2.3.515 Public Safety Station: police, fire and rescue stations.

2.3.520 Public Street: any right-of-way used for vehicular traffic that is permanently maintained by any city, county, or state agency and is open to all traffic.

2.3.525 Public Utility Buildings: outside storage of materials and equipment is an accessory use in buildings used by public utilities provided all storage is screened from view off the premises.

2.3.530 Quadrangle: a rectangular area, such as a courtyard, enclosed by buildings.

2.3.535 Rear Yard (See Yard, Rear)

2.3.540 Residential Street: all streets within the City of Westwood except those designated as collector streets or thoroughfares.

2.3.545 Residential-Design Manufactured Homes: a manufactured dwelling affixed to a permanent foundation which has minimum dimensions of 22 body feet in width, a pitched roof, and siding and roofing materials which are customarily used on site-built homes.

2.3.550 Retention: an engineered method to completely retain a specified amount of stormwater without release except by means of evaporation, infiltration, or pumping.

2.3.555 Ridge Line: the point at which two sides of a roof meet at their highest edges, which is typically the highest point of the primary roof.

2.3.560 Right-Of-Way (R-O-W): an area of public land dedicated to infrastructure such as streets, sewer lines, water lines, electric lines, and gas lines, etc.

2.3.565 Roof Line: the shape of a roof, formed by its slope, pitch, eaves, ends, and projections, such as dormers, which are above the eave line.

2.3.570 Setbacks the mandatory distance between a lot line and the face or nearest part of a structure.

2.3.575 Shed Dormer: a dormer with a roof sloping in the same direction as the roof from which the dormer projects.

2.3.580 Shop-Front: a business or retail establishment located on the ground floor of a structure, the facade of which is aligned directly along the frontage line and the entrance of which is at grade.

2.3.585 Side Yard (See Yard, Street Side and/or Yard, Interior Side.)

2.3.590 Single-family Dwelling: a detached dwelling designed for or occupied exclusively by one family, including residential-design manufactured homes.

2.3.595 Site Plan: the plan of a construction site showing the position and dimensions of the building to be erected and the dimensions and contours of the lot; a map done by a surveyor or design professional accurately depicting the scale distances and measurements of all existing and planned structures on a lot, and the location and dimensions of the lot itself.

2.3.600 Storm Water: storm water runoff, snow melt runoff, surface runoff, and drainage.

2.3.606 Storm Water Runoff: rainwater flowing on the surface of the ground.

2.3.610 Story: that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that habitable portion of a building included between the upper surface of the topmost floor and the ceiling or roof above.

2.3.615 Story Above Grade: any story having its finished floor surface entirely above grade, except that a basement shall be considered as a story above grade when the finished surface of the floor above the basement is:

- A. More than six feet above grade plane;
- B. More than six feet above finished ground level for more than fifty percent of the total building perimeter; or
- C. More than twelve feet above the finished ground level at any point.

2.3.620 Story, First: the street level of a building which is less than four feet below grade for no more than fifty percent of the perimeter and no portion of which is more than eight feet below grade.

2.3.625 Street: pavement and sub-grade of a city residential, collector, or thoroughfare roadway, excluding curbs, gutters, and portions adjacent to the pavement and sub-grade of a roadway that lie in a right-of-way.

2.3.630 Street Frontage: that portion of a lot that directly faces the public right-of-way along its front property line.

2.3.635 Street Yard: the area of land along the front property line parallel to a street (i.e. front yard) that is reserved for tree planting and landscaping.

2.3.640 Structure: anything constructed or erected, including retaining walls, the use of which demands a permanent location on the soil, or which is attached to something having a permanent location on the soil.

2.3.645 Sustainable: having the ability to accommodate and/or maintain future population growth and economic expansion.

2.3.650 Testing and Research Facilities: primarily office uses or an establishment primarily engaged in commercial research and providing testing services for scientific research. This use can include the design, development, and testing of biological, chemical, electrical, magnetic, mechanical, and/or optical components in advance of product manufacturing. This use does not involve the fabrication, mass manufacture, or processing of the products, and does not include general medical or dental laboratory services.

