DEVELOPMENT REGULATIONS DIAGNOSTIC REVIEW

LAWRENCE, KANSAS

December 10, 1999

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Contents

Introduction/Executive Summary

In early 1999, Duncan Associates[1] was retained by the City of Lawrence to perform an analysis of the city's existing zoning, subdivision and other land development regulations. This report presents the written findings from that analysis.

By design, the analysis focuses on what is wrong with the regulations, rather than what is right. It would be a mistake for readers to interpret that Lawrence faces an imminent regulatory crisis or that the city's regulations are not as "good" as other communities. No such judgement is made or implied by the authors. On the other hand, it would be correct to conclude that improvements can be made to the city's existing development regulations and procedures. Of course, that is true in any community.

No set of regulations is perfect. Regulations, like the plans they are intended to implement, require periodic revision to keep pace with cultural, economic and technological changes. In short, the problems identified in this report are not unique to Lawrence. But there are problems, and, if left unaddressed, they will likely lead to increased frustration on behalf of public officials, citizens, businesses, developers and staff. The commissioning of this report demonstrates the city's awareness of these issues.

The report is organized in two parts. Part I is a technical analysis of the city's zoning, subdivision and related land development regulations. Part I was based on the consultant team's independent analysis of existing ordinances and regulations. The evaluation was guided by the belief that public officials, private developers and, indeed, all citizens are best served by development regulations that are easy to use, understand, administer and enforce. Although sometimes mundane, this level of analysis can help to predict whether an ordinance is capable of accomplishing a community's goals.

Part II is a summary of the input that the consultant team received during interview sessions held with public officials, staff, neighborhood groups, developers, business owners, real estate brokers, design professionals and other interested persons in February and March of 1999.

The report contains a mixture of observations, analysis and recommendations. Following delivery of the report to the community, the consultant team will present the key findings in a workshop. After the workshop, the team will prepare revisions and additions as needed to address comments received.

The following provides a chapter-by-chapter listing of the key observations and recommendations. Readers should refer to the complete chapter text for more in-depth analysis.

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[1] Duncan Associates is a planning and growth management consulting firm that specializes in the revision of land development regulations.

Chapter 1

Chapter 1 addresses the zoning district regulations of the existing zoning ordinance. The following observations and recommendations are included:

1. A very broad range of uses is allowed in the ordinance's single-family residential zoning districts, some of which are fairly uncommon, such as mobile home parks, art galleries/museums, private clubs/lodges, health centers, theaters and hospitals.
2. There are limited options for small lot development (required PUD approval).
3. There may be a need for smaller lot, detached house zoning districts.
4. Townhouse development may be appropriate in some single-family districts.
5. Lot depth standards may be unnecessary.
6. Alternative residential types (e.g., zero lot line, small lot, cluster) should be allowed in some single-family zoning districts.
7. Maximum density limits should be considered for multi-family districts.
8. Existing density allowances are very high.
9. Greater limits should be placed on building heights in RM districts.
10. Variable setbacks and other residential protection standards[2] could be used to control high density development near low density areas.
11. The ordinance contains far more residential office districts than most ordinances; seemingly an opportunity for consolidation of districts.
12. Consider eliminating multi-family from list of uses allowed in RO districts.
13. Greater limits should be placed on building heights in RO districts.
14. Permitted uses in O-1 district should be revised; should place greater control on "limited service" uses in O-1, while allowing office uses by-right.
15. Building height limits in the commercial districts are very lax.
16. C-1 and C-2 districts contain few controls on building size/intensity, making them potentially unsuitable as "neighborhood" districts; consider building size limits.
17. Ordinance contains an inordinate number of industrial districts (5).
18. City may over-rely on PUD approvals, leading to a loss of predictability and a cumbersome development process from some standard development types. This is probably the result of conventional districts that do not offer adequate control and partly the result of local custom.

Chapter 2

Chapter 2 addresses the land use regulations of the existing zoning ordinance, including the permitted use tables. The chapter includes three chief recommendations:

19. Consolidating all the individual use tables (residential, office, commercial and industrial) into a master use table.
20. Creating better, more detailed definitions of the use categories (or groups) and eliminating the detailed use lists from the table itself.
21. Revising and creating new use categories.

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[2] "Protection standards" could include greater controls on building height; parking and dumpster siting criteria;, lighting and noise controls; and other regulations designed to protect residential uses from potential adverse impacts of nearby uses.

Chapter 3

Chapter 3 addresses Use-Specific Regulations and Conditions. The following observations/recommendation are included:

22. Many of the existing use standards are redundant, outdated or otherwise unnecessary.
23. A temporary use regulations section should be added to the ordinance and all use standards pertaining to temporary uses should be relocated to that section.
24. Home occupation regulations are outdated and in need of revision.
25. Earth station regulations should be brought into conformance with federal law and renamed.
26. Minor amendments may be necessary to bring telecommunications tower regulations into compliance with federal law.
27. An accessory use (and structures) section should be added to the ordinance and all use standards pertaining to accessory uses should be included in that section, rather than scattered throughout the ordinance as is now the case.
28. The city may want to consider allowing accessory dwelling units in some residential districts as a means of better utilizing its land resources.

Chapter 4

Chapter 4 addresses Development Standards of General Applicability. The following observations and recommendations are among those included:

29. Eliminate parking groups and cross-references; include minimum parking ratios for each land use type.
30. Reduce use of compact spaces, except for low-turnover uses (e.g., employee parking).
31. Driveway spacing standards are lax when compared to other ordinances.
32. Conflicts may exist between the city's driveway policy and some ordinance provisions.
33. The off-street parking section should be amended to allow greater flexibility (e.g., shared parking, valet parking, remote parking and transportation demand management approaches).
34. Vehicle stacking requirements should be added to the ordinance.
35. Consolidate all landscaping-related provisions in one section of ordinance..
36. Clarify locational provisions for off-street parking areas.
37. Revisions to lighting standards are needed to address spillover lighting and area/security lighting.
38. Landscaping standards are currently scattered throughout the ordinance and should be consolidated in a single section.
39. Consider revision of open space landscaping requirements so they are based on site area rather than open space.
40. Consider decreasing the amount of interior parking lot landscaping, while increasing the number of trees required.
41. Consider requiring screening between incompatible land uses in some situations.

Chapter 5

Chapter 5 addresses Nonconformities. The following observations and recommendations are among those included:

42. Existing regulations governing nonconforming situations are cumbersome, confusing and potentially counter-productive.
43. The regulations do not adequately distinguish among types of nonconformities, often lumping the regulations for nonconforming uses and structures together in one set of regulations.
44. Eliminate the authority for the City Commission to grant deviations from otherwise applicable nonconformity standards.
45. Revise the cessation provisions of §20-1304 to include a more detailed description of the types of actions that constitute cessation or abandonment of a nonconformity.

Chapter 6

Chapter 6 addresses Miscellaneous Zoning Provisions. The following observations and recommendations are among those included:

46. Allow broader use of front setback averaging provisions.
47. Include a separate "violations, penalties and enforcement" chapter in the ordinance.
48. Clearly state the full range of available enforcement options and make it clear that they are cumulative.
49. Administrative enforcement remedies should be expressly authorized.
50. K.S.A. §12-761(b) expressly allows enforcement by neighbors and other parties in interest and should be incorporated into the ordinance.
51. Investigate authority for using civil enforcement methods.

Chapter 7

Chapter 7 addresses Development Review and Approval Procedures. The following observations and recommendations are among those included:

52. The existing ordinance(s) would be easier to use if all development review procedures were consolidate in a single section of the document.
53. As a means of streamlining the development review process, the city may wish to consider revising the existing UPR process to give the Planning Commission authority to review and take final (appealable) action on proposed uses.
54. Regardless of the type of review procedure used, consider taking another look at the types of uses that are subject to special review and approval.
55. Revise the site plan review procedures to allow administrative (staff) review and approval.
56. Remove substantive design standards from site plan "procedures" section.

Chapter 8

Chapter 8 addresses Financing of Public Improvements (Ord. No. 5614). The following observations and recommendations are among those included:

57. Consider a more comprehensive treatment of adequate public facility/concurrency standards—at least for the essential public facilities (i.e., water, sewer, roads and stormwater management).
58. Consider replacing the public improvement financing ordinance with a combination of clear concurrency standards and impact-based exactions policies that will withstand the Supreme Court's "rough proportionality" test.

Chapter 9

Chapter 9 addresses Regulation of Adult Businesses. The following observations and recommendations are among those included:

59. Amend Sec. 6-313 of the existing ordinance, regarding the posting and display of licenses, to require the posting of licenses only for the establishment and the manager on duty (or all managers) but to require only that the licenses of entertainers and servers be maintained on the premises and be made available to city inspectors or police on request.
60. Consider an amendment to §6-311 to prohibit presentation of sexually-oriented entertainment in a space smaller than 150 square feet (or a larger number, based on the typical venues used there now).

Chapter 10

Chapter 10 addresses Sign Regulations. The following observations and recommendations are among those included:

61. Clarify provisions regarding "works of art."
62. Move the review fees (§5-704) to a resolution that can be updated periodically without an ordinance amendment.
63. Change many of the current exemptions (§5-705) to a category of signs allowed without a permit.
64. Include a section on prohibited signs, pulling together provisions which are currently scattered throughout the ordinance.

Chapter 11

Chapter 11 addresses Subdivision Regulations. The following observations and recommendations are among those included:

65. Consider elimination of the provision allowing applicants to appeal Planning Commission decisions on subdivision matters to the City Commission.

Chapter 12

Chapter 12 contains a summary of comments received during the small group interview sessions held at the beginning of the project.

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Part I: Technical Review

Chapters 1 through 11 contain a technical analysis of the city's zoning and subdivision regulations and some related land use/development controls. This part of the report has been based largely on the consultant team's independent analysis of existing ordinances and regulations. The approach used in the technical review has been to read existing provisions very literally. In short, the technical review focuses on what existing provisions "say," not necessarily how they have been administered over time. While this approach may have resulted in occasional misinterpretations of regulatory intent, such miscues may themselves provide insight into provisions in need of reworking.

It is important to note the criticisms of existing regulations are in no way intended to reflect poorly on the drafters of previous regulations or upon public officials and staff charged with administering them. The types of problems highlighted in Part I are common, particularly among older ordinances that have not been updated on a regular basis.

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Chapter 1 | Zoning Districts

The zoning ordinance contains 10 "residential" zoning districts: four "single-family" (RS) and six "multi-family" (RM). All of the zoning districts follow a conventional zoning model, with each spelling out the types of uses allowed and establishing minimum lot size, setback and height requirements.

1.1 Single-Family Districts

As is common of ordinances adopted during the 1960s, the city's single-family (RS) districts reflect what might be considered a "suburban ideal." They call for detached houses on large to medium-size lots, surrounded by ample yards.

1.1.1 Uses

The four RS districts allow a fairly broad range of use types, including such typical uses as detached houses, small group homes, religious institutions and home-based day care facilities. They also allow, by-right or upon review, use types that many communities do not allow within "single-family" zoning districts, such as mobile home parks, art galleries/museums, private clubs/lodges, health centers, theaters and hospitals.

1.1.2 Density/Intensity and Dimensional Standards

1.1.2.1 Lot Size

The minimum lot size (area and width) standards of the RS districts are fairly restrictive although generally typical of those seen in other

Density/Intensity and Dimensional Standards, RS Districts

Zoning District	Min. Lot Area (Square Feet)		Min. Lot Width (feet)	Min. Lot Depth (Feet)	Minimum Yards (Feet)						Max. Height (stories/feet)
					Front	Rear		Side			
	Per Lot	Per Dwelling Unit				Single Frontage Lot	Double Frontage Lot	Interior	Exterior		
									Abutting Side Yard	Abutting Rear Yard	
RS-A	1 Ac	1 Ac	150	150	25	30	45	30	25	25	3/35
RS-E	20,000	20,000	100	100	25	30	35	20	25	20	3/35
RS-1	10,000	10,000	70	100	25	30	25	10	25	15	3/35
RS-2	7,000	7,000	60	100	25	30	25	5	25	10	3/35

communities. The RS-A (1 acre), RS-E (½ acre) and RS-1 (¼ acre) districts offer a range of choice for those seeking large to moderate-size lots. At the other end of the scale, however, choices are limited by the 7,000 square foot minimum Unit Development option is available to accommodate smaller lot development, the city may want to add one or more new zoning districts to accommodate small-lot single-family development. In Lawrence, smaller lot, detached house zoning options might better fit lot pattens within older neighborhoods and present an alternative development option within newly developing areas. Some communities have also elected to allow single-

family attached development (townhouses) within smaller lot single-family districts, as opposed to relegating all townhouse development to multi-family districts.

Small lot zoning districts and alternative residential development options are supported by two specific *HORIZON 2020* residential land use policies:

> **Policy 2.7: Provide for a Variety of Housing Types**
> a. Intersperse low- to moderate-income housing throughout the city.
> b. Encourage the use of a variety of housing types, including townhomes, patio homes, zero lot line homes, cluster housing, garden apartments and retirement housing.
>
> **Policy 4.6: Provide for Small-Lot Subdivisions**
> a. Provide affordable housing options throughout the city through the adoption of residential zoning classifications with modified minimum lot sizes and setbacks.
> b Allow the use of small-lot subdivisions in low-density residential areas where flexibility in subdivision design is necessary to preserve natural features, provide open space linkages or avoid floodplains.

1.1.2.2 Lot Depth

The ordinance includes lot depth standards for all of the single-family districts. Minimum lot depth standards are increasingly rare within contemporary zoning ordinances since many communities have deemed such requirements unnecessary.

1.1.2.3 Setbacks and Height

The yard (setback) and height standards applicable to the RS districts are typical of those seen in other similar communities. The city's front yard setback requirements are less restrictive (requiring less of a setback) than one might expect to find in large lot zoning districts.

1.1.3 Alternative Residential Development Options

Perhaps the greatest shortcoming of the existing single-family zoning district regulations is that they do not address a number of increasingly common residential development styles. Those wishing to develop small lot or townhouse dwelling units have only two options under the ordinance: develop as PUD or rezone to a multi-family district. Similarly, zero lot line and cluster developments (a.k.a. "open space" or "conservation" developments) also necessitate more complex development approval procedures than detached dwelling units in conventional subdivisions. The city may want to consider accommodating these or other residential development options

within its base residential zoning districts.

1.2 Multi-Family Districts

1.2.1 Uses

The six RM districts allow the same broad range of use types as allowed in the RS district, plus duplex and multi-family structure types. As noted in the RS district section, the treatment of duplex and townhouse development as a multi-family structure type is relatively restrictive, though not unheard of. Some ordinances allow townhouses and duplexes in one or more single-family zoning districts. The advantage of such an approach is that such structures can be accommodating without rezoning to multi-family.

Density/Intensity and Dimensional Standards, RM Districts

Zoning District	Lot Area (Square Feet)		Lot Width (feet)	Lot Depth (Feet)	Minimum Yards (Feet)						Height (stories/feet)
					Front	Rear		Side			
	Per Lot	Per Dwelling Unit				Single Frontage Lot	Double Frontage Lot	Interior	Exterior		
									Abutting Side Yard	Abutting Rear Yard	
RMD	7,000	3,500	60	100	25	30	25	5	25	10	3/35
RM-1	7,000	3,500	60	100	25	25	25	5	25	10	3/35
RM-2	6,000	2,000	60	100	25	20	25	5	25	10	4/45
RM-2A	6,000	1,500	50	100	25	20	25	5	25	10	4/45
RM-3	6,000	1,000	50	100	25	20	25	5	25	10	4/45
RD	6,000	800	50	100	25	20	25	5	25	10	4/45

Note: The ordinance alternatively classifies the RM-D district as a single-family *and* multi-family district.

1.2.2 Density/Intensity and Dimensional Standards

1.2.2.1 Lot Size/Density

The RM districts, like their RS counterparts, rely on minimum lot area standards as a means of controlling the number of dwelling units that may be placed on a parcel. Maximum "density" is the more common expression for this type of development control. The following table converts the existing lot-area-per-dwelling-unit standard to a maximum density standard:

Density/Intensity and Dimensional Standards, RM Districts

Zoning District	Lot Area (square feet)		Maximum Density
	Per Lot	Per Dwelling Unit	Units Per Acre
RMD	7,000	3,500	12.45
RM-1	7,000	3,500	12.45

Zoning District	Lot Area (square feet)		Maximum Density
	Per Lot	Per Dwelling Unit	Units Per Acre
RM-2	6,000	2,000	21.78
RM-2A	6,000	1,500	29.04
RM-3	6,000	1,000	43.56
RD	6,000	800	54.45

The density figures of the RM-3 and RD districts are extremely high compared to modern multi-family density limits from other communities, which generally range from 12 to 25 or 30 units per acre. Existing densities appear to represent *theoretical* maximums rather than realistic or meaningful standards. As a practical matter, it would seem all but impossible to develop residential projects in Lawrence at any where near the maximum densities of those districts. This is especially true in light of existing height limits and off-street parking requirements.

