

ARTICLE 2. INTERPRETATION, CONSTRUCTION AND DEFINITIONS

100 Rules of Interpretation.

- A. Minimum Requirements. In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, morals, comfort and general welfare.
- B. Overlapping or Contradictory Regulations. Where the conditions imposed by the provisions of these regulations upon the use of land or structures are either more restrictive or less restrictive than comparable conditions imposed by any other provision of any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.
- C. Private Agreements. The provisions of these regulations are not intended to abrogate any lawful and valid easement, deed restriction, covenant or other private agreement of legal relationship; provided, that where the requirements of these regulations are more restrictive or impose higher standards or regulations than such private agreements, the requirements of these regulations shall govern. The City does not have a responsibility to enforce such private agreements.
- D. Unlawful Uses. No use of land or structure which was not lawfully existing at the time of the adoption of these regulations shall become or be made lawful solely by reason of the adoption of these regulations; and to the extent that, and in any respect that, said unlawful use or structure is in conflict with the requirements of these regulations, said use or structure remains unlawful hereunder.
- E. Not a Licensing Regulation. Nothing contained in these regulations shall be deemed to be a consent, license or permit to use any property or to locate, construct or maintain any structure or facility or to carry on any trade, industry, occupation or activity.
- F. Effect on Existing Permits. For all purposes except single-family residential developments platted and recorded after January 1, 1992, nothing in these regulations shall be deemed to require any change in plans, construction or designated use of any land or structure in the event that: (See Section 2-100G for Vesting of Development Rights.)
 - 1. A zoning permit for such use of land or structure was lawfully issued prior to the effective date of these regulations or the effective date of any amendment thereof; and
 - 2. Such permit had not by its own terms expired prior to such effective date; and
 - 3. Such permit was issued on the basis of an application showing complete plans for proposed construction and/or use; and

4. There has been a substantial change of position, substantial expenditure, substantial work performed or incurrence of substantial obligations by the permit holder in reliance on such permit other than purchase of land or preparation of design plans; and
 5. Such issuance of a permit and change of position, expenditures, work or incurrence of obligations were made prior to the effective date of an amendment of these regulations which amendments would have made illegal the issuance of such permit; and
 6. Construction pursuant to such permit is completed prior to the expiration of such permit; and
 7. When the use of land or a structure is completed under a permit to which this Section 2-100F applies, an occupancy certificate shall be issued in accordance with the zoning regulations in effect at the time the zoning permit was issued.
- G. Vesting of Development Rights. For the purpose of single-family residential developments according to K.S.A. 12-764, as amended, development rights in such land use shall vest upon recording of a final plat of such land after January 1, 1992. If construction of a principal structure is not commenced on such land within five years of recording a final plat before July 01, 2009, the development rights in such land shall expire and, thus, all revisions to zoning or subdivision regulations becoming effective during the period vested shall then apply to such platted land. For such plats recorded on or after July 01, 2009, such construction must take place within 10 years to be vested.

101 Rules of Construction.

- A. In the construction of these regulations, the provisions and rules of this Section shall be preserved and applied, except when the context clearly requires otherwise:
 1. The singular number includes the plural and the plural the singular.
 2. The present tense includes the past and future tenses and the future the present.
 3. The word "**shall**" is mandatory while the word "**may**" is permissive.
 4. The phrase "**used for**" shall include the phrases "arranged for," "designed for," "intended for," "maintained for" and "occupied for."
 5. The word "**person**" includes an individual, firm, corporation, association, partnership, trust, governmental body and agency, and all other legal entities.

6. The word "City" means the City of Cunningham, Kansas.
 7. The words "Governing Body" mean the Mayor and Council members of the City of Cunningham, Kansas which together constitute the governing body.
 8. The word "Clerk" means the City Clerk of the City of Cunningham, Kansas.
 9. The words "Planning Commission" mean the Cunningham City Planning Commission.
 10. The words "Comprehensive Plan" mean the adopted and approved Comprehensive Development Plan for the City of Cunningham, Kansas and surrounding Planning Area, which includes, among other elements, a plan for land use.
 11. The word "Board" means the Cunningham Board of Zoning Appeals.
 12. The words "zoning jurisdiction" mean the area as defined in Section 1-103 for which the jurisdiction of these regulations is applicable for zoning purposes.
 13. Unless otherwise specified, all distances shall be measured horizontally.
- B. Any word or phrase which is defined in this Article or elsewhere in these regulations shall have the meaning as so defined whenever used in these regulations, unless such definition is expressly limited in its meaning or scope.
- C. Words or terms not herein defined shall have their ordinary meaning in relation to the context as defined in a dictionary.