2.3.655 Temporary Structures: buildings placed on a lot for a specific purpose, which are to be removed within a specified time period. Examples of temporary structures are monitoring stations, mobile classrooms or office space, construction trailers or guard

houses, manufactured housing placed on a lot for temporary housing while the primary home renovations are done, and produce stands. The duration permitted for a temporary structure is established by this Ordinance.

2.3.660 Temporary Use Permit: a permit issued by the City allowing a specific use for a specific period of time.

2.3.665 Thoroughfare: within the City of Westwood, only Shawnee Mission Parkway, State Line Road, Rainbow Boulevard, West 47th Street, and Mission Road.

Through Lot: a parcel of land that has access to a public right-of-way from both the front and back property line.

2.3.670 Transitional Yard: the area of a property running along the side or rear yard of a non-residential lot when it abuts a residential lot, used as a buffer.

2.3.675 Utility Structure: any cabinet, pedestal, box, building or other structure used for public utility services, public service corporations, or telecommunications providers including any associated equipment such as condensing units and generators. Towers, poles and traffic signal controllers shall not be considered utility structures. Facilities with a footprint smaller than two square feet, or underground facilities that extend no more than six inches above grade are exempt from this definition.

2.3.680 Undercroft: the area underneath any structure that, due to its height above the ground, is exposed to view. Such structure may be a roof or floor.

2.3.685 Vocational Center: a teaching or learning business where classes are held, which may be affiliated with an educational institution.

2.3.690 Yard: the part of the building plot not occupied by structures and open to sky.

2.3.695 Yard, Front: open space across the full width of the lot extending from the front line of the primary structure to the front line of the lot where the street right-of-way begins. On corner lots, the front yard shall be determined by the street address but extends around on the exterior or right-of-way side to the rear corner of the primary structure.

2.3.700 Yard, Interior Side: open space between the side of the primary structure and the adjacent sideline of the lot, and between the front yard and the rear yard.

2.3.705 Yard, Rear: open space between the rear line of the primary structure and the rear lot line or public right-of-way and between the side lot lines. On corner lots, the rear yard adjacent to the public right-of-way ends at the corner of the primary structure nearest the rear yard and the adjacent side yard public right-of-way.

2.3.710 Yard, Street Side: on corner lots, side yards extend along the yard adjacent to the public right-of-way from the rear corner of the primary of the primary structure to the real property line.

SECTION 4. That Article 6, Section 6.3 of the Westwood Zoning Ordinance is hereby amended to read as follows:

6.3 Planned Residential Cluster Development (PRCD) District

6.3.1 Intent

The Planned Residential Cluster Development district (“PRCD”) is established to provide for higher density housing. The developments can incorporate the Permitted Uses described below, with flexible yard requirements. Projects may be developed on a single lot or parcel of land. Cottage style developments and patio homes, and other cluster subdivision developments that create a higher density single-family residential environment are encouraged.

6.3.2 Permitted Uses

No building, structure, land, area or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, remodeled, moved or altered except for one or more of the following uses:

- a. Single-Family dwellings
- b. Townhouse dwellings
- c. Group homes;
- d. Accessory structures; or
- e. Accessory uses a provide in Section 4.2.2, 4.2.6, 4.2.7, 4.3.12, and 4.3.13

6.3.3 Height and Area Regulations

The maximum height of buildings, the minimum dimensions of yard areas, and the minimum lot area per dwelling permitted on any parcel shall be as follows, except as otherwise provided in:

- a. Maximum height:
 1. Residential structures - 2 ½ stories, not exceeding 35 feet.
 2. Detached Garages - 1½ stories, not exceeding 26 feet and not exceeding the height of the main structure.
 3. All other accessory structures and uses -- one story, not exceeding 20 feet and not exceeding the height of the main structure.
- b. Minimum yard areas / setbacks:
 1. Front yards. No principal or accessory structure shall be closer than 10 feet to a public street right-of-way, and 25 feet from back of curb if fronting on a private street