Existing density standards in the ordinance may help to at least partially explain community resistance to locating multi-family zoning in or near low-density residential neighborhoods. Density limits should be expressly stated for all zoning districts that allow multi-family development. The density provisions should make clear that other development standards (e.g., parking requirements, height limits, landscaping and buffering standards, etc.,) may work to further limit density below the stated maximum. In other words: maximum density or minimum lot size standards should not be interpreted as a guarantee that such levels can be achieved on every site.

***HORIZON 2020* Residential Land Use Policy 2.6**
Consider Residential Density and Intensity of Use

a. The number of dwelling units per acre in any residential category should be viewed as representing a potential density range rather than a guaranteed maximum density. Potential development should be approved based upon consideration of natural features, public facilities, streets and traffic patterns, neighborhood character, and surrounding zoning and land use patterns.
b. Develop standards for density and intensity of uses.

1.2.2.2 Setbacks and Height

The yard (setback) and height standards applicable to the RM districts are fairly typical of small to medium size communities, except the provisions allowing height increases to as high as 75 feet in the RM-2 and RM-3 districts. The one foot of additional setback required for each additional foot is inadequate to ensure protection of single- and 2-story structures near taller buildings. Consideration should be given to eliminating this by-right option or increasing the required setback. The city may also want to

consider using variable setback requirements[3] in all RM districts when multi-family buildings are to be placed near single-family zoning districts.

1.3 Residential Office Districts

The most notable thing about the RO, Residential Office districts is how many there are and how similar they are to one another and to some RM and RS districts. A definite opportunity exists for consolidation of some of these districts. Communities rarely maintain over one or two "residential-office" zoning districts.

1.3.1 Uses

With a few exceptions, the RO districts allow the same uses as the other city's "residential" districts. The only differences are that all of the RO districts allow office uses, the RO-2 district does not allow multi-family uses and none of the RO districts allow so-called "residential dormitory" uses. Allowing high-density multi-family uses in RO districts is something the city should reconsider, since the operating characteristics of multi-family may make such districts incompatible with some residential neighborhoods. Another alternative would be to include new standards in the RO districts requiring that multi-family units could only occur as a second-story ("shop top") use above office uses.

Perhaps the best approach would be to adopt one "neighborhood" office district that allows low-intensity office uses, with single-family and duplex residential as a second floor, accessory use. A second RO-style district could be reserved for office and multi-family (mixed-use) development. If the city desires that all development in the RO district be mixed-use (office-residential), such requirements should be more firmly stated. The existing provisions of 20-606 leave room for interpretation on this point.

[3] Variable setback standards permit minimum building setbacks to be varied based on the adjacent zoning or use and the exact nature of the proposed use. Requiring greater setback distance as building heights increase is an example of a variable setback standard.

Density/Intensity and Dimensional Standards, RO Districts

Zoning District	Lot Area (Square Feet)		Lot Width (feet)	Lot Depth (Feet)	Minimum Yards (Feet)						Max. Height (stories/feet)
					Front	Rear		Side			
	Per Lot	Per Dwelling Unit				Single Frontage Lot	Double Frontage Lot	Interior	Exterior		
									Abutting Side Yard	Abutting Rear Yard	
Residential Office											
RO-1	6,000	1,000	50	100	25	20	25	5	25	10	4/45
RO-1A	6,000	2,000	50	100	25	20	25	5	25	10	4/45
RO-1B	7,000	3,500	60	100	25	30	25	5	25	10	4/35
RO-2	7,000	3,500	60	100	25	30	25	5	25	10	4/35

1.3.2 Density/Intensity and Dimensional Standards

As noted in the RM district discussion, the provisions of 20-607 allowing increases in building heights up to 100 feet pose a real potential for incompatible development near low intensity residential areas. Consideration should be given to eliminating this by-right option or increasing the required setback. The city may also want to consider using variable setback requirements[4] in all RO districts when office or multi-family buildings are to be placed near single-family zoning districts.

1.4 Office and Commercial Districts

1.4.1 Uses

Some of the allowed "limited service" uses in the O-1 district seem potentially out-of-place in an office zoning district. The prohibition on residential uses in the office district is also rather unusual. The C districts seem fairly typical in terms of the uses allowed.

1.4.2 Density/Intensity and Dimensional Standards

The office and commercial district standards are characteristic of those found in other similar ordinances, but again the provisions allowing building heights of up to 150 feet are very lenient and pose great potential for adversely affecting the character of established neighborhood areas. According to staff, the O-1 district is rarely used, which would sometimes be an indication that a district is overly restrictive. In this case, however, we see little reason why the O-1 district would not work for those wishing to develop office space. Consequently, disinterest in O-1 zoning appears to be more an indication of landowners desiring the most flexible

[4] Variable setback standards permit minimum building setbacks to be varied based on the adjacent zoning or use and the exact nature of the proposed use. Requiring greater setback distance as building heights increase is an example of a variable setback standard.

zoning option available. The C-1 and C-2 districts are notable for their lack of meaningful controls on intensity or scale. Although labeled "neighborhood" districts, there is no real limit on building size, which can be an important determinant of neighborhood "fit." Building size limits and other measures to ensure compatibility are commonly found in neighborhood-oriented districts.

Density/Intensity and Dimensional Standards, O and C Districts

Zoning District	Min. Lot Area (square feet)		Min. Lot Width (feet)	Min. Lot Depth (feet)	Minimum Yards (Feet)							Max. Height [1] [stories/ft]
					Front	Rear		Side				
								Interior		Exterior		
	Per Lot	Per Dwelling Unit				Single Front. Lot	Double Front. Lot	When Abutting Resident.	When Abutting Nonres.	Abuts Side Yard	Abuts Rear Yard	
Office												
O-1 [2]	5,000	N/A	50	100	25	15	25	12	5	[5]	15	3/35
Commercial												
CP	5,000	N/A	50	100	25	10	25	5	none	[5]	10	3/35
C-1	5,000 [3]	5,000	50	100	25	20	20	5	none		25	3/35
C-2 [2]	87,120[4]	1,000	100	200	25	20	25	12	none		25	3/35
C-3 [2]	2,500	50	25	100	none	none	none	12	none		none	7/75
C-4 [2]	5,000	N/A	50	100	25	12	25	12	none		10	4/45
C-5 [2]	15,000	1,000	100	150	25	12	25	12	none		15	3/35

[1] See Section 20-706 and 20-7A02..
[2] No exterior storage allowed in O-1. Exterior storage as an accessory use in C-2, C-3, C-4 and C-5 shall meet the requirements of Section 20-1443 and 20-2002.4(4).
[3] A maximum aggregate lot area is applicable in the C-1 district. Refer to 20-702.
[4] Minimum lot area 5,000 square feet when lot is an integral part of a unified shopping center at least two acres in aggregate size.
[5] Same as required front yard on lot abutting rear lot line of subject lot

1.5 Industrial Districts

Lawrence has far more industrial zoning districts (5) than other similar communities. There is potential for consolidation and elimination of at least 2 of the existing districts.

Permitted Uses, M Districts

Permitted Use Groups	Zoning Districts				
	M1	M1A	M2	M3	M4
Agriculture - Animal Husbandry	S	S	S	S	S
Agriculture - Field Crops	P	P	P	P	P
Community Facilities and Utilities-Residential	S	S	S	S	S
Temporary Uses	S	S	S	S	S
Professional Offices		S	S	S	S

Permitted Uses, M Districts

Permitted Use Groups	Zoning Districts				
Off-street Parking	S	S	S	S	S
Automotive Services and Retail Sales-Other			S	S	
Retail - Wholesale Sales and Services			S	S	
Manufacturing - Low Nuisance		S	S	S	
Research and Testing	S	S	S	S	
Industrial-Medium Nuisance			S	S	
Industrial-High Nuisance				S	
Salvage Yards					S

Density/Intensity and Dimensional Standards, M Districts

Zoning District [3]	Min. Lot Area (square feet)	Min. Lot Width (feet)	Min. Lot Depth (feet)	Minimum Yards (feet)					Maximum Height [1] [stories/ft]
				When Abutting a Street Right-of-Way [2]			When Abutting Other Property Lines [1]		
				Across Street from Residential District	Across Street from a Nonresidential District		When Abutting Residential	When Abutting Nonresid.	
					Minor Thoroughfare	Major Thoroughfare			
M-1	304,920 *	200	200	40	40	40	40	15	3/40
M-1A	20,000	100	200	50	25	50	20	15	3/35
M-2	5,000	50	100	25	25	50	20	15	3/35
M-3	20,000	100	100	50	25	50	50	15	7/75
M-4	87,120	200	200	50	25	50	50	15	3/35 [4]

Notes: See Section 20-806 for further conditions.

* When development occurs in industrial/research parks over 35 acres in area, minimum lot area may be reduced to 1 acre, and minimum interior setback requirements may be reduced (See Sec. 20-806[a])

[1] In M-1 and M-1A districts no exterior storage of industrial supplies, goods, equipment, or trucks is allowed within 20 feet of any street line. In M-2 and M-3 districts no exterior storage of industrial supplies, goods, equipment, or trucks is allowed within 20 feet of any street line when across the street from any R district or when abutting any street designed as a major thoroughfare.

[2] No setback is required where a yard abuts a railroad right-of-way with a minimum width of 50 feet.

[3] Minimum yard requirements in the M-4 district apply only to buildings. See Sec. 20-1418 for fencing setback requirements.

[4] A building or structure may exceed the district maximum height regulations up to a maximum of 150 feet: provided, that each front, side and rear yard is increased by the greater of the following quantity: (1) 1 foot for each additional 2 feet of height, or (2) 5 feet for each additional story.

1.6 Planned Unit Development District

In Lawrence, planned unit developments (PUDs) are a large piece of the zoning and development puzzle. Particularly in the past few years, the city has come to rely more and more on PUDs and less on its conventional zoning districts, especially when it comes to commercial development.

PUD regulations can be a very useful tool. The original concept of PUDs was that if

developers were offered greater flexibility to use innovative planning and site design practices, communities would stand to reap great benefits in the form of higher-quality development. In practice, Lawrence has come to use PUDs to accomplish more prosaic goals—overcoming the zoning districts' shortcomings and exerting greater control over development of all types. Rather than using PUDs exclusively as a means of addressing "constrained" sites or of preserving open space and environmental features within developments, the Lawrence approach is to force a good deal of development into PUD districts so that substantive development standards and restrictions can be imposed on a case-by-case basis.

Lawrence is far from alone in its heavy reliance on PUDs. Moreover, the desire of the city to exert more control over specific aspects of a development are understandable. There are significant downsides to the city's approach, however. They include a loss of predictability and the temptation to slip into a "gymnasium syndrome," whereby development proposals are judged on the basis of whether more opponents or proponents appear at the public hearing. Because of the flexibility and negotiation inherent in PUD approvals, developers don't know what they are going to be required to do as part of the PUD approval process, and neighborhoods don't know what is going to be approved as part of a PUD project.

It is possible that the situation would be improved if existing base zoning districts and other development standards were updated as necessary to ensure that the city is getting the type and quality of development it desires, no matter what the zoning classification. If these sorts of things—now obtained from the PUD process—could become the base standards for development, the PUD process could again be used to accomplish "bigger picture" objectives. Namely, protection of natural features, open space preservation and more sensitive site planning.

The existing PUD regulations are a complex stew of very detailed standards and requirements. The level of detail and specificity of standards is rather unusual for a PUD regulation, although this is not viewed as an inherent flaw. With all of its detail the PUD section does not provide enough guidance on the standards that can be waived or modified as part of a PUD approval or on the criteria to be used in granting such waivers and modifications. (See also the discussion of PUD approval procedures in Sec. 7.3 [p. 44])

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Chapter 2 | Use Classifications and Tables

Land uses can be identified by their commonly understood name (e.g., "florist shop"), or in terms of a broader classification that is explicitly defined (e.g., "retail sales and service"). This land use naming system constitutes a zoning ordinance's use classification system. Land use categories that are vague or contradictory make it difficult (1) for property owners to know what uses are allowed on their property, (2) for planning and zoning officials to administer the use regulations in a consistent manner; and (3) for the city to enforce them in court.

A well-designed use classification system is composed of a limited number of explicitly defined land use categories that are mutually exclusive. As a general rule, land use categories should be designed to include only uses that have similar land use impacts and similar operating characteristics. Ideally, every land use category regulated in a zoning ordinance should be explicitly defined. While having a complete set of definitions will not resolve all questions of interpretation, it will help ensure greater clarity, more consistent administration and easier enforcement of the ordinance's regulations.

Land use categories should be narrow enough to exclude incompatible uses, but also broad enough to permit classification of new, unanticipated uses with similar impacts. Use classification systems that attempt to list every conceivable use are doomed to failure; there are simply too many possible land uses, with new uses constantly evolving. Frequent amendments to a zoning ordinance to add new land use categories is a symptom of a poorly designed and overly rigid use classification system. In short, a limited number of broad land use categories is preferred to long lists of very specific land use types.

To avoid confusing and conflicting regulations, the land use categories should be mutually exclusive. In other words, it should be possible to classify a particular land use type in only one category. This feature of a use classification system avoids the problem of having a use that fits the definition of two different land use categories, which are, in turn, subject to different regulations in the same district.

The Lawrence ordinance relies on a sort of hybrid use classification system. The use tables are organized around major "use groups," with detailed listings of sample use types provided for many of the groups. While the idea behind the system is excellent, it fails in execution and should be considered a candidate for substantial updating and revision Consideration should be given to the following use-related changes:

(1) Consolidating all the individual use tables (residential, office, commercial and industrial) into a master use table. This will help to eliminate inconsistencies and redundancies, as well as make the ordinance easier to use. It will also help end reliance on cross-references back to other zoning districts (e.g., "as set forth in Section 20-610.10"). This is a practice that now often requires users to refer to the residential districts to determine some of the uses allowed in commercial districts.

(2) Creating better, more detailed definitions of the use categories (or groups) and eliminating the detailed use lists from the table itself. A description or listing of the use types encompassed by the use categories can be listed in the definition or a separate appendix. Individual use types should be listed in the table only when the individual use is allowed in different districts than the category as a whole or when there are conditions that apply to the use type but not the use category. Note that this approach would necessitate removal of the parking groups from the use table and instead relying on a separate parking requirements table.

Sample Use Category Description

1. Vehicle Repair

a. Characteristics
Vehicle Repair firms service passenger vehicles, light and medium trucks and other consumer motor vehicles such as motorcycles, boats and recreational vehicles. Generally, the customer does not wait at the site while the service or repair is being performed.

b. Examples
Examples include vehicle repair, transmission or muffler shop, auto body shop, alignment shop, auto upholstery shop, auto detailing and tire sales and mounting.

c. Exceptions
Repair and service of industrial vehicles and equipment and of heavy trucks; towing and vehicle storage; and vehicle wrecking and salvage are classified as Industrial Service.

2. Vehicle Service, Limited

a. Characteristics
Limited Vehicle Service uses provide direct services to motor vehicles where the driver or passengers generally wait in the car or nearby while the service is performed.

b. Examples
Examples include full-service, mini-service and self-service gas stations; car washes; and quick lubrication services.

c. Exceptions

(1) Truck stops are classified as Industrial Service.

(2) Refueling facilities for vehicles that belong to a specific use (fleet vehicles) are considered accessory uses if they are located on the site of the principal use.