102 **Definitions.** The following definitions shall be used in the interpretation and construction of these regulations:

ACCESSORY DWELLING: An accessory use dwelling unit that may be constructed wholly within, or may be detached from, a principal single-family dwelling unit which shall be subject to the following standards:

1. A maximum of one accessory dwelling may be allowed on the same zoning lot as a single-family dwelling unit;
2. The appearance of an accessory dwelling shall be compatible with the principal dwelling and the character of the neighborhood;
3. The lot on which the accessory dwelling is to be located must meet the minimum lot area as required for the lot size in the relevant zoning district;
4. The off-street parking space and standards required for Section 5-101A1 must be met;

5. Separate or shared utility connections may be utilized subject to meeting all requirements of any applicable building codes for the City;
6. Temporary, prefabricated structures may be used as accessory dwellings for limited periods of time; and
7. An accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling unit and not be subdivided or sold as a condominium. A suitable deed restriction stating this restriction must be filed with the Kingman County Register of Deeds prior to issuance of any occupancy certificate for the accessory dwelling.

ACCESSORY USE OR STRUCTURE: As defined in Article 6.

ADULT CARE CENTER: A facility in which care and activities are provided on an hourly or daily basis for adults of all ages. The latter arrangement is not construed to be a "nursing home". It may also be referred to as an "adult day care" facility. Such centers are licensed under regulations established and administered by the Kansas Department of Health and Environment. (See Section 6-102C1 for adult care center limitations as home occupation.)

ADULT CARE HOME: A residential facility operated as a home occupation for not more than six adults wherein care and activities are provided on an hourly or daily basis or limited nursing care is provided on a 24-hour basis. Such homes may also be referred to as "home plus" and are licensed under regulations established and administered by the Kansas Department of Health and Environment. Standards for such definitions may be periodically amended by changes in state regulations.

AGRICULTURE: (Inside the City) The use of land for growing crops in the open, horticulture, nurseries, truck farms and accessory uses, including structures not in a designated floodplain, for carrying out agricultural operations; provided, however, such agricultural use shall not include the following uses: (See Section 3-100E4 for Exemptions.)

- a. The maintenance and operation of commercial greenhouses or hydroponic farms, except in zoning districts where permitted.
- b. Retail sales as an accessory use, unless the same are otherwise permitted by these regulations.
- c. The feeding of garbage to animals.
- d. The feeding, grazing or sheltering of domestic animals or fowl, e.g., horses, cows, swine, goats, chickens, pigeons, rabbits or fur bearing animals, but not including cats and dogs and other pets; unless such animals or fowl are otherwise permitted by City laws or regulations.
- e. The operation or maintenance of a stockyard or feedlot.

Farmhouses are considered to be single-family dwellings.

AGRICULTURE: (Outside the City) The use of a tract of land in excess of three acres under one ownership where the principle activity is to produce income from the growing of crops, horticulture, nurseries, truck farms or the raising of fish, poultry and cattle or other livestock, but not including feedlots. Such definition includes the structures which are not in a designated floodplain that are necessary for carrying on farming operations including greenhouses and, as an accessory use, the dwelling of the owner or operator of the premises including modular, manufactured or mobile homes used as the principal farm dwelling. Application may be made to the Board of Zoning Appeals for a conditional use for locating a manufactured or mobile home with such an existing dwelling for additional assistance on the farm or ranch. The retail sale of items on the property produced as part of the farming operation is permitted. Such definition shall not include lands used for recreational purposes or rural home sites whose primary purpose is for residential use and not the production of income from a farming operation. Privately owned natural wildlife habitats and reserves are also considered an agricultural use.

So long as such land, related structures and accessory dwelling(s) are used for such bona fide agricultural purposes, these regulations do not require a zoning permit or an occupancy certificate, nor do they establish any other rule or regulation contrary to the provisions of K.S.A. 12-715b. To assist the Zoning Administrator in determining if a proposed building, structure or use meets the definition of agriculture, any applicant seeking agricultural exempt status may be asked to complete a certificate of compliance. Any person aggrieved by a decision of the Zoning Administrator in interpreting the definition of agriculture may appeal to the Board of Zoning Appeals for a determination. Surrounding nonagricultural landowners should be aware that Kansas is a "right-to-farm" state under K.S.A. 2-3201, et seq. which limits nuisance suits and injunctions if an agricultural activity is being conducted in conformity with federal, state and local laws. (See definition for FEEDLOT, Section 3-100E4 for Exemptions to agricultural purposes and Section 3-103N6 for accessory dwelling(s) to agricultural land as a conditional use.)