2. The perimeter setback along a public street shall not be less than the average setback for residential uses along the same and facing block faces, and shall not be greater than 15 feet back from the average existing setback.
 3. Structure Separation: No portion of any principal structure shall be located less than 10 feet from any other principal structure. Each accessory building shall provide a yard area between the building and the property line of the project, other than a street line, of not less than five (5) feet.
- c. Area Regulations
1. The minimum net site area per dwelling unit shall be 5,000 square feet of the project area.
 2. The aggregate total lot coverage of all structures, both principal and accessory, shall not exceed 40% of an individual lot for detached principal residences.
 3. Maximum total lot coverage of all buildings and hard surface areas shall not exceed 65% of the total project area.

6.3.4 Parking Regulations

Two off-street parking spaces shall be provided for each principal dwelling, at least one of which shall be in a garage or carport. To fulfill the off-street parking requirements, the development may develop accessory off-site parking areas within common open space areas. The off-site parking areas must be accessible to all units for which they are intended. These accessory off-site parking areas shall be indicated on the initial development plan.

6.3.5 Development and Performance Standards

- a. Attached principal dwellings which otherwise comply with the ordinances of the city may be divided at the party wall as to ownership and owned as separate dwelling units by separate owners and such ownership shall not constitute violation of the lot and yard requirements of this chapter.
- b. Private gated communities are not encouraged.
- c. All driveways shall be at least 20 feet long to accommodate off-street parking,
- d. Pedestrian circulation systems (sidewalks, walkways and paths) should be located and designed to provide adequate physical separation from vehicles along all public and private streets and drives and within any parking area.
- e. Site drainage patterns shall be designed, graded and constructed to prevent surface drainage from collecting on and flowing across pedestrian paths, walks and sidewalks.

- f. Detached accessory buildings including garages and carports shall not be located in any required front or setback area, but may be located in the rear yard area provided that no such building may be closer than five (5) feet to any interior property line, closer than 20 feet from any street right-of-way line, or in front of any building setback line. No more than two (2) detached accessory buildings shall be permitted for each residence.
- g. Common open space is encouraged, but not required with this type of planned development. Such common open space shall be perpetually owned and maintained by a homeowners association. The owner(s) shall cause a final plat to be recorded which clearly describes the open space(s), required deed restrictions, and conditions thereof, prior to the issuance of any building permit(s).
- h. An orderly transition from adjacent lower-density to higher density developments is encouraged by providing well designed transition area between existing residential parcels and structures, and the proposed project.
- i. Prior to issuance of any building permit, final development plan approval shall be obtained as provided for in Section 1.6.21 and 1.6.25.

SECTION 5. That Article 6, Section 6.4 of the Westwood Zoning Ordinance is hereby amended to read as follows:

6.4 Planned Multi-Family Residential (PMFR)

6.4.1 Intent

The Planned Multi-Family Residential zoning district (“PMRF”) is established as a planned zoning district to allow attached and/or detached dwelling units, consisting of one or several buildings designed as a planned unified development in a higher-density setting upon a finding of compatibility with surrounding uses while ensuring that livability, property values, open spaces, high levels of landscaping, safety and the general welfare will be sustained. Projects may be developed on a single lot or parcel of land. Higher density and intensity residential developments are to be located bordering a designated Thoroughfare: Shawnee Mission Parkway, State Line Road, Rainbow Boulevard, West 47th Street, and Mission Road.

6.4.2 Permitted Uses

No building, structure, land, or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered except for one or more of the following uses:

- a. Residential buildings containing one to eight dwelling units;
- b. Senior Adult Independent Living Dwellings;
- c. Community Living Facility;
- d. Assisted Living, Skilled Nursing, Continuing Care Retirement Facilities;
- e. Accessory structures; or
- f. Accessory uses as provided in 4.2.6, 4.2.7, 4.3.12, and 4.3.13

6.4.3 Height and Area Regulations

The maximum height of buildings, the minimum dimensions of lots and yards, and the minimum lot area per dwelling permitted on any lot shall be as follows, except as otherwise provided in