(3) Revising and creating new use categories. The following table compares the city's existing use group system with an alternative structure[5]:

Existing	Alternative	
Use Group	**Use Category**	**Excerpted Definition**
	Residential	
Residential-Single-Family **Residential-Duplex** **Residential-Multi-Family** **Resid.-Mobile Home Park**	**Household Living**	residential occupancy of a dwelling unit by a "household"
Residential-Dormitory	**Group Living**	residential occupancy of a structure by a group of people who do not meet the definition of "Household Living"
	Institutional	
Community Facilities/ Public Utilities	**College**	colleges and institutions of higher learning
	Community Service	public, nonprofit, or charitable uses, generally providing a local service to the community
	Day Care	care, protection and supervision for children or adults on a regular basis away from their primary residence for less than 24 hours per day
	Detention Facilities	facilities for the detention or incarceration of people
	Health Care Facility	medical or surgical care to patients, with overnight care
	Parks and Open Areas	natural areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, etc.,
	Religious Institution	meeting area for religious activities
	Safety Services	public safety and emergency response services
	Schools	schools at the primary, elementary, middle, junior high, or high school level
	Utilities, Basic	infrastructure services that need to be located in or near the area where the service is provided
	Commercial	
	Adult Entertainment	an adult bookstore, adult cinema or adult entertainment facility
Professional Office	**Office**	activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services
Off-Street Parking	**Parking, Commercial**	parking that is not accessory to a specific use…fees may or may not be charged
Amusement, Rec/Cultural	**Recreation/Entertainment, Outdoor**	large, generally commercial uses that provide continuous recreation or entertainment- oriented activities

[5] The use classifications suggested in this section are hypothetical only. Much additional detail would need to be included if such a system were chosen for inclusion in a revised ordinance.

Existing	Alternative	
Use Group	**Use Category**	**Excerpted Definition**
Retail Stores Inner City NH Comm. Retail Sales Other Limited Services	**Retail Sales/Service**	firms involved in the sale, lease or rental of new or used products to the general public...they may also provide personal services or entertainment, or provide product repair or services for consumer and business goods
	Self-Service Storage	uses providing separate storage areas for individual or business uses
Automotive Services	**Vehicle Repair**	service to passenger vehicles, light and medium trucks and other consumer motor vehicles ...generally, the customer does not wait at the site while the service or repair is being performed
	Vehicle Service, Limited	direct services to motor vehicles where the driver or passengers generally wait in the car or nearby while the service is performed
	Industrial	
Salvage Yard Industrial-Med. Nuisance Industrial-High Nuisance	**Industrial Service**	firms engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products
Manufact-Low Nuisance Research and Testing	**Manufacturing/Productio n**	firms involved in the manufacturing, processing, fabrication, packaging, or assembly of goods
	Warehouse/Freight Movement	firms involved in the storage, or movement of goods
	Waste-Related Use	uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the composting of organic material
Retail-Wholesale Sales and Service	**Wholesale Sales**	firms involved in the sale, lease, or rental of products primarily intended for industrial, institutional, or commercial businesses
	Other	
Agriculture-Animal Husbandry Agriculture-Field Crops	**Agriculture**	raising, producing or keeping plants or animals
	Aviation	facilities for the landing and takeoff of flying vehicles, including loading and unloading areas
Amusement, Rec/Cultural	**Entertainment Event, Major**	activities and structures that draw large numbers of people to specific events or shows
	Mining	mining or extraction of mineral or aggregate resources from the ground for off-site use

Chapter 3 | Use-Specific Regulations and Conditions

The "Special Condition" column of the four use tables contains a reference to regulations and conditions that apply to certain use types. With a couple of exceptions, all of these special regulations and conditions are set out in Article 14 of the zoning ordinance.

The majority of use-specific conditions in Article 14 date to at least 1979. Many of these existing standards are redundant or unnecessary in light of general development standards that have been added since 1979. In other cases, general development standards should be added to the ordinance to take the place of outdated use standards.

For example, the car wash condition of Sec. 20-1405 could be eliminated if vehicle stacking requirements (for all drive-through type uses) were added to the parking and loading section of the ordinance. These types of changes would also help streamline the use table. Similarly, the provisions that apply to uses like dance halls and golf driving ranges would be better handled by general land use compatibility standards that address outdoor lighting, buffering and setbacks in those instances where high-intensity uses are sited near low intensity uses.

Another type of provision that can and should be eliminated are those that merely require compliance with applicable federal, state and local laws (e.g., Flammable Liquids and Gases (§20-1414)).

In revising the use-specific conditions, it would be very useful to organize the standards alphabetically by use type.

3.1 Animal-Related Uses

At a minimum, the animal density provisions of §20-1402-(a) (requiring at least 20,000 square feet of land area for each head of livestock) should be added to paragraph "b."[6]

3.2 Temporary Uses and Special Events

The following provisions should be moved to a section of the ordinance dealing exclusively with temporary uses and special events:

(1) Construction Facilities, et. al, (§20-1411)
(2) Carnival, Circus or Temporary Religious Event (§20-1407)
(3) Off-Street Parking (§20-20-1424)
(4) Tract Office (§20-1438)
(5) Special Events (§20-1454)
(6) Temporary Outdoor Sales (§20-1455)

[6] Consideration should also be given to amending the county's zoning ordinance to address animal confinement operations.

3.3 Home Occupations

Some types of work can be conducted at home with little or no effect on the surrounding neighborhood. Home occupation regulations are intended to permit residents to engage in such home occupations, while ensuring that they will not be a detriment to the character and livability of the surrounding area. In the 1990s, nearly every community has been forced to revisit their home occupation regulations. Most have found that drawing the line between a neighborhood-compatible home occupation and a business use with the potential to adversely affect surrounding neighbors is not an easy matter. There simply is no one-size-fits-all solution to the home occupation issue.

Some of Lawrence's home occupation regulations are now found in the definition of "home occupation" (§20-2002.7), while other standards are located in §20-1417. At the very least, these regulations should be consolidated in one place. The regulations themselves are not terribly out-of-date or markedly different from those seen in other communities.

3.3.1 Type of Home Occupations Allowed

Section 20-2002.7(1)(b) lists the types of uses that are allowed as home occupations, while §20-2002.7(1)(c) includes of listing of prohibited home-based businesses. An alternative to this approach would be to establish performance standards for all accessory home occupations rather than to suggest that there is a set list of allowed uses. Listing uses that are expressly prohibited is a good practice that should be continued. The types of uses typically prohibited are as follows:

A. Vehicle/Equipment Repair, Rental or Sales
Any type of repair, rental, sales or assembly of vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines) or of large appliances (such as washing machines, dryers, and refrigerators) or any other work related to automobiles and their parts.

B. Restaurants
Restaurants and other food service establishments.

C. Employee Dispatch Centers
Dispatch centers, where employees come to the site to be dispatched to other locations.

D. Animal Care or Boarding
Animal care or boarding facilities (including animal hospitals, kennels, stables and all other types of animal boarding and care facilities).

E. Medical Offices or Clinics
Medical offices and medical clinics, including doctors' offices, dentists' offices, psychologist's offices, hospitals, physical therapist's offices and all other medical care facilities. This prohibition is not to be interpreted as preventing medical practitioners from seeing patients in their home on an emergency basis.

F. Funeral Homes
Funeral homes and funeral service activities, including crematoriums.

G. Hair Care, Electrolysis and Nail Salons

Barber shops, beauty shops, nail salons and other cosmetology services.

H. Firearms, Alcoholic Beverages and Tobacco Products
Sales, repair or trade of firearms, alcoholic beverages and tobacco products.

3.3.2 Employees

The existing ordinance does not allow nonresident employees, which is the case in most communities, though certainly not all. If the city wishes to retain the prohibition on outside employees, the provision should be supplemented by a definition of nonresident employee: "an employee, business partner, co-owner, or other person affiliated with the home occupation, who does not live at the site, but who visits the site as part of the home occupation."

3.3.3 On-Premise Sales and Customer Visits

Besides nonresident employees, the other major policy question that must be addressed, is whether to allow on-premise sales and/or customer visits to the home occupation. The existing ordinance prohibits "sales to customers on the premises," which is a fairly common approach. Some ordinances allow on-premise sales of goods produced on-site, such as art works, or of services rendered on-site.

The ordinance does not specifically address the issue of customer visits to the site. This issue should be addressed by provisions specifying the maximum number of customer visits that may occur in any given period (a day or a week) and by limiting the hours of the day during which customer visits are allowed.

3.3.4 Area Limitations

The existing provisions allow home occupations to occur in the principal dwelling unit or in an allowed accessory building. This is a topic on which there is no clear trend nationally; many communities allow home occupations in accessory structures, others do not. The existing provision requiring that the "entrance to the space devoted to a home occupation shall be from within the dwelling" would seem to prevent detached accessory structures from being used.

Many communities limit the area of a home occupation to 25 to 33 percent of the floor area within the dwelling unit. In Lawrence the limit is 25 percent of the area *of a single floor* within the dwelling unit. The Lawrence approach seems to offer greater protection from abuse, although there is clearly nothing magical about 25 percent.

3.3.5 Exterior Appearance

The provisions regarding exterior appearance are generally good, although it might be wise to reinforce the requirement that all activities and storage areas associated with home occupations must be conducted in completely enclosed structures. The ordinance addresses the issue of home occupation signs with a relatively liberal allowance of 2 square feet of signage. It would be good to address other examples of

prohibited building and site alterations, such as in the following example:

> There shall be no visible evidence of the conduct of a home occupation when viewed from the street right-of-way or from an adjacent lot. There may be no change in the exterior appearance of the dwelling unit that houses a home occupation or the site upon which it is conducted that will make the dwelling appear less residential in nature or function. Examples of such prohibited alterations include construction of parking lots, adding extra driveways, paving required setbacks, adding additional entrances to the dwelling unit or commercial-like exterior lighting. [This provision must also address allowed signage]

The provision requiring access to the home occupation from within the dwelling could perhaps be deleted, in lieu of a prohibition on the addition of new, visible entrances.

3.3.6 Operational Standards

Limiting power equipment to electric motors seems like a good idea, although the 3 horsepower limit may be overly restrictive. Consideration should be given to the addition of general operational performance standards such as:

> No home occupation or equipment used in conjunction with a home occupation may cause odor, vibration, noise, electrical interference or fluctuation in voltage that is perceptible beyond the lot line of the lot upon which the home occupation is conducted. No hazardous substances may be used or stored in conjunction with a home occupation.

3.3.7 Trucks and Delivery Vehicles

Although the Lawrence ordinance does not appear to regulate the parking of trucks/commercial vehicles or delivery vehicles, some communities have elected to impose such limits as a part of their home occupation controls. Sample provisions follow:

> **Trucks**
> No truck or van with a payload rating of more than 1½ ton may be parked at the site of a home occupation. No more than 1 such truck is allowed at the site of a home occupation.
>
> **Deliveries**
> Deliveries or pick-ups of supplies or products associated with home occupations are allowed only between 8 a.m. and 8 p.m.

3.4 Recreation Units

The provisions of §20-1421 dealing with recreation vehicles would be better located in a section of the ordinance dealing exclusively with accessory uses and structures.

3.5 Mobile Homes

The existing ordinance does clearly identify where mobile homes that do not meet manufactured housing codes are permitted (if anywhere). This issue should be more squarely addressed in the ordinance.

3.6 On-Street Parking

This provisions of §20-1422 should be removed from the zoning ordinance since they deal with use of public rights-of-way and thereby have no relevance to zoning.

3.7 Site Plan Approval

See Sec. 7.5 (p. 46)

3.8 Outdoor Storage

The regulations of §20-1443 are not *use*-specific. They should be placed with other general development standards or with the zoning *district* regulations.

3.9 Research Industrial Parks

The standards of §20-1444 are really zoning *district* standards and should be located with the regulations for the M1 district.

3.10 "Earth Stations" (aka "Satellite Dish Antennas")

Section 20-1445 should be brought into conformance with current federal law and regulations. The effect of updating this section of the code will be to eliminate some of the restrictions on small dishes, as required by federal law. At the same time, the city may also wish to make more distinctions based on zoning districts, possibly eliminating the future installation of dishes larger than one meter in most residential areas. The city may maintain or even strengthen its standards on larger dishes. The current ordinance allows dishes of up to 10 feet in diameter; the current federal regulations protect only those up to 2 meters, or about 7 and one-half feet; the city should certainly take into consideration the needs of its cable operator, radio stations and major convention facilities, but to the extent that they do not need the larger dishes, the city may wish to impose significant limitations on them.

Satellite Dish Antennas

In the Telecommunications Act of 1996, Congress significantly limited the ability of local governments to regulate satellite dishes of less than one meter (about 39 inches) in diameter. About the same time, the Federal Communications Commission adopted regulatory amendments affecting the treatment of dishes up to two meters in diameter.

> *Dishes that are more than one meter but less than two meters in diameter are subject to the provisions of 47 C.F.R. §25.104, which creates a rebuttable presumption that local land use regulations interfering with the installation of such a dish in industrial or commercial areas are unreasonable. Dishes smaller than one meter in diameter are technically also protected by that rule, but the much broader protection of 47 C.F.R. §1.4000 allows them almost anywhere and thus effectively supercedes the other regulation. Note that the final version of this rule, as adopted by the FCC, also protects a traditional television antenna. At this time, there is no express federal protection for satellite dishes larger than two meters in diameter.*
> --(*Zoning and Land Use Controls* (§10A.05[2]; Kelly, Gen'l Ed., New York: Matthew Bender & Co. 1999).

3.11 Telecommunications Towers

The Telecommunications Act of 1996 also significantly limited the ability of local governments to deny applications for towers serving cellular and digital telephone service

providers. The operative provisions of the law, as they affect cellular and other wireless service towers, are brief and worth considering in whole:

> **(B) Limitations**
>
> (i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof–
>
> (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
>
> (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
>
> (ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
>
> (iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
>
> (iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.
>
> (v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.
>
> --47 U.S.C. §332(c)(7)(B)(1998).

There has already been a great deal of litigation over these provisions, with the industry winning many of the cases. There are no decisions from the U.S. Supreme Court yet, but a number have reached the various federal Courts of Appeals. That case law is discussed in §10A.06 of *Zoning and Land Use Controls,* which cites and summarizes many of the cases but which also identifies major patterns emerging from the litigation.

The provisions of Article 14B in the current Lawrence ordinance meet some but not all of these criteria. The provisions of that article are far better than those in effect in many communities, because they do include express standards, many of which are objective. Additional issues which should be addressed in an update, however, include:

(1) Clear time limits on the review process, if there are not time limits applied to all such reviews under the new ordinance;

(2) A clarification of the distinctions between towers in residential zones and those in commercial and industrial ones (there are currently references to the issue in both §§20-14B03 and 20-14B04). Ideally the new ordinance would specify "standards for towers in residential zoning districts" and "standards for towers in nonresidential

zoning districts;"

(3) The case law generally does not support the "setback-equal-to-the-height-of-the-tower" requirement, since the current technology of tower design typically ensures a straight-down collapse rather than a "fall-over." The city would certainly be entitled to demand expert certification of the failure design of a tower on a smaller site, but it would be wise to at least consider allowing them on smaller sites;

(4) At this time, the courts appear to be quite supportive of requirements for joint use of the towers, as required by the current Lawrence ordinance.

Note that the new law applies only to cellular and PCS towers. Thus, the city can treat broadcast, microwave, and traditional private mobile service towers differently; many communities limit such towers to industrial and highway-oriented commercial districts, with no exceptions at all for residential areas. The primary reason for this distinction is clearly the small coverage area of the cellular and PCS towers, meaning that it is necessary to have such towers at relatively frequent intervals, which may at times require installation in residential areas. In contrast, microwave and broadcast towers generally serve areas of dozens or hundreds of square miles, allowing a good deal of flexibility in site selection. It would be desirable to separate these two general categories of communication towers, so that some of the exceptions that the city already has for such towers and so that those required by federal law for the new communications services do not apply unnecessarily to other types of towers.

3.12 C-1 District Standards

The standards of §20-1446 are really zoning *district* standards and should be located with the regulations for the C-1 district.

3.13 Accessory Uses and Structures

The regulations pertaining to accessory uses and structures are scattered throughout the existing ordinance. Some are located in Article 14, some in Article 13 and some buried in the definition of "accessory use." Most of the regulations appear to date to the late 1970s. They could benefit from a general reorganization and updating. The provision limiting the area occupied by accessory structures to a maximum of 30 percent of the *required* rear yard may be unnecessarily restrictive, particularly when applied to Original Townsite lots. A more common provision would be to limit the size based on the *actual* rear yard area, with a stipulation that the combined area of all accessory structures on a parcel (in residential districts at least) not exceed the (first floor) area of the principal structure.

Among the accessory use *policy* issues that the city may wish to consider, is the issue of whether to allow accessory dwelling units. The existing ordinance allows guest houses and employees' quarters, but not accessory dwelling units per se. A growing number of communities are allowing accessory dwelling units as a means of permitting more

efficient use of land resources. Accessory dwelling units can also meet the needs of older persons or persons in need of extra assistance in the household. Some communities are allowing accessory units uses only on very large lots, while others are allowing only internal conversions of floor space (as opposed to separate structures. Many communities require that either the accessory or primary unit be occupied by the owner of the property.