AIRCRAFT: Any contrivance now known or hereafter invented for use in or designed for navigation of or flight in the air.

AIRPORT: (including Landing Strip, Heliport or Helistop.) Any premises which are used or intended for use, for the landing and take-off of aircraft; and any appurtenant areas which are used, or intended for use, for airport buildings or other airport structures or right of way together with all airport buildings and structures located thereon.

ALLEY: A minor public right of way along the side of or in the rear of lots intended to provide a secondary means of access to abutting lots and to and from streets.

ALTERATION: See STRUCTURAL ALTERATION.

AMUSEMENT CENTER: An indoor commercial establishment which contains amusement devices for public use as the principal activity of the business operating the center, but, in any event, places which operate six or more of the devices. Amusement devices shall include computer video games, pinball machines, pool or billiard and other table games. Such definition is not intended to include recreational uses such as bowling, skating rinks or miniature golf, but may include indoor ranges for archery and shooting firearms.

ANIMAL HOSPITAL OR CLINIC: An establishment where animals are admitted principally for examination, treatment, board or care, by a doctor of Veterinary Medicine. This does not include open kennels or runs, unless specifically permitted by the district regulations.

APARTMENT: See DWELLING, MULTIPLE-FAMILY.

APPEAL: See Section 10-106 for description.

ASSISTED LIVING FACILITY: Dwelling units used by older persons, persons with disabilities or other persons needing or desiring assistance with day-to-day living matters, but not including nursing homes, hospitals or convalescent care facilities. Typical uses include retirement communities in which housekeeping services, common dining facilities and recreational and social activities are offered to residents.

AUTOMOBILE SERVICE STATION: A structure and surrounding land used for the storage and sale of petroleum fuel, including self-service, primarily to passenger vehicles and for accessory uses such as the sale of lubricants, accessories or supplies, the incidental washing of motor vehicles and the performing of minor repairs, but not including tire recapping, body repairs or major overhaul. Such use does not include open sales lots for new or used vehicles or provide for rental vehicles or equipment, unless specifically permitted by the district regulations.

AWNING: A roof-like cover that is temporary in nature which projects from the wall of a building and which may overhang a public sidewalk area.

BASEMENT: That portion of a building located wholly or partially underground, but having more than one-half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

BED AND BREAKFAST HOME OR INN: A dwelling where for compensation one or more rooms are available for lodging and breakfast served to lodgers only. When conducted as a home occupation, such facilities are designated as "homes." When designated as an "inn," such facilities may be operated as a home occupation or as a business enterprise. When specifically permitted, meals for a limited number of customers may be operated in conjunction with bed and breakfast inns.

BLOCK: A tract of land bounded by streets or by a combination of streets, public parks, cemeteries, railroad rights-of-way, waterways, city limits or other property lines.

BOARDING OR ROOMING HOUSE: A building other than a hotel where, for compensation and by prearrangement for definite periods, lodging only or with meals are provided for six or more boarders and/or roomers exclusive of the occupant's family. Individual cooking facilities are not provided. (See FAMILY.)

BUILDING: Any covered structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, horticultural products or chattels. Interconnected buildings shall be considered as one building.

BULK REGULATIONS: Regulations controlling the size of structures and the relationships of structures and uses to each other and to open areas and lot lines. Bulk regulations include regulations controlling: (1) maximum height, (2) maximum lot coverage, and (3) minimum size of yards and setbacks. (See Section 3-103G for utility and communication facilities exemption.)

BUSINESS AND PROFESSIONAL OFFICE: The office of an architect, attorney, dentist, doctor, engineer, landscape architect, real estate or insurance agent or other similar professional person, and any office used primarily for accounting, correspondence, research, editing or administration.

CAMPGROUND: Any parcel of ground which provides space for transient occupancy and is used or intended to be used for the parking of one or more camping trailers, tents or similar recreational vehicles. No camper shall occupy a campground for a period exceeding 30 consecutive days. The term campground does not include sales lots on which unoccupied camping trailers, whether new or used, are parked for the purpose of storage, inspection or sale.

CANOPY: Any structure, movable or stationary, open on three sides without supporting posts, which is attached to and projects from a wall of a building for the purpose of sheltering a drive-up facility, platform, stoop, entranceway or sidewalk from the elements including a motor vehicle; or an independent roof-like structure supported by posts with no sidewalls for the purpose of sheltering a gasoline service area or drive-in facility. In any event, a canopy for sheltering of motor vehicles is for temporary parking and unloading only and not a permanent parking or storage space. (See Section 3-103F1 for Permitted Obstructions.)