- a. Maximum height:
 - 1. Three-story maximum not exceeding 48 feet.
 - 2. Accessory structures and uses – 1½ stories, not exceeding 26 feet and not exceeding the height of the main structure.
- b. Minimum setbacks:
 - 1. All main structures shall be located at least 20 feet from any lot line or street rights-of-way.
 - 2. All accessory structures shall be located at least 5 feet from any interior lot line or structure.
 - 3. All accessory structures shall be at least 20 feet from any lot line which abuts a street or any property zoned R-1.
- b. Minimum yard areas/setbacks:
 - 1. Where a lot line abuts a public street, the minimum setback for main structures shall be 10 feet from any street.
 - 2. The perimeter setback along a public street shall not be less than the average setback for residential uses along the same and facing block faces.
 - 3. Structure Separation: No portion of any principal structure shall be located less than 10 feet from any other principal structure. Each accessory building shall provide a yard area between the building and the property line of the project, other than a street line, of not less than five (5) feet.
- c. The minimum net site area per dwelling unit shall be 1,500 square feet.

6.4.4. Parking Regulations

- a. Parking spaces shall be provided at the following rates for Multi-Family, Senior Adult, or Elderly Housing dwellings:

<u>Dwelling Unit</u>	<u>Number of Spaces Required per Unit</u>
Studio/efficiency	1.33
1-bedroom	1.5
2-bedroom	1.8
More than 2 bedrooms	2.0

- b. Parking spaces shall be provided at the following rates for Assisted Living, Skilled Nursing, and Continuing Care Retirement Facilities:
 - Not less than three off-street parking spaces shall be provided on the premises for every four apartments or congregate living units.
 - One space shall be provided for every five beds, and not less than one space shall be provided for each employee on the premises on the maximum shift.
- c. No parking or access drives shall be located within 15 feet from any lot line which abuts a property zoned R-1
- d. No parking area shall be located within 15 feet of any public street rights-of-way.
- e. Lighting used to illuminate parking areas shall be arranged, located or screened to direct light away from any adjoining or abutting residential district or any street right-of-way.

6.4.5 Development and Performance Standards

- a. Attached principal dwellings which otherwise comply with the ordinances of the city may be divided at the party wall as to ownership and owned as separate dwelling units by separate owners and such ownership shall not constitute violation of the lot and yard requirements of this chapter.
- b. Pedestrian circulation systems (sidewalks, walkways and paths) shall be located and designed to provide adequate physical separation from vehicles along all public and private streets and drives and within any parking area.
- c. Site drainage patterns shall be designed, graded and constructed to prevent surface drainage from collecting on and flowing across pedestrian paths, walks and sidewalks.
- d. Detached accessory buildings including garages and carports shall not be located in any required front or side yard setback area, but may be located in the rear yard setback area provided that no such building may be closer than five (5) feet to any interior property line, closer than 20 feet from any street right-of-way line, or in front of any building setback line. No more than two (2) detached accessory buildings shall be permitted for each residence.
- e. An orderly transition from adjacent lower-density to higher density developments is encouraged by providing well designed transition area between existing residential parcels and structures, and the proposed project.
- j. Prior to issuance of any building permit, final site plan approval shall be obtained as provided for in Section 1.6.21 and 1.6.25.

SECTION 6. That Article 8, Sections 8.1.1, 8.1.2, 8.1.3, 8.1.4 of the Westwood Zoning Ordinance is hereby amended to read as follows:

Article Eight: Special Use Permits

8.1 Special Use Permits

8.1.1 Special Uses

Certain uses of land or buildings may not be appropriate under all circumstances in any zoning district, but may be appropriate where adequate precautions can be taken to assure the compatibility of the use with surrounding uses. It is the intent of this Chapter to allow for such uses by the granting of a special use permit, subject to the same procedures applicable to a rezoning set forth in Section 1.6.