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Chapter 4 | Development Standards of General Applicability

4.1 Off-Street Parking and Loading

The city's off-street parking and loading requirements are located in Article 12 of the zoning ordinance.

4.1.1 Off-Street Loading

The off-street loading applicability statement of §20-1201 is rather vague, stating that loading spaces are required for "[all buildings] requiring the receipt or distribution by vehicles (with a gross vehicular weight exceeding 10,000 lbs.)." Buildings that trigger the requirements must provide at least 1 off-street loading space for the first 5,000 square feet of gross floor area, plus 1 additional space for each 10,000 square feet of floor area, up to a maximum of 10 loading spaces. While these requirements are slightly more general than seen in some communities, no changes are necessary unless problems have been observed with the existing standards. A growing number of communities have elected to eliminate off-street loading space requirements in lieu of a general requirement that all loading occur outside of the public right-of-way. Existing loading space width and height standards (10 and 14 feet, respectively) are small in comparison to those seen in other communities. Regulations governing the location of loading spaces are also lacking from the existing ordinance and should be considered for inclusion.

4.1.2 Off-Street Parking

4.1.2.1 Applicability

Compliance with off-street parking requirements is required for all new construction, building additions or other alterations that increase capacity by more than 10 percent (above the existing use). The applicability provision of §20-1204 does not explicitly state whether parking spaces must be provided only in proportion to the extent that floor area or capacity is increased or whether the entire development must be brought into compliance with off-street parking requirements. The answer to this question should be expressly stated in the regulations.

4.1.2.2 Spaces Required

In order to determine how many parking spaces must be provided for each land use type, ordinance users must flip between Article 12 and the permitted use tables that accompany the zoning district provisions. This is an awkward organizational convention. The ordinance would be easier to use if the off-street parking section included a table of parking standards by land use type.

A review of the existing numerical requirements reveals that the city's standards are generally within the range seen in other communities. Beyond such relative comparisons, it is impossible to judge the adequacy of the city's existing numerical requirements, since local parking generation characteristics are not known. As is the case throughout this report, changes are not recommended merely for the sake

of change. In other words, if existing parking requirements are not creating problems, no "corrections" should be made.

The zoning ordinance should include parking standards for each land use type listed in the ordinance. Moreover, the parking space requirements should be established on the basis of floor area wherever possible, as a means of simplifying administration and use of the standards.

There will be instances in which no precise parking standard can be established for a given land use type, due to the widely varying parking demand characteristics of certain uses (e.g., park and recreation uses, auditoriums, stadiums and ambulatory care facilities). In those cases, the zoning ordinance provisions should authorize administrative determinations of applicable requirements, based on parking demand studies provided by the applicant and relevant data, such as from the Institute of Traffic Engineers (ITE).

4.1.2.3 Design Standards

The zoning ordinance addresses surfacing, layout and design of off-street parking areas in several sections of Article 12. The required size of a standard parking space is 9 feet by 18 feet, although up to 40 percent of required parking spaces can be "compact car" spaces, which can be a small as 7.5 feet by 16.5 feet. Few modern ordinances allow such widespread use of compact spaces, except in instances where the compact spaces are reserved for low-turnover use, such as employee parking areas.

Driveway standards are located (inconveniently) in §20-1205(g). The 30-foot maximum driveway width is common in local ordinances, although some allow for administrative approval (usually city engineer) of wider driveways for uses likely to generate large truck traffic or for dual drive configurations. The driveway spacing (from intersections) standards of §20-1205[g][2] are very lax when compared with those seen in other communities. More typical are requirements that driveways be spaced from street intersections and even other driveways by at least 125 to 250 feet or more depending upon roadway type. Organizationally, the driveway spacing provisions of §20-1205 should be combined with the access provisions of §20-1224, all of which address driveway access.

The off-street parking area/driveway surfacing standards of §20-1217 appear to conflict with the city's Driveway Policy. Section 20-1217 states that *all* off-street parking area and driveways must be hard-surfaced, while the Driveway Policy allows expansion of existing gravel drives. The driveway width standards of §1209(c) represent another potential conflict with the city's Driveway Policy. Obviously, such conflicts should be eliminated.

4.1.2.4 Remote Parking and Other Alternatives

The city's off-street parking regulations are fairly inflexible in their current form, with no provisions for shared parking or use of traffic demand management measures as a substitute for providing parking spaces. The ordinance does allow use of remote (a.k.a., "off-site") parking areas, although the maximum distance limit (300 feet) and the requirement that remote parking areas be under the same ownership as the use served render such requirements somewhat inflexible. Consideration should be given to adding provisions addressing use of shared parking, valet parking, (flexible) remote parking and other alternatives to the provision of off-street parking spaces.

4.1.2.5 Drive-Through Facilities and Vehicle Stacking Spaces

Consideration should be given to the addition vehicle stacking requirements for uses with drive-through windows. Such a section should detail the number and size of required stacking spaces required by drive-through use type (e.g., restaurant, bank, ATM, car wash, drug store, etc.,). Stacking space requirements can help ensure safe and efficient traffic flows within off-street parking areas and help avoid the problem of waiting vehicles backing up into the public right-of-way.

4.1.2.6 Parking Lot Landscaping

The fact that parking lot screening standards are located in Article 12 and parking lot landscaping standards are located in Article 14A is a serious organizational shortcoming of the zoning ordinance. All of the ordinance's landscaping and screening standards should be consolidated in a single section of the zoning ordinance. A cross-reference to the existence of such standards should be included within the parking regulations. See Sec. 4.2.2 of this report (p. 34) for a discussion of landscaping and screening standards.

4.1.2.7 Parking Lot Location

The ordinance is not entirely clear on the subject of parking lot location, at least in regard to setbacks. Section 20-1215 suggests that parking lots must be set back at least 15 feet from street rights-of-way, while §20-1216 seems to state that the 15-foot setback applies only to commercial and office developments. Similarly §20-1216(c) seems to require only that commercial and office parking lots be buffered from residential. This ambiguity should be addressed, ideally with a clear statement that all off-street parking areas containing more than 5 spaces are subject to some minimum front setback. Alternatively, landscape buffer requirements could be substituted for minimum parking lot setbacks, with the required width of buffers serving as the minimum setback standard. See Sec. 4.2.2 of this report (p. 34) for a discussion of landscaping and screening standards.

4.2 Lighting, Landscaping and Screening

4.2.1 Lighting

The zoning ordinance's existing lighting standards (§20-14A01–§20-14A03) appear to fall short of their stated purpose. They do not offer any real protection from spillover light or glare, since the regulations contain very few objective standards governing spillover lighting (lighting that crosses property lines to "spill over" on to adjacent sites). Since the standards of §20-14A03 aimed at preventing excessive lighting levels seem to be geared exclusively toward parking lots, they may not necessarily "reduce light pollution" or mitigate "effects to the night sky." If reasonable controls over lighting levels and light pollution are desired, the existing lighting regulations will need to be substantially revised.

4.2.2 Landscaping and Screening

4.2.2.1 Organization

Although the zoning ordinance's table of contents suggests that landscaping and screening standards can be found in Article 14A, such standards are, in fact, scattered throughout the ordinance. Several of the use-specific conditions of Article 14, for example, pertain to visual screening of proposed uses. The C-4A, C-1 and SLT overlay districts also address landscaping/screening, as do the PUD and off-street parking provisions. Plant material size specifications are located outside of Article 14A, this time buried in the site plan section of the ordinance. At best, this type of organizational scheme presents an opportunity for repetition and confusion. At worst it presents opportunity for internal inconsistencies and frustrating "hunt and search" sessions for ordinance users.

4.2.2.2 General Requirements

The general requirements provision of §20-14A04.1 (calling for open areas of a site to be landscaped) is so vague that it is essentially meaningless, especially in light of the zoning ordinance's definition of "landscape material:"

> *such living material as trees, shrubs, groundcover/ vines, turf grasses, and non-living material such as: rocks, pebbles, sand, bark, brick pavers, earthen mounds (excluding pavement), and/or other items of a decorative or embellishment nature such as: fountains, pools, walls, fencing, sculpture, etc.*

4.2.2.3 Tree Planting

The ordinance includes street tree planting requirements and general tree planting standards. The RS-1 and RS-2 districts are exempted from compliance with these standards. In light of the fact that uses other than single-family residential are allowed in those districts, it would seem preferable to exempt single-family uses from compliance rather than single-family zoning districts.

The ordinance requires 1 street (shade) tree per 40 feet of street frontage. Due to what must be a typographical error in the provisions, it is unclear if street trees must be placed 40 feet on-center or whether clustering is allowed. Additional trees are required to be provided on development sites in accordance with ratios that vary by zoning district. The requirement for the RM-D district appears to be in error, since a literal reading of the standard would require 1.5 trees per duplex lot. The tree planting standards for residential districts are based on the number of dwelling units on the parcel. The standards for nonresidential districts are established on the basis of trees per amount of open space area (generally 1 tree per 2,500 to 4,000 square feet of open space area). This approach has the affect (presumably unintentional) of penalizing sites that provide open space. Most ordinances base open space landscaping and tree planting requirements on gross site area rather than open space area.

4.2.2.4 Parking and Vehicular Use Area Landscaping

Section 20-1214A04.6 states that parking lot landscaping standards apply to parking lots with 6 or more stalls. Section 20-1214 states that parking lot screening standards apply to lots with 5 or more spaces. Still additional requirements are established for parking lots for 25 or more vehicles. The ordinance should be amended to clarify the applicability of parking lot landscaping requirements.

As in the tree planting section, the exemption for parking areas in the RS-1 and RS-2 districts should be replaced by an exemption for single-family, duplex and other residential *uses*. This change would close a potential loophole for permitted nonresidential development in single-family districts (e.g., religious institutions).

The interior parking lot landscaping standards of the existing ordinance were a topic of frequent criticism during the consultant team's discussions with representatives of the development community. The current requirements call for 15 percent of interior of a parking lot to be landscaped, based on the following calculations: [(Number of Parking Spaces $\times$ 280) $\times$ 0.15].

These existing landscape area standards are at or above the high end of requirements this team has seen in other communities, perhaps because of the way the 15 percent requirement is calculated. On the other hand, tree planting requirements for parking lots are extremely low, at 1 tree per 40 parking spaces. The city should consider decreasing landscaped area requirements and increasing interior tree planting requirements. A minimum requirement of at least 1 shade tree per 10 to 15 spaces is suggested.

4.2.2.5 Screening

The ordinance's screening and buffering standards are geared primarily toward parking lots, mechanical equipment and outdoor storage areas. The screening

requirements found in §20-1214 and §20-14A04.8 are rather confusing, primarily because it is difficult to determine exactly when screening is necessary. The ordinance needs to do a better job of clearly describing which site features need to be screened and what they needed to be screened from. The ordinance appears to show a preference only for buffering commercial, office and some other forms of nonresidential uses/zoning from residential. Consideration should be given to requiring that moderate to high density residential development also be buffered from low-density residential districts. Perhaps the best approach would be establish land use buffer standards based on relative levels of intensity between adjacent uses. Such an idea is supported by *HORIZON 2020:*

Commercial Land Use Policy 2.1: Use Appropriate Transitional Methods

a. Commercial areas should not adversely impact adjacent residential areas. Screening and buffering should be provided which may include: landscaped setbacks, berms and open space areas. Traffic and parking should not adversely affect neighborhood quality. Noise, safety and overall maintenance of commercial properties should be carefully monitored.

b. Use landscaped transition yards between residential and nonresidential uses which include additional lot depth, berms, landscape screening, and/or fences and walls to provide additional buffering between differing land use intensities.

Industrial Land Use Policy 2.1: Use Appropriate Transitional Methods

4. Screening and Landscaping

a. Encourage the creative and extensive use of landscaping and berming techniques for effective buffering between differing intensities of land uses.

b. Fences shall not be used as a sole method of providing screening and buffering.

c. Promote site design that uses existing vegetation, such as stands of mature trees, as natural buffers or focal points.

d. Use high quality materials in the construction of screening and landscaping to decrease long-term maintenance costs.

In revising the screening standards, consideration should also be given to further defining when vegetative and non-vegetative screens are required. The general right-of-way screening standards applicable in the SLT Overlay districts (or a variation) should be considered for wider application throughout the city.

Chapter 5 | Nonconformities

In zoning parlance, "nonconformities" are lots, buildings or uses that came into existence lawfully but that violate one or more subsequently adopted zoning ordinance standards. Nonconformities are not "illegal" and should not be confused with illegal uses or activities. Nonconformities were perfectly legal when established, but due to the imposition of new or revised standards, they no longer conform to the regulatory requirements set forth in the zoning ordinance.

Nonconformities exist only because it has been determined that particular uses of land or site development features that were once permitted should no longer be allowed. There are probably some nonconformities still remaining from the adoption of Lawrence's first zoning ordinance and from amendments adopted since that time.

The existing regulations governing nonconforming situations are cumbersome, confusing and potentially counter-productive. Their greatest deficiency is that they do not adequately distinguish among types of nonconformities, often lumping the regulations for nonconforming uses and structures together in one set of regulations. This may work to create a disincentive or obstacle for owners who wish to make improvements to nonconformities. Moreover, the regulations do not expressly address nonconformities that are not related to a use or structure (e.g., nonconforming lots, nonconforming parking areas, nonconforming landscaping, etc,).

The existing regulations appear to give fairly broad authority to the City Commission to grant deviations from otherwise applicable nonconformity standards. This is a very unusual grant of authority. Such situations are nearly always handled as zoning variances and decided by a Zoning Board of Appeals based on specific hardship findings. This provision should be revised.

The city may want to consider revising the cessation provisions of §20-1304 to include a more detailed description of the types of actions that constitute cessation or abandonment of a nonconformity. Actions such as failure to renew a business license, failure to file applicable tax returns for the subject business, failure to renew a lease or failure to pay utility bills are examples of some of the criteria used in other communities. In the event of legal challenge, such an approach to defining "abandonment" may also be viewed more favorably by the courts.

A recommended general outline for a new nonconformity article follows:

Section 1/General Nonconformity Provisions

A. Purpose and Scope of Regulations

The zoning ordinance's nonconformities article should address legally established uses, structures and lots that do not comply with existing zoning regulations. This section should define the types of nonconforming situations that may be encountered and provide definitions for each of the following:

1. Nonconforming Uses

Definition: Uses that were legally established but that do not comply with the zoning district use regulations (or residential density/nonresidential intensity standards) applicable to the district in which the use is located.

2. **Nonconforming Structures**
   Definition: Buildings and structures (not including signs) that were legally established but that do not comply with the dimensional standards applicable in the zoning district in which the use is located.

3. **Nonconforming Lots**
   Definition: Lots that were legally established but that do not comply with the size standards (lot area, lot width or lot depth) applicable in the zoning district in which the use is located.

5. **Other Nonconformities**
   The "other nonconformities" definition should address other nonconforming situations that aren't related to use, zoning district dimensional standards or lot size, including fence regulations, landscaping, screening, off-street parking and other matters that are relatively easy to bring into compliance (e.g., access or curb cut location)

B. Authority to Continue
A statement that all nonconformities are allowed to continue in accordance with applicable nonconformity regulations.

C. Determination of Nonconformity Status
Standard clause stating that the burden of establishing that a nonconformity lawfully exists is to be the owner's burden, not the city's.

D. Repairs and Maintenance
Normal repair and maintenance are allowed, even encouraged.

E. Change of Tenancy or Ownership
Does not, in and of itself, affect nonconformity status.

Section 2/ Nonconforming Uses
This section should include regulations governing nonconforming uses. The regulations should address expansion, abandonment and relocation. The city's existing approach toward nonconforming uses of open land is excellent, Better provisions should be added for other nonconforming uses. The ordinance should not allow expansion of nonconforming uses in buildings or structures beyond the limits of the original structure. Even use expansions within such structures should be limited to those for which off-street parking standards can be met, and structural modifications to permit expansions should generally be prohibited. There is considerable logic in prohibiting structural expansions to accommodate nonconforming uses in low-intensity districts, even if such expansions are to be allowed in other districts.

Section 3/ Nonconforming Structures
These provisions should include key substantive regulations governing buildings and structures that, although legally established, no longer comply with applicable zoning district dimensional standards. The ordinance should address situations in which uses are conforming but the building exceeds the height limit for the district or encroaches into a required setback area. The city should consider freely allowing remodeling and expansion of such buildings as long as there is no increase in the degree of nonconformity; in other words, if a building is too close to one lot line, it could be expanded in any other direction. In the interest of encouraging maintenance and improvements to nonconforming buildings, building expansions that do not increase the degree of nonconformity should not require any sort of approval other than a routine building permit. One of the problems with nonconforming structures, particularly in commercial areas, is that they are often allowed to deteriorate because they cannot be expanded without a variance.