CAPACITY IN PERSONS: The maximum number of persons that can avail themselves of the services or goods of an establishment, at any one time, with reasonable comfort.

CARPORT: A structure for shelter and temporary or permanent parking space for motor vehicles and recreational vehicles either attached to a building or independent thereof which is enclosed on at least one side. Such carports are not permitted obstructions under Section 3-103F1. (See CANOPY.)

CAR WASH: An establishment having facilities designed or used exclusively for washing or cleaning motor vehicles.

CHILD CARE FACILITIES: Definitions for facilities which provide care for children are established by state law and promulgated by regulations of the Kansas Department of Health and Environment. Standards for such definitions may be periodically amended by changes to state regulations and are automatically incorporated herein. The following facilities are licensed or registered by the department:

1. **Group Boarding Home:** A non-secure facility providing 24-hour residential care for not less than five nor more than 10 persons unrelated to the caregivers. Emergency shelter and maternity care may be provided.
2. **Child Care Center:** A facility in which care and educational activities for 13 or more children two weeks to 16 years of age are provided for more than three, but less than 24 hours per day, including before and after school care for school age children.
3. **Preschool:** A facility such as a "nursery school" providing learning experiences for children of less than kindergarten age, but who are 30 months or older, where sessions do not exceed three hours per day.
4. **Day Care Home:** A home or facility in which care is provided for a maximum of 10 children under 16 years of age.
5. **Group Day Care Home:** Similar to day care homes except that care is provided to a maximum of 12 children under 16 years of age.
6. **Family Day Care Home:** A home in which care is provided for less than 24 hours per day for a maximum of six children who are less than 16 years of age, but of whom not more than three children are less than 18 months.

(See Section 6-100B11 for child care facilities for employees and Sections 6-102C and D for home occupations permitted and prohibited.)

CLUB: An organization licensed as a Class A or B club for the purpose of consuming alcoholic beverages either for or not for profit under K.S.A. 41-2601, et seq., as amended. (See FRATERNAL OR SERVICE CLUB and TAVERN AND DRINKING ESTABLISHMENT.)

CONDITIONAL USE: The use of a structure or land that is not permitted outright within any zoning district, but when specifically authorized and listed in these regulations as a conditional use such use may be granted as an "exception" by the Board of Zoning Appeals. Conditions may be attached to the approval of such uses by the Board so that they may be more compatible to the particular location within a district. (See Section 10-108 for Conditional Uses.)

CONDOMINIUM: A structure and related common areas and facilities designed to meet the provisions of the Apartment Ownership Act cited in K.S.A. 58-3101 et seq. which governs the ownership, management, taxation, contents of the declaration and other matters related to the sale and operation of such structures and the independent units therein. Independent condominium units, as defined in the Act, may be used for residential, office, business, industrial and other uses as permitted by the respective zoning districts. The contents of the declaration as required by K.S.A. 58-3111 shall also include a provision for the City to carry out the obligation to maintain the common areas and facilities in order to avoid having them become a public nuisance. In the event such common areas and facilities are all or portions of declared to be a public nuisance by the Governing Body and such responsibilities are assumed by the City, the costs for such maintenance shall be assessed against the condominium units and shall become a tax lien thereon. The Zoning Administrator must be satisfied that such a provision is included in the declaration before an occupancy certificate will be approved.

DENSITY: Restrictions on the number of dwelling units that may be constructed per acre or per square feet of a zoning lot area.

DEVELOPER: The legal or beneficial owner or owners of all of the land proposed to be included in a planned development or the duly authorized agent thereof. The holder of an option or contract for purchase, a lessee having a remaining term of not less than 40 years or other person having an enforceable proprietary interest in such land, shall be deemed to be a developer for the purpose of these regulations.

DISTRICT: A section or sections of the zoning jurisdiction for which the regulations governing the use of buildings and land, the height of buildings, the size of yards, and the intensity of use are uniform.

DOG KENNEL: Any place where six or more dogs are kept, maintained, boarded, bred for a fee or offered for sale. A "dog" is defined as any member of any canine species over six months of age. This definition includes dogs which are kept or maintained as pets.

DRIVE-IN ESTABLISHMENT: An enterprise which accommodates the patrons' parked automobiles and from which the occupants may make purchases, transact business or view motion pictures or other entertainment. Such definition does not include a drive-through facility such as located at banks or restaurants.