8.1.2 Special Uses Designated

Any building, structure, land or premises may be used, and any building or structure may be erected, constructed, reconstructed, moved or altered, for one (1) or more of the following special uses, subject to approval of a special use permit by the Governing Body and subject to the development and performance standards set forth in Section 8.1.4:

- a. Amusement centers and arcades;
- b. Clubs and drinking establishments - bar or night club;
- c. Community living facility;
- d. Communications facilities and antennas;
- e. Daycare homes, group daycare homes, childcare centers, preschools, and Mother's Day Out programs;
- f. Hospitals;
- g. Off-street parking lots/structures of a temporary or permanent nature
- h. Public utility services or public service corporations - buildings, structures, and premises;
- i. Radio, television and microwave towers over 60 feet in height;
- j. Testing and research facilities, and laboratories;
- k. Temporary use of land for commercial or industrial purposes;

8.1.3 Special Uses Not Permitted

It shall be presumed that any use listed in Section 8.1.2 shall not be permitted in the City without a special use permit unless that use is also specifically listed as a use permitted by right or as an accessory use in a given zoning district.

8.1.4 Development and Performance Standards

8.1.4.010 Amusement Centers and Arcades

- a. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.
- b. The initial special use permit may be granted for a period of up to twelve (12) months, with renewals for a period of up to five (5) years.

8.1.4.015 Clubs and Drinking Establishments - Bar or Night Club

- a. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.
- b. An initial permit may be issued for a maximum time period of two (2) years. Subsequent renewals may be issued for a maximum time period of five (5) years. Provided, however, that establishments within facilities such as convention centers, health clubs, hotels, or similar structures determined not to have traffic, parking, noise, litter or other adverse impacts on surrounding properties, may be issued a special use permit for an indefinite time period.

8.1.4.020 Community Living Facility

- a. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.
- b. An initial permit may be issued for a maximum time period of two (1) year. Subsequent renewals may be issued for a maximum time period of three (3) years.

8.1.4.025 Communications Facilities and Antennas

- a. The initial special use permit may be granted for a period of up to two (2) years, with renewals for a period of up to five (5) years.
- b. The Planning Commission and Governing Body may, upon a finding that time restrictions on the permit are not required to protect the public health, safety and welfare, approve a special use permit for an indefinite period of time.

8.1.4.030 Daycare Homes, Group Daycare Homes, Childcare Centers, Preschools, and Mother's Day Out Programs

- a. A Special Use Permit is require only on property zoned District R-1 or residentially zoned property, which are not otherwise permitted as an accessory use or as a permitted use.
 1. Day care homes shall be allowed subject to the following standards:
 - i. The day care provider shall be licensed by the State of Kansas and shall reside on the premises.
 - ii. Outside play areas shall be fenced.
 - iii. Only one employee, other than persons residing on the premises, shall be permitted.
 2. Child care centers, preschools and Mother's Day Out programs may be allowed as an accessory use only in religious, educational and community buildings.
 - i. Such programs shall be subject to a general traffic circulation plan being submitted. Such plan shall not permit parking on any adjacent public street, and shall include a drop-off and pick-up site designed to prevent traffic congestion or vehicles stacking up onto the public streets.
 - ii. The day care operation shall be licensed or registered with the State of Kansas.

- iii. The Planning Commission and Governing Body may, as a part of any special use permit renewal, require that the number of children and/or employees be reduced until, in their judgment, the adjoining properties are not adversely impacted.
 - iv. Where the day care operation is operated from a residential dwelling, the owner or operator shall occupy the structure as his or her private residence.
 - v. No signs identifying the daycare operation shall be permitted on the premises.
- b. An initial permit may be issued for a maximum time period of two (2) years. Subsequent renewals may be issued for a maximum time period of three (3) years.

8.1.4.035 Hospitals

- a. The following uses are accessory uses within a hospital where located within the main building and designed to serve hospital personnel, visitors or patients:
- 1. Florist.
 - 2. Food service and vending machines.
 - 3. Gift shops.
 - 4. Laundry, cleaning and garment services - pickup and delivery.
 - 5. Nursing and personal care facilities.
 - 6. Pharmacies.
 - 7. Residential quarters for staff and employees.
 - 8. Fitness Centers, pools, game rooms
- b. An initial permit may be issued for a maximum time period of two (2) years. Subsequent renewals may be issued for a maximum time period of five (5) years.
- c. The Planning Commission and Governing Body may, upon a finding that time restrictions on the permit are not required to protect the public health, safety and welfare, approve a special use permit for an indefinite period of time.