Section 4/ Nonconforming Lots
This section should replace or supplement the "Existing Lots of Record" provision of §20-1502 and include express

provisions dealing with lots that are nonconforming because of lot size (area, width or depth). The provisions governing nonconforming lots containing structures should be similar to those for nonconforming structures. For lots that do not contain structures, the ordinance should generally allow reasonable use to be made of the lot, with a preference for a conforming use. If, for example, a lot is in a single-family/duplex district and a single-family residence can be placed on the lot with no nonconformity, whereas a church would create a nonconformity, then only the single-family house should be permitted.

Section 5/ Other Nonconformities
This section should contain the ordinance's regulations governing "other nonconformities." State law (K.S.A. 12-758) protects the "existing use of any building or land." It does not protect unpaved parking lots, nonconforming fencing (or lack of screening fences around salvage yards), lack of required landscaping or other nonconformities that are relatively inexpensive to cure. There is considerable reason for the ordinance to require that these and other sorts of nonconformities to be brought up to existing standards. To the maximum extent practicable on the existing property, such matters should be brought fully into conformity any time that the property owner seeks any sort of additional permit (building, sign or other) related to that property. Possible exceptions to this proposed rule would be situations where the existing lot might be too small to handle off-street parking and landscaping requirements.

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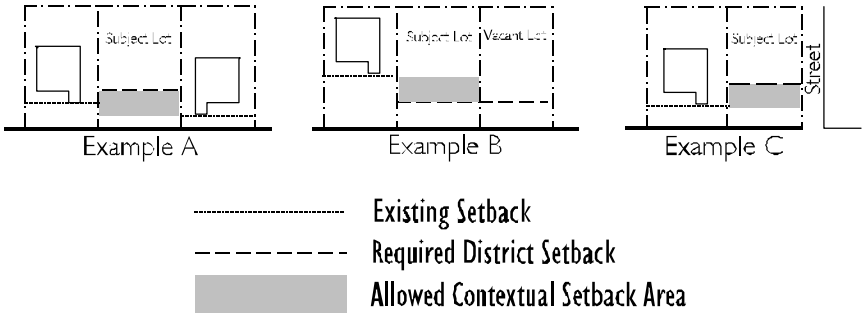
Chapter 6 | Miscellaneous Zoning Provisions

6.1 Exceptions and Modifications

The exception provisions of Article 15 address permitted exceptions to zoning district dimensional standards.

The provisions allow for use of "average" front setbacks and alternative calculations for rear and side setbacks. There does not appear to be any inherent flaw in those existing provisions, although whether they work in practice is the true test. §20-1503-05 are prime examples of provisions that could be expressed much more clearly through illustrations. The textual description of allowed exceptions is sometimes tortuous. It should also be noted that the front setback averaging provisions of §20-1503 seem fairly restrictive. Some communities have elected to allow much more widespread use of such provisions, as in the following example from Pittsburgh:

> *Regardless of the minimum front setback requirement imposed by the zoning district standards of this Code, applicants shall be allowed to use a "contextual" front setback. A"contextual" front setback may fall at any point between the (zoning district) required front setback and the front setback that exists on a lot that is adjacent and oriented to the same street as the subject lot. If the subject lot is a corner lot, the "contextual" setback may fall at any point between the (zoning district) required front setback and the front setback that exists on the lot that is adjacent and oriented to the same street as the subject lot. If lots on either side of the subject lot are vacant, the setback that "exists" on such vacant lots shall be interpreted as the minimum required front setback that applies to the vacant lot. This provision shall not be interpreted as requiring a greater front setback than imposed by the underlying zoning district, and it shall not be interpreted as allowing setbacks to be reduced to a level that results in right-of-way widths dropping below established minimums.*



The provisions of Article 15 should be supplemented with provisions describing how compliance with all zoning district dimensional, density and intensity standards will be measured.

6.2 Airspace Control

The city's airspace control regulations appear to be consistent with the aircraft and airfield zoning provisions of Kansas Statutes (K.S.A. 3-701 through 3-713). No further analysis of those provisions has been conducted as part of this study.

6.3 Floodplain Management

The city's floodplain management regulations are, in large measure, determined by federal and state requirements. For that reason, no in-depth technical analysis of the floodplain regulations has been conducted.

6.4 Definitions

The definitions article (Art. 20) could be improved by the addition of more defined terms and the elimination of substantive regulations and standards from the definitions. Greater use of illustrations would also improve the article.

6.5 Violations, Enforcement and Remedies

Land use regulations are only as effective as their enforcement. Although a great deal of zoning enforcement takes place informally and often somewhat outside the technical scope of the regulations, it is important that the adopted ordinances provide the broadest possible range of authority and enforcement options for the officials charged with those duties.

The current "violations" provision (§20-1902) is very good. It broadly defines violation, including violations of permits issued under the ordinance and conditions imposed on those permits. We generally recommend putting such a list in list form, but the substance is very good.

The enforcement language is not as good. We recommend that the ordinance set out a full range of enforcement options and make it clear that they are cumulative. The administrative enforcement remedies often used by good enforcement officers—"stop work" orders and denials of permits—ought to be expressly authorized. Further, K.S.A. §12-761(b) expressly allows enforcement by neighbors and other parties in interest, which should be incorporated into the city ordinance.

In general, field enforcement officers today prefer to use civil enforcement methods whenever possible. We find no express authority for such a remedy in the zoning and related enabling acts in Kansas, but we would like to review with the corporation counsel the question of whether there may be other authority for such techniques in Kansas.

Chapter 7 | Development Review and Approval Procedures

From an organizational and ease-of-use perspective, the existing ordinance would be improved if all of the required development review and approval procedures were consolidated into a single article. If the zoning ordinance remains a stand-alone ordinance, this would mean a single article with procedures governing:

1. Zoning Ordinance Text Amendments,
2. Zoning Map Amendments (Rezonings),
3. Planned Unit Development,
4. Uses Permitted upon Review (including temporary uses),
5. Site Plan Review,
6. Building Permits,
7. Certificates of Occupancy,
8. Variances, and
9. Appeals of Administrative Decisions

7.1 General Provisions

If all procedures are placed in one article, there are a number of generally applicable procedural provisions that can be placed at the beginning of the article, thereby avoiding the need to repeat certain provisions in each section of the article. The following types of provisions could be covered in this introductory section of a "procedures" article:

7.1.1 Authority to File Applications

The ordinance should include a clear explanation of who, generally, may file all types of applications (can be modified by specific provisions within the article's individual procedures).

7.1.2 Fee Schedules

The existing ordinance includes a fee schedule for zoning map amendment applications. The city should consider not including fee amounts in the ordinance. Instead, fee schedules could be adopted by a separate resolution of the City Commission. Doing so would allow revisions to fees from time-to-time without the need to process a formal amendment to the zoning ordinance. The ordinance itself can simply include a provision stating that an application shall not be considered complete and will not be processed until all required fees have been paid. It should be noted that many of the existing fees are very low, and are unlikely to cover the administrative costs of processing applications.

7.1.3 Form of Application

The ordinance should state that applications for development review and approval be submitted on forms provided by and in such numbers as required by the department head responsible for accepting the application. As is now the case in Lawrence, checklists of required information/submittals should be available as hand-out forms. Some sections of the existing procedures (e.g., Site Plan Approval, §20-1428) contain detailed specification for applications and required plans. We typically recommend

that the ordinance text not include detailed requirements for the format of applications nor the actual checklists of information required to be submitted with each required plan. Again, the reason for not including such detailed specifications in the ordinance is to avoid the need for processing an ordinance amendment each time there is a change to the application submittal requirements.

The provisions included in this type of section should describe the concept of a "complete" application, stating, for example, that applications will be reviewed for completeness within a certain amount of time after filing. The ordinance should clearly state that no action will be taken on incomplete applications.

7.1.4 Notices

This section should include all of the rules regarding the various types of notices that may be required under the ordinance, including the content, timing and material specifications for different types of notices. To the maximum extent possible under Kansas law, the city should attempt to use uniform notice methods and procedures for all type of actions requiring notice.

7.1.5 Public Hearings

This section should set out the general requirements for public hearings, including continuance of hearings.

7.1.6 Inaction by Review and Decision-Making Bodies

These provisions will explain the effect of inaction (ultimately or within required time-frames) by review or decision-making bodies.

7.1.7 Lapse of Approval

Lapse of approval provisions should be included for all forms of development permits and approvals. In general, such provisions should state that development approval lapses if development is not commenced or a subsequent permit is not obtained within required time-frames. Extensions (often administratively approved) should be allowed for extenuating circumstances.

7.2 Zoning Ordinance and Map Amendments

Although it is common for ordinances to combine the rules and procedures for ordinance text and zoning map amendments, consideration should be given to including separate procedures for both types of amendments. The existing procedures appear to be consistent with state law and are presented in a fairly straight-forward manner.

7.3 Planned Unit Developments

The existing PUD procedural provisions are lengthy, detailed and cumbersome, although the actual process used to approve PUDs appears to be relatively common and straight-forward. In essence, most PUDs in Lawrence must follow a 3-step approval process:

zoning map amendment to PUD district; approval of a Preliminary Development Plan; and approval of a Final Development Plan. The zoning map amendment and preliminary development plan phases require review and recommendation of the Planning Commission and final action by the City Commission. The Planning Commission is authorized to take final action on final development plans, although the Planning Commission's decision can be appealed to the City Commission.

The existing procedures could and should be reorganized and edited to be clearer and more straight-forward. Consideration should be given to requiring preapplication conferences and concept plan drawings prior to formal initiation of the PUD approval process. (See also PUD discussion in Sec. 1.6 [p. 16]) A re-evaluation of the submittal and plan content requirements should also be conducted to determine if some information now requested as part of the preliminary development plan could be deferred until final development plan stage.

7.4 Uses Permitted upon Review (including temporary uses)

Whenever the special conditions column of the zoning district use tables specifies condition "1608," the listed use must be reviewed and approved in accordance with the provisions of §20-1608. Requiring that some use application go through a special (discretionary) review and approval process before being allowed is a feature common to zoning ordinances. While Lawrence calls these "uses permitted upon review" most communities and the Kansas planning and zoning statutes refer to them as "conditional uses" or "special uses."

Although the Kansas statutes authorize the use of discretionary use approval procedures, they are silent on the required review process. In Lawrence, as in most communities, approval involves a two-step review procedure—review and recommendation by the Planning Commission and review and approval by the governing body. As a means of streamlining the development review process, the city may wish to consider revising the existing UPR process to give the Planning Commission authority to review and take action on proposed uses. Such an amendment could include a "safety valve" provision allowing the Planning Commission's decision to be appealed to the City Commission. The net effect of such a change would be to shave time off of the process for approval of some UPR uses, while still maintaining the rights of applicants and other parties aggrieved by the Planning Commission's decision to appeal decisions to the elected officials.

Regardless of the type of review procedure actually used in amending its ordinance and/or use classification/regulation system, the city should take another look at the types of uses that are subject to special review and approval. Zoning ordinances should not use discretionary review and approval procedures as a substitute for sound land use *standards*. Sometimes, discretionary use approval procedures are adopted in-lieu-of dealing rationally with an issue up-front.

7.5 Site Plan Review

In Lawrence, Site Plan Review seems to be where the "rubber meets the road." Very few development or redevelopment proposals escape the ordinance's site plan review net, which in its full form requires review and reports by staff and final decisions by the City Commission. Even so-called "minor alterations" to existing development are subject to administrative site plan review.

Site plan review is an extremely valuable tool for evaluating a proposed development's ability to comply with zoning standards and for gauging and mitigating adverse land-use impacts before they become problems. In theory, site plans are required so that applicants can demonstrate how a development will comply with applicable development standards.

There are two major shortcomings of the Lawrence approach to site plan review. The first is that City Commission is given final approval authority over most site plans. Except in the case of discretionary use approvals (UPR) site plan review should be largely a technical exercise, carried out by trained personnel. The appropriate time for "discretionary" review is during the rezoning, PUD and or UPR approval process, not during site plan review. Requiring that site plans go the governing body for review and approval suggests to developers and any persons opposed to an application that action will be taken on the basis of some factor other than whether the proposed plan complies will all applicable ordinance requirements. That is not and should not be the case. Besides bringing the city's site plan review process up-to-date, revising the review procedure will streamline the process for all concerned.

The other major shortcoming of the city's existing approach to site plan review is that the site plan *procedures* section has become the home of many of the development *standards* themselves. Take for example the applicability provisions of §20-1429. For the most part, the many comments we received about the city's site plan requirements dealt not with having to go through the site plan *process,* but rather about the city's perceived low thresholds for bringing existing projects into compliance with "new" development standards.

The thresholds for bringing projects into compliance with regulations (such as those dealing with sidewalks and landscaping) are really located in the applicability provisions of the site plan section. As a result, the ordinance does not make enough use of variable thresholds which might, for example, establish different thresholds for when sidewalks need to be installed, when interior parking lot landscaping must be provided or when perimeter landscape buffer are required. It must be noted here, too, that the existing definition of "significant alteration" (which establishes the primary threshold for bringing redevelopment projects into compliance with existing standards) establishes a very low threshold. The *theoretical* benefit of such a low threshold is that community-wide development standards will be brought up-to-date more quickly. The downside is that the expense associated with bringing development standards up-to-date may serve to stifle

redevelopment.

7.6 Variances and Appeals of Administrative Decisions

As is often the case in older ordinances, the procedural requirements for processing and approval of zoning variances and appeals of administrative decisions are buried in the Board of Zoning Appeals article (Article 17). In revising the ordinance it would be wise to include a separate article dealing with the roles, responsibilities and rules of all actors in the city's development review and decision-making process. Such an article can help clarify the role of various review and decision-making bodies and serve as a convenient place-holder for general administrative rules for groups like the Board of Zoning Appeals, Planning Commission, and other advisory boards.

Separate procedures should be included for variances and appeals. The existing provisions are somewhat difficult to use because the intermingling of variance and appeal provisions.

The provisions of §20-1709.3–in fact all of the ordinance provisions pertaining to conditions that may be imposed on development–should be revised to better ensure that conditions imposed are roughly proportional to the projected impacts of the development. See Chapter 8 (p. 49) for a discussion of the U.S. Supreme Court's "rough proportionality" test.

The provisions of §20-1708 authorize the Board of Zoning Adjustment to grant "exceptions" to certain ordinance standards when the ordinance provisions expressly allow such exception. A review of the ordinance indicates that only one such exception is expressly allowed: the ability to modify setbacks applicable to major recreation vehicles (§20-1421). If the city wishes to authorize exceptions, an "Exceptions" procedure should be added to the procedures article of the ordinance.

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Chapter 8 | Financing of Public Improvements

Resolution No. 5614 appears to address three separate sets of issues:

(1) Terms and conditions under which the city will improve a benefit assessment district, either for a new development or for an existing neighborhood;

(2) Some hints at concurrency requirements. For example, Section 10 appears to provide a basis for requiring developers to pay for line extensions within the city, although it is not clear whether a developer has the alternative option of obtaining water service from another source.

(3) A rational basis for some exactions, such as the allocation of costs of line extensions and the collection of fees for new traffic signals.

This policy is a good first step. As indicated in Chapter 12.23 (p. 81), however, the city should consider a more comprehensive treatment of adequate public facility/concurrency standards—at least for the essential public facilities (i.e., water, sewer, roads and stormwater management).

The new ordinance should provide clear authority for denial of development approval for any project for which there is an obvious and significant deficiency in public facilities—in other words, situations where someone is proposing apartments and the nearest sewer line is a mile away or someone is proposing a big box store and parking lot in an area where the surface drainage facilities are completely overloaded.

8.1 Legal Context for Development Exactions

The most important recent legal development regarding exactions is the decision of the U.S. Supreme Court in *Dolan v. City of Tigard,* 114 S. Ct. 2309 (1994). In that case, the Court held that Tigard, Oregon's, requirement that Florence Dolan dedicate land to the city for use as a floodway, a greenway and a bike path amounted to an unconstitutional taking of her land. The case arose when Dolan applied for a building permit to expand an existing hardware and plumbing supply store from 9,000 square feet to 17,000 square feet and to pave a 39-car parking lot. The project conformed with existing zoning, but the city imposed the exactions as conditions on the issuance of a building permit.

This was the first exactions case to be decided by the Court since *Nollan v. California Coastal Commission,* 483 U.S. 825 (1987). The Nollans wanted to demolish an existing single-family dwelling and replace it with another, larger single-family dwelling on valuable beachfront property. Their proposal conformed with local zoning and subdivision regulations, but it also required approval under the state's coastal zone regulatory program. The Coastal Commission was willing to approve the building permit, but it conditioned issuance of the permit on the dedication of a trail across the Nollans' beach, connecting into a larger trail system. In that case, the U.S. Supreme Court created the "rational nexus" test, suggesting that there was in fact no "rational nexus," or reasonable connection between the proposal to replace one house with another and the need for

additional trails in the area.

In *Dolan,* the Supreme Court expanded upon the rational nexus test, adding to it a requirement that there be a "rough proportionality" between the impact of a proposed development and the burden of the exaction imposed on it. In *Dolan,* there clearly was a rational nexus—the expansion of a commercial enterprise is bound to lead to some increase in runoff and some increase in traffic, including bicycle and pedestrian traffic. Thus, Tigard satisfied the basic requirement of the Nollan test. The Supreme Court sought more. In a published article on the case, the author of this section referred to the Tigard case as one that seized the middle ground. He explained that rationale as follows:

> For more than three decades, there has been a split of authority among the state courts on the rule applicable to exactions.
>
> ****
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> In *Dolan v. City of Tigard,* the U.S. Supreme Court came down squarely in the middle. It expressly rejected the narrow Illinois rule ("We do not think the Federal Constitution requires such exacting scrutiny," Slip Opinion at 15), but it also rejected the other extreme by holding that, "the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development" (at 16). Justice Stevens argued in dissent that because the bike path "'could' offset some of the increase traffic flow that the larger store will generate," the dedication is valid. As Michael Berger suggested humorously in this space in February ("*Nollan* meets *Dolan* rolling down the bike path,"), the proposition that a bike path serves as a useful form of transportation to a plumbing supply store is as much obvious nonsense as the California court's assertion that Ayres' small subdivision required the widening of a road serving a large part of the Los Angeles metropolitan area. From E. Kelly, "Supreme Court Strikes Middle Ground on Exactions Test," in 47 *Land Use Law & Zoning Digest,* 7:6 (July 1994).

Tigard's goal in seeking trail dedication was to develop a trail network as part of its transportation system. That is a perfectly reasonable public goal. The problem was not with the goal. The problem was with its implementation. Tigard did not seek an impact fee. It wanted land. The amount of land it wanted had nothing to do with the probable trail usage of customers of the hardware store. It was not even based on the probable traffic generation of customers of the hardware store. That might have provided a reasonable basis for dedication, if the town had argued that it had a public policy of encouraging at least XX percent of all trips to be by bicycle or foot and that some bicycle and foot traffic would thus be imputed to every traffic generator. That is not what the Town did, however—at least not initially. What it did was to map its trails. The Dolans' hardware store lay along a mapped trail. The city needed the land to link up the trail. The amount of land and the route of the land that the city sought in the dedication was based on the trail

routing and design, not on traffic impact.

Tigard's city staff ultimately computed some traffic generation figures for the hardware store and even argued that some trips might be by bicycle. The argument failed, as it should have. All of that figuring was spurious. There is every indication that the city would have sought precisely the same exaction for the trail if the hardware store expansion had been 1/10 the proposed size or twice the proposed size. The city wanted that land, because it provided a key link in the trail—regardless of the extent of the impact of the proposed development.

The Supreme Court has not invalidated all forms of exactions. In Dolan, it simply clarified its earlier holding in Nollan, adding to it a requirement that exactions should bear a "rough proportionality" between the exaction and the impact of the proposed development. The Court suggested that the calculation of proportionality should be based on an "individualized determination." That is exactly what an impact fee system does. An impact fee system takes the individualized facts of a proposed development and computes the estimated traffic impact of that development (an individualized determination) and then bases the fee on that computation (giving us something that we hope is actually better than a "rough" proportionality). Although critics of the Dolan decision have argued that it can be interpreted as requiring a complete impact study of every development, there is nothing in the Court's language to indicate that. In fact, given the anti-regulatory bias of some members of the Court, it seems likely that they would find the simplicity of an impact fee system far preferable to a regulation that required complex impact assessments of every project.

The city should consider replacing much of its public improvement financing ordinance with a combination of clear concurrency standards and impact-based exactions policies that will withstand the Supreme Court's "rough proportionality" test. That would leave the basic provisions on the establishment of benefit assessment districts in a separate ordinance, which is entirely appropriate.

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Chapter 9 | Regulation of Adult Businesses

9.1 Sexually-Oriented Businesses

Article 3 of Chapter 6 of the Lawrence Code regulates sexually-oriented businesses involving live entertainment through licensing. The ordinance is thoroughly defensible and very practical. Licensing is clearly the best approach to regulating businesses involving live entertainment, because the problems that can arise with those businesses are operating problems, not land-use ones. The city has established clear standards for the issuance of licenses and has set a very tight time limit on the review of the license; both are important provisions to ensure the defensibility of the ordinance. There are also clear standards for the operation of the business and clear standards for the suspension and revocation of licenses.

It is a very good ordinance which needs little attention. It would be improved with two changes, one technical and one somewhat substantive. First, section 6-313 of the ordinance, regarding the posting and display of licenses, be amended to require posting of licenses only for the establishment and the manager on duty (or all managers) but to require only that the licenses of entertainers and servers be maintained on the premises and be made available to city inspectors or police on request. Better adult businesses try to protect their employees, many of whom perform (and serve) under assumed names; it is not in the best interest of the businesses, the employees or the city to make the real names and addresses of entertainers and servers readily available to patrons.

Second, the city should consider an amendment to §6-311 to prohibit presentation of sexually-oriented entertainment in a space smaller than 150 square feet (or a larger number, based on the typical venues used there now). Businesses in other communities, including one quite nearby, sometimes offer live entertainment for individual patrons in very small, glass-enclosed venues; those are a very different and somewhat troubling land use and one which other communities have prohibited. It is easier to prohibit such a business before it starts than to deal with an existing establishment.

The live entertainment part of the sex business is one best addressed through licensing, but there are other types of sexually oriented businesses and identifiable distinctions between sexually-oriented businesses and businesses that simply carry some arguably sexually-oriented material. The current Lawrence zoning ordinance does not appear to make any distinction between a "XXX" bookstore that offers only (or primarily) sexually-oriented material and a major bookstore that simply happens to have some adult material; or among a "XXX" video store that offers only (or primarily) sexually-oriented material, a mainline video store with a "back room" containing sexually-oriented material; and a mainline video store that happens to have some movies, like Last Tango in Paris, that include scenes with sexually oriented content. Those are important distinctions.

Chapter 17 of Zoning and Land Use Controls (New York: Matthew Bender, 1998), of which

project team member Eric Damian Kelly is General Editor, suggests the following land-use categories for sexually-oriented businesses:

(1) Bookstore, newsstand, video store or combination. Generally, establishments where less than half the business focuses on sexually-oriented materials. There should also be a second category, where sexually-oriented materials account for more than 10 percent of the business but less than half, requiring that, for such businesses, the sexually-oriented materials must be kept in a separate room in which only persons 21 years or older may gain access. Note that the "more than 10 percent" approach would avoid placing the burden of separation on truly general book and video stores that may happen to have some inventory that meets the definition of "sexually-oriented" (stores like Blockbuster Video or Barnes & Noble Books), but it would require that establishments which have large inventories of sexually-oriented material, keep that material separate and away from general public view as they do now.

(2) Sex shop. This term should apply to any establishment meeting any of the following criteria:

- offering for sale or rent items from any 2 of the following categories: sexually-oriented books and videos; lingerie; leather goods marketed or presented in a context to suggest their use for "bondage" or other sexual activities; or
- offering for sale sexually-oriented toys and novelties; or
- where more than fifty percent of the business involves sexually-oriented books and videos; or
- advertising or holding itself out in any forum as "XXX," "adult," "sex" or otherwise as a sexually-oriented business.

(3) Video viewing booths. Perhaps more appropriately called "peep shows," this old term suggests the archaic nature of this medium. Although often operated as an accessory to a bookstore or movie theater, this is clearly a separate, definable land use.

(4) Adult motion picture theaters. Although both involve on-premises entertainment, this is distinct from adult cabarets, both of which are currently classified as "adult entertainment" establishments in many communities; for land use purposes, establishments with live entertainment typically have a somewhat more significant impact on surrounding neighborhoods than do movie theaters. The land use principles involved are similar to those which have caused many communities to allow restaurants in some zoning districts in which they do not allow nightclubs.

(5) Adult cabaret. An establishment featuring sexually-oriented live entertainment.

(Zoning and Land Use Controls, §11.02[1][f] (1998).

This list is also a hierarchy, from the uses with the fewest secondary effects on surrounding uses to those with the most. Bookstores and video stores have no apparent effect on the surrounding neighborhood that is different from those of other retailers. Recent neighborhood surveys in Kansas City found that this principle holds true even for establishments with rather large "back rooms" containing sexually-oriented material. Most bookstores and video stores will, as a matter of course, have some items with some scenes that fit the definition of sexually-oriented material under most local ordinances; it is thus important to use a threshold of something on the order of 10 percent (which is high but reasonable) to exclude mainline book and video stores from categorization as sexually oriented businesses. For bookstores, newsstands or video stores with more than 10 percent of their inventory in sexually oriented material, it is both appropriate and desirable to impose some requirements to ensure that the sexually oriented material is kept out of the view (and the reach) of minors, usually by placement in a separate room with controlled access; most operators provide such controls as a matter of course, but it is a legitimate subject of regulation.

There is, however, a significant difference between "Jones Video Store" with Disney and Spielberg in the front room and a number of sexually oriented titles in the backroom, and the "XXX Video Store" or "Adult Books and Videos Store," even if the latter two stores have some mainline titles. Those stores have clearly moved from selling videos and books to selling sex. That is a different land use, with demonstrably different impacts on the neighborhood. It is a land use that can be perfectly appropriate in intensely commercial areas, but there will undoubtedly be locations (particularly in neighborhood business districts) where the Jones Video Store, even with its backroom, is acceptable but the "XXX Video Store" is not. The zoning ordinance should recognize that distinction.

The sexually oriented businesses resulting in the most neighborhood complaints in detailed neighborhood surveys in Kansas City were what have been defined here as "sex shops" – businesses that sell a variety of sexually oriented goods, including sex toys, lingerie and sexually oriented media. These uses are simply not appropriate in areas subject to significant pedestrian traffic, because of the exposure to young people. They are best located in highway business or similar auto-oriented commercial zoning districts, with significant separation from residences, religious institutions and educational institutions serving minors.

Note that from a First Amendment perspective, the liberal treatment of bookstores and video stores—including those with large quantities of sexually oriented material in a back room—helps to justify significant restrictions on sex shops. It is the videos, books and magazines that are entitled to protection under the First Amendment, not the stores themselves; if those materials are readily available in a variety of other venues, there is less need for sex shops.

Video viewing booths, sometimes called "peep shows" or "panorams," are particularly troublesome uses. These are typically closed booths which a patron can enter and view videos in privacy, either by pre-paying for a video at a central desk or by inserting coins or bills into a machine in the booth. Called "masturbation booths" in at least one court decision, a recent Kansas City study found these uses to be totally undesirable. Although there may once have been an argument that they provided an important venue for the private consumption of certain types of videos and thus were entitled to some Constitutional protection, in the day of almost universal ownership of VCRs and wide availability of rental videos of all type, they appear to be an anachronism and one that can and should be clearly banned under zoning.

Sexually oriented motion picture theaters, on the other hand, do have Constitutional protection, but it is not without limits. It is thus important to distinguish sexually oriented theaters from the other types of theaters now allowed in Lawrence.

Finally, although Lawrence has adopted an appropriate regulatory approach to live entertainment establishments that are sexually oriented, such establishments also represent a distinct type of land use and one that ought to be addressed in the zoning ordinance.

All of these uses other than mainline bookstores, newsstands and video stores, can be made subject to "special conditions" such as those now set out in Article 14 of the zoning ordinance. The most important special conditions typically imposed on such establishments include: appropriate separation from residential zones, religious institutions and educational institutions serving minors; separation between such establishments; limitation on the number of such establishments that can be placed at one location; and special limits on signage, site orientation and window displays, similar to those now contained in the Lawrence licensing ordinance.

These recommendations regarding provisions for the regulation of sexually oriented businesses are simply suggestive of the concepts that can be applied to such businesses in a zoning ordinance. The new land development ordinance should include comprehensive treatment of this important subject, based on these concepts but filling in many details.

9.2 Drinking Establishments

The city's ordinance regulating the hours of operation of nonconforming drinking establishments is an excellent ordinance with a clear public purpose. It directly addresses one of the principal concerns that residents often express about bars and taverns in and near residential areas. It reflects the kind of approach that we often suggest for intrusive nonconforming uses—regulation that allows the use to continue to the extent required by law but that requires mitigation of the worst effects of the nonconformity.

The ordinance appears to be well within the authority of the city under Kansas law and an excellent approach to this subject. This coordinates nicely with the current zoning ordinance and will continue to work effectively under a new zoning or land development ordinance.

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Chapter 10 | Sign Regulations

10.1 Constitutional Principles

Chapter 11 of Zoning and Land Use Controls (New York: Matthew Bender, 1998), of which project team member Eric Damian Kelly is General Editor, summarizes the constitutional principles applicable to sign regulation. Those principles provide the basis for the recommendations here. They are:

(1) A distinction between off-site and on-site signs which permits on-site signs and prohibits off-site signs may be constitutionally permissible but is defensible only if containing a "savings clause" to protect noncommercial messages;

(2) Commercial speech involved in advertising is a form of constitutionally protected speech, albeit deserving of less protection than non-commercial speech;

(3) Constitutionally protected speech may be curtailed by sign regulations in order to implement or further the governmental interest in aesthetics or traffic safety;

(4) Sign restrictions must reach "no further than necessary to accomplish the given objective," and courts will closely examine the "fit" between government's goals and the means chosen to achieve those goals;

(5) Commercial speech may never be treated more favorably than non-commercial speech;

(6) Although the government may ban some commercial messages while allowing others, it must generally maintain neutrality in regulating non-commercial speech; and

(7) Government may not ban residential signs that carry political, religious and personal messages. Zoning and Land Use Controls, §17.03 (1998).

10.2 Content Neutral Regulations

In general, the most straight-forward method for bringing a sign ordinance well within the protection established by the U.S. Supreme Court is to eliminate as many content-based distinctions as possible. To the extent that references to content remain, it is essential to ensure that the content-based differences are based on some valid public purpose rather than on the special interest of a particular group. For example, the city has an interest in ensuring that neighborhoods remain fully occupied, even when current residents want to move; thus, there is clearly a public interest in allowing "for sale" and "for rent" signs even where other commercial signs are not allowed.

The regulation of political signs in Lawrence can be improved, to ensure that a political sign in a particular location is treated at least as well as any other sign in the same location. In that context, both the timing and size requirements related to political signs should be reviewed. Note that at this time the "development" [construction] sign allowed on an individual residential lot is currently the largest sign allowed in residential areas (32 or 64 square feet, depending on lot size; see §5-741(C)); the case law would suggest that this maximum size also defines the maximum size that ought to be applied to political signs. By reducing the size of these signs, however, to the same size as real estate signs in the same zones, the city could, if it wished, also reduce the permitted size of political signs in residential areas to that same 8 square feet; on the other hand, the city could, if it preferred, limit real estate and construction signs to 8 square feet but continue to allow political signs of 16 square feet.

The development sign for the entire subdivision (see §5-741(B)) does not pose the same problems as the ones on individual lots. Although it should be clarified in the "purpose" statement of the ordinance, or in a separate purpose section for the section there is a "public purpose" argument that can be made in favor of identifying an entire new area open for development; in contrast, the signs on individual lots serve no apparent purpose other than advertising the professional and commercial enterprises listed on them.

The city should consider the adoption of some standards for §5-705(G) (permitting "signs of community interest which are approved by the City Commission"). Despite the best intentions of a governing body, any time that a political entity reviews in advance communications that are protected by the First Amendment, with the ability to deny or limit the use of that particular communication, it raises concerns about perceptions of censorship. It would be desirable to set criteria for these signs or to list the specific events for which they are typically allowed. Allowing them for non-commercial, non-political events (county fair, championship football game, 4th of July parade) creates no problems at all. If such signs are permitted for any commercial or political purposes, however, the city could, under some scenarios, be required to make this form of communication available to any political group that requested it. By establishing clear standards, defining "community interest" the city can avoid this risk. In that context, §5-722 ("banners across Massachusetts Street) is better, although the standards in it could be made somewhat clearer.