8.1.4.040 Off-Street Parking Lots/Structures of a Temporary or Permanent Nature

- a. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.
- b. An initial permit may be issued for a maximum time period of two (1) year. Subsequent renewals may be issued for a maximum time period of three (3) years

8.1.4.045 Public Utility Services or Public Service Corporations - Buildings, Structures, and Premises

- a. Outside storage of materials and equipment is an accessory use in buildings used by public utilities provided all storage is screened from view off the premises.
- b. The initial special use permit may be granted for a period of up to two (2) years, with renewals for a period of up to five (5) years.
- c. The Planning Commission and Governing Body may, upon a finding that time restrictions on the permit are not required to protect the public health, safety and welfare, approve a special use permit for an indefinite period of time.

8.1.4.050 Radio, Television and Microwave Towers Over 60 Feet In Height

- a. The property owner must provide maintenance and inspection reports for towers and all supporting structures, guys, and attachments. Such reports shall follow the guideline and checklist set forth in TIA-EIA-222-F, Annex E
- b. The property owner shall maintain \$1,000,000/\$2,000,000 aggregate Commercial General Liability insurance on each tower or in the alternative the applicant shall maintain \$2,000,000/\$4,000,000 aggregate Commercial General Liability insurance for any casualty occurring with respect to either tower
- c. The property owner shall provide a Certificate of Insurance, with a 30-day notice in the event of cancellation, to the City Clerk, evidencing that it has obtained the requisite liability insurance
- d. The initial special use permit may be granted for a period of up to two (2) years, with renewals for a period of up to five (5) years.

8.1.4.055 Testing and Research Facilities, Laboratories

- a. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.
- b. The initial special use permit may be granted for a period of up to two (2) years, with renewals for a period of up to five (5) years.
- c. The Planning Commission and Governing Body may, upon a finding that time restrictions on the permit are not required to protect the public health, safety and welfare, approve a special use permit for an indefinite period of time.

8.1.4.060 Temporary Uses of Land for Commercial or Industrial Purposes

- a. Special use permits for temporary uses of land for commercial or industrial purposes may be granted for a period not to exceed two (2) years, subject to renewal for one or more periods of time not to exceed a maximum of two (2) years for each renewal.
- b. If a building or structure is constructed on said land in connection with the approved temporary use, and such structure is not otherwise permitted in that district, the building or structure shall be temporary and, along with any stored equipment or material, shall be removed on or before the expiration date of the Special Use Permit;
- c. This provision shall not be used as a means of seeking approval for occupations which are not permitted as accessory uses in residential districts under Section 4.2.2

SECTION 7. That Article 5, Sections 5.1.2, 5.1.3; Article 6, Sections 6.2.3, 6.2.4, 6.2.5 of the Westwood Zoning Ordinance, to the extent inconsistent with the above, are hereby repealed.

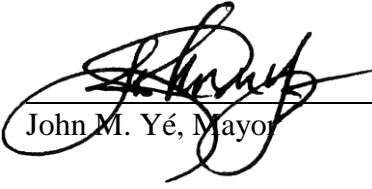
SECTION 8. This Ordinance shall take effect and be in force from and after its passage, approval, and publication in the official city newspaper.

PASSED by the Governing Body this 9th day of July, 2015.

APPROVED by the Mayor this 9th day of July, 2015.



ATTEST:

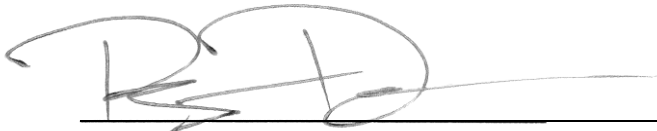


John M. Yé, Mayor



Frederick L. Sherman, City Clerk

APPROVED AS TO FORM:



Ryan Denk, City Attorney