The City of San Diego encountered problems in the U.S. Supreme Court with the distinction between "advertising sign" (off-premises) and "business sign" (on-premises)..

As noted above, it may be defensible, but the distinction must be based on established public policy related to the purposes of the regulations. The most common "off-premises" sign is a billboard, and the objection that most people have to billboards is that they tend to be large and obtrusive. Another way to approach these troublesome signs, and one that does not raise any constitutional concerns, is simply to limit the size of signs. By using a circuit-breaker concept based on the size of the building located on the property, it is possible to allow much larger signs on occupied business properties than on the vacant parcels where billboards traditionally have been placed.

10.3 Technical Recommendations

Some technical recommendations that would improve the sign ordinance include:

(1) Clarifying the provisions regarding "work of art," which are well-intentioned but currently confusing (see definition in §5-702(Z);

(2) Moving the fees (§5-704) to a resolution that can be updated periodically without an ordinance amendment. In general, these fees seem somewhat low for handling the processing and inspection costs involved in regulation and there may be a basis for some reasonable increases in them;

(3) Change many of the exemptions (§5-705) to a category of signs allowed without a permit. Although the approach now used in Lawrence is fairly common, it is somewhat incongruous to say, on the one hand, that a particular type of sign is "exempt" from regulation and then to specify size and placement standards for such a sign. It is clearer to make them regulated signs that are allowed with no processing and no fees;

(4) Some of the exemptions, such as state and municipal signs, should remain in an "exempt from regulation" category;

(5) There should be a parallel section on prohibited signs, pulling together provisions which are currently scattered throughout the ordinance;

(6) The administrative and enforcement provisions (including, in part, §§5-708, 5-709, 5-710, and 5-713) should be expanded and improved. Specifically:

- The maintenance provisions should be expanded and integrated with the"unsafe" provisions of §5-713. These also should be coordinated with the provisions of §5-723 dealing with "nuisance abatement;"

- The distinction between "rebuilding" under §5-708 and "maintenance" under §5-709 should be clarified, so that §5-708 does not provide an unintentional disincentive for maintenance of older signs;

- There should be express provisions requiring nonconforming signs to be brought into conformance at any time that the property owner or tenant seeks a new sign permit for any sign on the property and, subject to policy review by the city, at the time of application for a building permit on the property;

- There should be coordination between the "projecting" sign provisions of §5-722 and the "canopy" provisions of §§5-722 and 5-723, as well as those of §5-727 and the "marquee" provisions of §5-729. Many communities require proof of liability insurance before allowing any such structure to protrude over the sidewalk or public right-of-way;

- The design standards related to specific types of signs (§§5-728 through 5-734) are in many cases redundant and could be made simpler and clearer if coordinated with the general design standards in §§5-713 through 5-720;

- The ordinance would be clearer if the lighting provisions were all grouped together and kept separate from (but near) the other design provisions;

- It is not clear from §5-722 whether any projecting signs other than banners are permitted. In general, projecting signs of a reasonable scale are desirable forms of identification in a pedestrian-oriented downtown area, such as that in Lawrence;

- The "directional and informational" signs provisions of §5-726.1 could easily be merged into a section on incidental signs, which would also include signs that say "no parking," "phone," "restrooms" and "no trespassing." An easier way to address the content of these signs than the one now used in the ordinance is that they "shall contain no commercial message." In many situations, two square feet should be sufficient size for such signs, although the current standard of four square feet is quite appropriate in shopping centers and office complexes. There should be some standards for the location of such signs, rather than leaving the chief building official with complete discretion in handling them;

- The dimensional standards for particular types of signs and the enumeration of the types of signs allowed in various residential districts can be presented easily in table form, with appropriate numbered notes to refer to special conditions applicable to particular types of signs in specific circumstances;

- Sign variances (§5-745) can be troublesome because of the risk that someone may make comments on the record about the content of the sign at issue, thus raising again the issue of "censorship." The standards in the current ordinance are helpful, however, and may adequately limit that risk.

It is safe to say that there are significant opportunities to improve the city's sign ordinance,

both technically and substantively. If the city is generally satisfied with the dimensional standards applicable to most signs, it would be possible to conduct the sign ordinance update as a technical/legal process that would not affect most sign users and that would thus not be particularly politically controversial. If the city decides to take this opportunity to make significant changes in the standards in the ordinance, as well as in the ordinance itself, that process should be separated from (but coordinated with) the process of updating the land development regulations of the city. The two types of regulations have different constituency groups and it is usually desirable to keep the policy and political issues of the two separate.

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Chapter 11 | Subdivision Regulations

The existing subdivision regulations apply within the City of Lawrence and unincorporated Douglas County and consist of a fairly typical mix of procedural requirements and substantive design standards.

11.1 Subdivision Plat Approval Procedures

According to the regulations, most subdivisions are required to go through a 3-step review and approval process: (1) Preapplication Conference; (2) Preliminary Plat; and (3) Final Plat.[7]

Approval authority for preliminary and final plats rests with the Planning Commission, although the appeal provisions of §21-801 suggest that applicants can appeal Planning Commission decisions on subdivision matters to the City Commission. The city should consider revising this provision, since this type of appeal is not expressly authorized in the Kansas planning and zoning statutes. Rather, K.S.A. 12-752(b) and (c) appear to give the Planning Commission sole authority for plat approval:

> (b) *The planning commission or the joint committee shall determine if the plat conforms to the provisions of the subdivision regulations. If such determination is not made within 60 days after the first meeting of such commission or committee following the date of the submission of the plat to the secretary thereof, such plat shall be deemed to have been approved and a certificate shall be issued by the secretary of the planning commission or joint committee upon demand. If the planning commission or joint committee finds that the plat does not conform to the requirements of the subdivision regulations, the planning commission or joint committee shall notify the owner or owners of such fact. If the plat conforms to the requirements of such regulations, there shall be endorsed thereon the fact that the plat has been submitted to and approved by the planning commission or joint committee.*
>
> *(c) The governing body shall accept or refuse the dedication of land for public purposes within 30 days after the first meeting of the governing body following the date of the submission of the plat to the clerk thereof. The governing body may defer action for an additional 30 days for the purpose of allowing for modifications to comply with the requirements established by the governing body. No additional filing fees shall be assessed during that period. If the governing body defers or refuses such dedication, it shall advise the planning commission or joint committee of the reasons therefor.*

11.2 Design Standards

The subdivision design standards are a mixture of general guidelines and detailed standards. The bulk of the article is devoted to street and road design.

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[7] Some of the city's public information flyers on the subject of platting suggest that preapplication conferences are not necessarily required.

11.2.1 Street Layout

One section of the subdivision design standards that elicited a great deal of comment during interview sessions was §21-607. The regulations of that section place fairly strict limits on street layout patterns by prohibiting 4-way local intersections or other designs that facilitate use of subdivision streets by non-local traffic. Although these sorts of provisions do offer some level of traffic calming and neighborhood protection, they do so at the expense of areawide transportation levels of service. Depending on how such regulations are administered, they may also run counter to the goal of connecting different neighborhoods. Communities throughout the country are attempting to strike the appropriate balance between these competing objectives. The City may want to consider modifying the existing "prohibition" on 4-way intersections to permit use of a case-by-case review. Street and neighborhood "connectivity options" should be explored as part of the city's ordinance update.

11.2.2 Cul-de-Sacs

The cul-de-sac length standards of §21-607.2 are fairly lax for an urban area. The standards allow cul-de-sac streets to be as long as 1,000 feet, even at densities as high as 7 dwelling units per acre. A more typical maximum length is 600 feet, with longer lengths allowed only when approved by emergency service agencies.

11.3 Appeals and Variances

The term "variance" should not be used to describe allowed deviations from subdivision design and improvement standards. "Variance" is a term of art in zoning parlance and should not be confused with a waiver from or modification of subdivision standards. This semantic point will be particularly important if the city elects to pursue the idea of a unified development ordinance which consolidates zoning, subdivision and other development regulations into a single document.

The provisions dealing with modifications and waivers (§21-802) is very loose, essentially allowing the Planning Commission or City Commission to waive or modify any of the subdivision standards upon request. Although the criteria for waivers/modifications state that they may be granted only upon a showing of "undue hardship," the provisions of this section pose great potential for misuse and abuse.

As noted above, there does not appear to be any express statutory authority for governing bodies to overrule planning commissions on subdivision matters. Consideration should be given to eliminating §21-801 or revising it to give the Planning Commission authority to hear appeals of administrative interpretations on subdivision matters.

11.4 Master Concept Plans

The city should consider adopting requirements calling for submittal of a concept master plan for the entire (contiguous) landholdings of a prospective subdivider before approval is

granted for the first subdivision plat. At a minimum, the concept master plan should show the major road patterns through the development (not exact locations, but the general plan for providing access and linkages to the existing street system), master drainage plan, and plans for connections to the public sewer and water systems—all in the context of proposed land-uses consistent with the zoning of the site.

Part II: Issues Raised in Interviews

The issues raised in this part of the report, Chapter 12, are based on comments and views expressed by public officials, development community representatives and local residents during the small group interviews conducted at the outset of the project.

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Chapter 12 | Interview Findings

12.1 Organization, Format and Usability

The following comments were made regarding the organization, format and usability of existing regulations.

- Ordinance is cumbersome, difficult to use
- Regulations should be more user-friendly.
- Ordinances need to be written in "plain English"
- Documents should be better organized.
- There are many internal and inter-ordinance conflicts.
- Landscaping section is poorly located in the existing ordinance.
- City's handouts and user guides are good; need more

All of these issues are fairly easy to fix, although doing so will likely require a comprehensive organizational overhaul of the existing documents. One key decision the city should make before embarking on such an organization update, is whether to continue the practice of maintaining separate ordinances, or whether to consolidate all existing land development regulatory controls into unified ordinance document. The chief advantage of the unified ordinance approach is a greater ability to avoid conflicting and redundant regulations. Use of common definitions, unification of development review procedures and integration of other standards and procedures can help resolve some problems of interpretation and administration.

12.2 Regulatory Predictability

Several interviewees commented on the "lack of predictability" of existing regulations. The following comments are typical of those heard during the sessions:

- Too many things being done by policy.
- Ordinances have become too flexible. No longer predictable
- "Lesser changes table" is inconsistent and erroneous. It is unpredictable and creates false expectations
- Inconsistent interpretations are a problem, even among staff.

The use of policy resolutions as a means of instituting new development requirements and standards does make for a more confusing regulatory landscape than necessary. The "driveway policy," which appears to be inconsistent with some sections of the existing zoning ordinance (e.g., 20-1209[c]), is a case-in-point. Of course, even had the driveway policy been adopted as an ordinance amendment, it could have conflicted with other ordinance provisions, but at least the standard rules of construction would have provided a clear interpretation that the more recent amendment would control. In the case of "policies" that conflict with adopted ordinances, it is not as clear which "regulation" will control.

In general, the use of discretionary review processes, such as PUDs and uses permitted upon review can be cited as practices leading to less "predictability" in the development review process. It must be stated, however, that this loss of predictability comes with the supposed advantage of greater control over the type, location and character of development (See 1.6 and 7.4).

12.3 Parking

The following parking-related comments were heard during the interview sessions:

- Vehicles parked in front yards, recreational vehicles and abandoned vehicles are problems
- Too much compact parking allowed (40%) and space size requirements are too small
- Retail parking requirements too high for big box retail
- Need better standards and guidelines for parking lot design, particularly pedestrian access within parking lots
- Bedroom-based parking requirements may be necessary for duplex and higher intensity multi-family.
- Bicycle parking regulations are needed
- City's existing regulations require that parking on adjacent site must be under the same ownership. This causes problems.

Few modern ordinances allow as widespread use of compact spaces as the Lawrence ordinance, except in instances where the compact spaces are reserved for low-turnover uses, such as employee parking areas. The stall size requirements, too, appear very small.

A review of the city's existing off-street requirements reveals that the standards for how many parking spaces are to be provided are generally within the range seen in other communities. Beyond such relative comparisons, it is impossible to judge the adequacy of the city's existing numerical requirements, since local parking generation characteristics are not known. It should be noted however, that it is not uncommon for retail parking ratios to be reduced as the size of the use increases.

The idea of bedroom-based parking standards for duplex and multi-family uses arose from a discussion of how to deal with student and other rental housing in residential neighborhoods. Some communities have successfully used bedroom-based parking ratios as a means of better controlling parking impacts within residential neighborhoods. The downside of such an approach is that it is more difficult to administer and track over time.

The zoning ordinance requirement that remote (a.k.a., "off-site") parking areas be under the same ownership as the use served by such spaces means that off-site parking is not an option for many users. Consideration should be given to relaxing this standard, allowing use of irrevocable, long-term lease agreements.

12.4 Planned Unit Developments

Many people with whom we spoke expressed the view that PUDs are overused in Lawrence. Some suggested that this over-reliance on discretionary review mechanisms has allowed the city to shrink from its "responsibility" to carry out land use planning in advance of development. Real estate and development interests pointed out that the practice of not zoning land in advance sometimes complicates the process of marketing land to out-of-town interests who are not familiar with Lawrence-style zoning. Nearly everyone lamented the lack of predictability that results when PUDs and other discretionary approvals are used extensively. Paraphrased comments from interviewees follow:

- Planned unit developments section of ordinance doesn't work well
- Some city policies encourage PUD's, but the process and the outcomes are not always desirable
- Commercial PUDs are used primarily as a conditional zoning tool
- Residential PUDs are used as an end run around density restrictions
- Forcing everything into planned unit development results in bogus site plans
- Planned unit developments are being used to permit only one or two uses on a site (use specific)
- Tracking planned unit development restrictions is difficult. There is no central filing system for planned developments. People keep their own files.
- City over-relies on planned unit developments
- Not enough straight zoning; these is an over-reliance on planned unit developments

See the discussion of planned unit developments in Sec. 1.6.

12.5 Development Review Process

The "development review process" was the topic receiving the greatest number of comments.

- The definition of "significant alteration" has caused much controversy. The 10% rule is catching lots of things, has caused much controversy and has been criticized as being anti-small-business and anti-redevelopment.
- There are 46 boards and commissions with over 500 people.
- Need to move to 2-step site plan process: preliminary/general and then construction/engineering.
- Some site plans are inadequate; qualifications criteria should be established for site plan preparers.
- Once submitted, site plans don't die (this is a different issue than expiration of approved site plan)
- UPRs–used to be called SUPs–can they ever expire?
- Time frames for development approval, used to be 90 to 120 days; now it takes 12, 18 or 24 months.
- Illogical timing of development approvals sometimes results in developers getting hit up for the same thing 2 or 3 times per project review.
- Ad hoc conditions are often imposed
- Too much detail required at the preliminary plat stage.
- Sometimes poor coordination among reviewers

- Need development expediters.
- Should require fewer notices, fewer public hearings and fewer discretionary actions
- Very detailed storm water plans are being required too early in the development process
- Grading plans are being required too early in the process.
- Developers have to knock on every department's doors themselves.
- Should allow people to submit plats (preliminary and final) concurrently
- Plats come back before meeting with conditions of approval, but are slated for consent agenda. Developers are then faced with the decision of whether to accept the conditions and stay on the consent agenda or pull the item from the consent agenda and take their chances at the hearing.

The zoning ordinance's definition of "significant alteration"[8] (which establishes the primary threshold for bringing redevelopment projects into compliance with existing standards) represents a very low threshold. Presumably, this threshold was chosen as a means of bringing older developments up-to-date more quickly, since whenever virtually any modification is made owners will be forced to bring their project into compliance with current standards. As the community has experienced, however, there are disadvantages to this approach. For one, the Board of Zoning Appeals is forced to hear many requests for variances to the site plan compliance threshold. Second, there is also a belief among some that the expense associated with bringing development standards up-to-date may stifle redevelopment activity in the community. Finally, it should be noted that use of a construction cost: appraised value threshold may be difficult to administer, since (independent) appraised value and construction cost data are not immediately available to review personnel.

The significant alteration threshold should be re-evaluated. Consideration should be given to eliminating the cost-based component, perhaps substituting some form of land use intensity increase threshold (i.e., require compliance when a change in occupancy results in an increase in land use intensity). The 10-percent addition threshold could be modified to establish a threshold that requires development standard compliance for additions of "×" square feet or "×" percent, whichever is greater. The intent of such revisions would be to exempt interior and exterior alterations that will result in no increase in land use intensity and to exempt very small additions to small structures. The final change that should be considered is the establishment of different thresholds for different development

[8]The zoning ordinance's definition of "significant alteration" is as follows:

(a) Development that 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;
(b) Development construction costs exceed 10 percent of the most recent appraised fair market value of the existing property as determined by the County Appraiser;
(c) The construction or paving of any parking lot or facility that 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 of Sec. 20-1217; or
(d) The alteration or intensification of any use that increases off-street parking requirements pursuant to Article 12.

standards, rather than lumping all standards together under the umbrella of "site plan review (see Site Plan Review, Sec. 7.5).

Many interviewees commented on the level of detailed planning and engineering data required for "preliminary" approvals. On the other hand, the consultant team heard many comments about the lack of accurate data on submitted plans. This report offers no specific conclusions regarding the appropriateness of the city's existing plan and plat submittal requirements. The exact nature of required submittals and the timing of such requirements is dependent on a variety of factors. This issue might best be resolved through facilitated discussions among plan reviewers, public officials and development representatives. Greater use of preapplication conferences and sketch plan reviews could also help resolve some of these issues.

The lack of "plan expiration" (A.K.A. lapse of approval) provisions for some forms of plan/permit approvals should be corrected. This will involve establishing maximum time-frames for receiving building permit approval or commencing construction. Such provisions should also address whether extensions of time may be granted for extenuating circumstances, and if so, whether notice of such extension requests is required.

Many of the comments regarding the city's development review and approval process focused on interdepartmental coordination issues and review practices (as opposed to ordinance-mandated procedures). One particularly common frustration expressed by development community representatives was a so-called "lack of coordination" among review entities and a lack of central decision-making authority in cases of conflicts among reviewers. Some interviewees suggested that there is a need for clearer lines of authority within the administrative review process. At least two persons suggested that the city should use development expediters or permit coordinators to shepard development applications through the process.[9]

12.6 Drainage/Stormwater Management

Drainage and stormwater management issues were a topic of great interest, particularly to developers. Many of the drainage-related comments could also have been categorized with the development review process comments. The following are representative:

- The new storm water management ordinance is contradicted by or in conflict with many different sections of zoning, subdivision and other ordinances
- Zoning and subdivision regulations need to better identify when drainage studies are required
- Timing of stormwater study is a big issue
- The City storm water management policy is unfair and doesn't work
- Storm water and sanitary sewer requirements are things that tend to "trip projects up"

[9] For a (California-based) discussion of permit coordinators, one-stop permit centers, on-line permit tracking and other "streamlining" measures see http://commerce.ca.gov/business/permits_assist/strmmain.html.

- Storm water management requirements are being imposed after final planning and design has been done which causes developers to have to reconfigure their project set of very late date...very expensive

12.7 Nonconformities

The following comments were received on the issue of nonconformities.

- Many nonconforming situations exist in the original town site area, including downtown.
- Most of downtown is nonconforming because of setbacks
- Need clarification on abandonment of nonconformity.
- Ordinance needs to do a better job of distinguishing among nonconforming use is, noncomplying uses, nonconforming uses of open land, etc..

Most of these issues can be easily resolved with the creation of a more comprehensive and up-to-day nonconformities ordinance section. The issue of neighborhood areas that are nonconforming is a policy issue, however. Ideally, a new ordinance would create new zoning districts that provide a better "fit" with existing development patterns, including those downtown and within the ordinal townsite area.

12.8 Sidewalks

The following comments were made regarding sidewalks:

- Need policy addressing sidewalk upgrade issue
- Criticism of six-foot sidewalks on K-10 highway
- Sidewalks are being required before building permit, which means they are being damaged during the construction process. They're also seeding lawns too early, then utility companies come in and tear lawns out

The city's ordinance requirements regarding where sidewalks are required are clear. The issue of whether existing sidewalks must be brought "up to code" when new development or redevelopment occurs is a policy issue that needs to be more clearly defined.

As an alternative to installation of sidewalks, landscaping and other site features prior to building permit, the city could use bonds or other surety mechanisms as a means of guaranteeing their ultimate installation.

12.9 Use Regulations

Most of the following use-related issues could be fairly easily resolved through the creation of an updated use classification system and revisions to the zoning ordinance's accessory and temporary use provisions.

- Use categories are overly detailed and outdated, and which causes of particular problem with parking requirements.
- Need new regulations for garage sales, sample sales

- Need new regulations for shade tree mechanics and Derby cars (unlicenced vehicles undergoing repair activity to be used in demo derby)
- Need a public facility use group and public zoning district
- Use lists are outdated.
- Need to differentiate between open land and active recreational uses.

See Chapter 2 and Chapter 3 for further discussion of use regulation issues.

12.10 Utilities

Many interviewees expressed frustration over the lack of a coordinated policy for utility placement. The following comments are indicative of those heard:

- There is a conflict between utility easements and right away. Utilities don't want to be in street right-of-way so people end up dedicating right-of-way, plus providing 10 or 15 feet for easements.
- Needed better or, more consistent policy regarding utility location. Sometimes in front; sometimes in back.
- Lack of coordination among utilities. People are getting their yards torn up 2 to 3 times by different utilities.

12.11 Zoning Districts

The following comments were made on the subject of zoning districts:

- There are too many zoning districts.
- The RD district is not just for dormitories. It's really just a high-density multifamily district. Attempts to eliminate the district have met with strong opposition from property owners.
- Problem: lack of open space zoning,
- Problem: lack of floodplain zoning
- Problem: lack of a real agricultural district.
- City needs a "holding zone" to use for newly annexed land
- Parkland is being used for overly intensive uses
- Should have zoning districts that would prohibit any change for a certain amount of years after establishment.

See Chapter 1 for a general discussion and analysis of zoning district issues.

12.12 Transportation and Traffic

Several interviewees commented on transportation and traffic issues. The following comments are typical of those heard during the sessions:

- T-intersections policy is too restrictive
- Some of the more controversial issues are access controls, intersections within developments and 4-way intersections.
- Access management regulations are addressed on an ad hoc basis. Where standards exist, they are too restrictive
- Traffic impact studies are ad hoc.
- An access study has been done for 6th street. It recommends one-quarter mile spacing between access points.

- There are weak links between the plan and ordinance when it comes to pedestrian and bicycle access issues.
- Access--what to do about waivers, like to the 30 ft. driveway throat requirement. (Tanker trucks at gas stations)
- Need a standard policy or regulation addressing in traffic impact studies (e.g., 100 peak hour trips)
- Need a driveway spacing standard
- Need regulations that prohibit backing up into the right-of-way or using the right-of-way for parking maneuvers.
- Driveway standards were adopted, but not codified. They should be
- 4-way intersection policy is a big issue
- Lack of connectivity is a problem in neighborhood areas. Don't use so many cul-de-sacs

12.13 Subdivisions

The following comments were made regarding subdivision ordinance matters:

- Most subdivisions are very small which makes dealing with issues even more difficult.
- Five acre exemption-regulation is a major problem
- County sanitary code poses an obstacle to efforts to encourage cluster and open-space developments
- Subdivision regulations are one size fits all
- Five acre exemption is the biggest problem. Should use TDR as a mitigation measure for elimination of the 5-acre exemption.
- Need to see more conservation subdivision design

12.14 Infill Development

The following infill-related comments were heard during the interview sessions:

- Need different regulations for original town site.
- Code needs to make it easier for people to develop (esp. infill)
- Some neighborhoods opposed to new infill development

12.15 Landscaping

The following comments were made regarding landscaping issues:

- Street trees-not being installed sometimes. City sometimes doesn't get bonds.
- Interior parking lot landscaping requirements are excessive
- Different interpretations of street tree planting requirements

See Sec. 4.2 for a discussion of existing landscaping provisions.

12.16 Miscellaneous

Affordable Housing	"Lots of talk about affordable housing but no real initiatives"

Definitions	Ordinance needs better definitions, particularly "plan," "plats," "plots," etc..
Enforcement	Some question about how serious the city is about enforcement
Fairness	City does not play by its own rules
Farmland Preservation	NRCS lists 54 percent of county farmland as "prime"
Farmland Preservation	Comprehensive plan does not adequately address farmland preservation.
Grading	People are not doing topographic surveys, so grading plans can be "off" fairly substantially. The city does not require grading permits. Need requirements for grading permits, based on accurate topographic surveys.
Growth	Some controversy over Plan's Urban Growth Area.
Growth	Sewer is the city's "hammer" for controlling growth on the fringe
Historic	Historic District ordinance should be in the zoning ordinance.
Home Occupations	Home occupations are problem, particularly those related to massage, salvage, construction contractors, employee dispatch offices, and caterers.
Home Occupations	Need new regulations for garage sales, sample sales, shade tree mechanics, and Derby cars (unlicenced vehicles undergoing repair activity to be used in demo derby)
Home Occupations	Should consider licensing of home occupations or registration\permits.
Intergovernmental Coordination	Improvements built to County standards sometimes cause problems when they're brought into the city.
Market Studies	City denies some use and zoning request based on market considerations (Columbia hospital and big box retail)
Market Studies	Preoccupation with protecting the market for small, local businesses.
Rental Housing	Problem: single-family conversions and number of unrelated persons living together in dwelling units
Rental Housing	Should have a rental licensing program, even on a voluntary basis
Residential	Need to address townhouse, single-family attached, zero lot line and other forms of alternative residential developments
Site Planning	The lack of building separation requirements in multifamily and nonresidential districts is a problem.
University	The university is zoned, but city doesn't have jurisdiction over most university owned land.
Variances	The Zoning board hears many variance request to the "10 percent rule"
Variances	Corner lots are a big variance item.
Variances	Interior parking lot landscaping requirements are a big variance item.
Zoning Map	Zoning along 19th Street is a problem.
Zoning Policy	City should have a proactive zoning policy. Particularly cited need for commercial in the west and northwest areas of city.

12.17 Multi-Family

Multi-family zoning and development was also a common topic of discussion. Several people expressed the opinion that there is an "over-concentration" of multi-family development in certain areas of the community. Others cited multi-family projects as being overly dense, of not having enough usable open space, of not having enough "amenities."

One interviewee pointed out that the lot coverage requirements in the RM-3 district work to prevent the construction of garage units in multi-family developments.

Many people suggested that the city needs to do a better job of "integrating" different housing types, of ensuring smoother land use transitions between areas of varying densities. At least one group cited the lack of available off-street parking spaces within multi-family developments as a serious problem.

12.18 Single-Family

Two distinctly different views were heard on the subject of single-family zoning and development. We heard, on the one hand, that existing single-family development standards are overly strict. In other meetings we heard that more stringent development standards were needed in single-family areas.

It's possible, we believe, that both viewpoints are accurate. If one listens carefully to the two sides of this issue, they both seem to be arguing for greater choice and protection. We believe that the city could use a single-family district with reduced minimum requirements *and* one with "higher" minimum standards.

One group of interviewees suggested that the Lawrence area was showing a greater acceptance of townhouse development styles and that the city should do more to encourage townhouse development,.

12.19 Trees and Landscaping

Some of those interviewed perceive of trees and landscaping as vital components of a well-designed development project. These people generally believe that Lawrence should adopt landscaping and or tree protection/planting requirements. Others expressed the view that requiring landscaping would be overly burdensome and add unnecessarily to the cost of doing business in Lawrence.

12.20 Communication

The concept of communication was an over-arching theme in a number of discussions, although it was rarely referred to in those terms. At least one individual in every group expressed that view that the city needs to do a better job of intergovernmental coordination with neighboring communities, the School Board, the Park District or the County.

At another level, the comments we received on the role of the *Policy*, if genuine, suggest a breakdown in communicating the role of the Plan to the larger community.

At least two interviewees suggested that the existing 200-foot radius for public notices was inadequate. This too can be viewed as a communication issue, as can the issue of not showing PUDs on the zoning map.

The presence of vague, confusing and conflicting provisions within the zoning ordinance is itself a matter of communication.

12.21 Economic Development/Housing Affordability

It is impossible to raise the issue of zoning and development regulations without provoking a discussion of the effect of regulations on the cost of development and housing. This was certainly true in Lawrence. We can make only anecdotal contributions to this debate and therefore offer no opinion about the role that Lawrence's development regulations have on home ownership rates.

12.22 Development Review Procedures

We heard a few complaints about the amount of time required to process applications and permit requests. Most of the critics conceded that the city was doing a fairly good job of getting things done, in light of existing resources. Other people mentioned that average processing time were very good.

A few people mentioned the idea of having additional Planning Commission meetings, at least during the construction season, an idea that sounds very logical.

The need for an administrative lot-split process was also mentioned as a needed process improvement.[10]

The checklist system now used in the development review process was criticized by staff and developers alike. It seems that the process could be greatly improved by the use of E-mail or even more standardized plan routing procedures.

The need for a less stringent process for minor plat amendments was mentioned.

12.23 Concurrency/Adequacy of Public Facilities

One of the most important factors in maintaining the quality of a community is the availability of public facilities and services in the appropriate times and places to serve new development. Historically, the planning and development process has addressed that issue only indirectly.

Zoning in many communities addresses developed uses, typically with no consideration of timing. That is, a piece of land that is planned for single-family residential development and that has services immediately available may be zoned exactly the same as another piece of land that, the community believes, should ultimately be in residential use but that currently has no services at all. Where undeveloped land remains in an agricultural zone

[10] The City apparently now allows people to sell lots [or portions of lots] that don't comply with approved plats (i.e., to sell 40-foot lots in a subdivision platted with 50-foot lots. Such a practice can and has created numerous problems, and we recommend the City take steps to halt the practice.

or some other sort of formal or informal "holding" zone, there is at least an opportunity to consider the issue of the adequacy of public facilities when the developer applies for rezoning. The Kansas supreme court has established the criteria generally followed by local governments in Kansas in reviewing rezoning proposals. *Golden v. City of Overland Park*, 224 Kan. 591, 597, 584 P.2d 130 (1978). Three of the court's criteria could certainly be used as the basis for considering the adequacy of public facilities at that stage of review:

(3) the suitability of the property for the uses to which it is restricted;

(6) the gain to the public health, safety, and welfare by the possible diminution in value of the developer's property as compared to the hardship imposed on the individual landowners;

(8) the conformance of the requested change to the city's master or comprehensive plan. 224 Kan. at 598.

The city has codified the *Golden* criteria in §20-1809 of its zoning ordinance. Thus, there is only a vague and theoretical basis for addressing this important issue in the rezoning process.

Subdivision regulations certainly address the issue of public facilities. The entire focus of subdivision review, however, is on the parcel of land being subdivided. It is unfortunately common to find a new subdivision, built to the most modern subdivision standards, connecting beautifully paved streets into a narrow, gravel access road; relying on "temporary" septic tanks for lack of sewer; and dumping stormwater into an adjacent cornfield for lack of drainage facilities in the area. Nothing in typical subdivision regulations addresses those issues. Like Article 7 of the current Lawrence subdivision regulations, those typically focus on the improvements within the subdivision itself.

The courts have been sympathetic to the consideration of the adequacy of public facilities at both the rezoning and the subdivision stage, provided that concurrency or adequacy of public facilities is an express criterion in the applicable ordinances. The courts have been far less supportive of ad hoc decisions based on problems with public facilities, where the regulations do not address the issue. See, generally, Kelly, Gen.Ed., §4.02, esp. 4.02[3]; *Zoning and Land Use Controls,* New York: Matthew Bender (1999).

Even the planning and investment functions of local governments only address this issue to a limited extent. Historically, local governments took a reactive role in providing public facilities for new development—that is, local officials allowed development to occur when and where developers wanted it to occur, and the local officials then tried to provide adequate roads, sewer, water, parks and other public facilities and services for the new development.

Today, an increasing number of local governments (a few under express mandate of state law) require findings of the adequacy of public facilities to serve a project before that project can be approved. The general term applied to such a regulatory program is "adequate public facilities" regulation.

We recommend that the city's development regulations address this issue. At a minimum, such regulations should include generalized criteria establishing the authority for the city to deny applications for rezoning, for subdivision approval and for other approvals and permits based on inadequacies of essential facilities. Ideally, the community should develop a basic set of "concurrency" or APF standards. Those go beyond mere policy statements by setting express, measurable standards to be used in determining the adequacy of such facilities. The city undoubtedly has such criteria at least implicitly in its water and sewer policies and it may have an adequate basis for defining the adequacy of drainage facilities. Developing APF standards for roads would require some study, because there is a good deal of judgment involved in determining the "capacity" of a road—the numeric capacity of a section of road can vary enormously, depending upon whether it is the local consensus that people will sit through two full light cycles at rush hour or whether it is essential for most people to find every light "green" when they reach a controlled intersection.

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