DWELLING: A building, or portion thereof, which is designed or used for residential occupancy including a condominium and a modular home, but not a group home as herein defined, an earth-sheltered dwelling, a residential-design manufactured home or a manufactured or mobile home, unless any of the latter are specifically permitted.

DWELLING, ATTACHED: A residential building which is joined to another dwelling at one or more sides by a party wall or walls, including walls of an attached garage. Separate ownership of attached dwelling units known as common lot line housing or "twin homes" shall be accompanied by a recorded lot split unless already platted into individual lots. All utilities and facilities must be independent of each other, unless provided by an association of town house or condominium owners under K.S.A. 58-3101 et seq. or 58-3701 et seq. respectively and platted as common ownership.

DWELLING, DETACHED: A residential building which is entirely surrounded by open space on the same lot.

DWELLING, MULTIPLE-FAMILY: A residential building containing three or more dwelling units.

DWELLING, SINGLE-FAMILY: A residential building containing one dwelling unit only or a group home as defined herein.

DWELLING, TWO-FAMILY: A residential building containing two dwelling units only.

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

EARTH-SHELTERED DWELLING: A single-family dwelling constructed so that 50% or more of the exterior surface area of the building, excluding garages and other accessory structures, is covered with earth. Such a dwelling is a complete structure that does not serve just as a foundation or substructure for above-grade construction. A partially completed building shall not be considered earth-sheltered. Bulk regulations shall be measured from the structural part of the dwelling as distinguished from the earth covering.

EASEMENT: A public dedication or private grant by the property owner of the specific use of a strip of land by others. Limitations apply on what type of principal or accessory buildings or structures can be located on a public easement. (See Section 9-101A for Zoning Permits.)

FAMILY: Either (1) an individual or two or more persons related by blood, marriage or adoption, living together as a single housekeeping unit in a dwelling unit; or (2) a group of not more than five adult persons who need not be related by blood, marriage or adoption, living together as a single, nonprofit housekeeping unit in a dwelling unit; plus in either case, domestic servants. A family may include any number of gratuitous guests or children not related by blood, marriage or adoption. No more than six boarders or roomers are permitted as part of a housekeeping unit. (See BOARDING OR ROOMING HOUSE and Section 6-102B3 for home occupation limitations.)

FEEDLOT: Any tract of land or structure, pen or corral wherein livestock or fowl are maintained in close quarters for the purpose of feeding such livestock or fowl for shipment to market. Such confined areas are not used normally for raising crops and no vegetation is grown therein which is intended for feed. The lot may or may not be regulated by the Kansas Department of Health and Environment. (See AGRICULTURE, inside and outside the City.)

FENCE: A free-standing structure of customary materials such as metal, masonry, glass, plastic or wood or any combination thereof, resting on or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes, but which does not pose a threat to public safety or health and is designed and constructed in such a manner as to produce an aesthetically pleasing appearance. Fences constructed of metal roofing materials, fork-lift pallets, portions of vehicles or appliances and the like are not permitted. (See Section 3-103F 2-5 for fences as Permitted Obstructions.)

FLOOR AREA: For computing off-street parking requirements, floor area shall mean the gross floor area of the building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings and shall include all floors, except that space which is used for storage or for group meeting rooms.

FRATERNAL OR SERVICE CLUB: An association formally organized for either fraternal, social, educational, philanthropic or other similar purposes, including union and professional organizations and operated not for profit for persons who are bona fide members paying annual dues, which owns, hires or leases premises, the use of which premises is restricted to such members and their guests. The affairs and management of such association are conducted by a board of directors, executive committee or similar body chosen by the members. Food, meals and beverages may be served on such premises; provided, adequate dining space and kitchen facilities are available. Alcoholic beverages may be sold or served to members and their guests, provided such service is secondary and incidental to the promotion of some other common objective of the organization, and further provided that such sale or service of alcoholic beverages is in compliance with all federal, state, county and local laws. (See CLUB.)

FRONTAGE: The property on one side of a street between two intersecting streets (crossing or terminating) measured along the line of the street; or with a dead-end street, all property abutting one side of such street measured from the nearest intersecting street and the end of the dead-end street.

GARAGE, PRIVATE: A building for the private use of the owner or occupant of a principal building situated on the same lot as the principal building for the storage of motor vehicles with no facilities for mechanical service or repair of a commercial or public nature.

GARAGE, REPAIR: A building designed and used for the storage, care, repair or refinishing of motor vehicles including both minor and major mechanical overhauling, paint and body work.

GARDEN STORE: A store which sells growing plants, seeds, bulbs, shrubs, trees and gardening and landscaping tools, implements and supplies, including lawn furniture.

GROUP HOME: A dwelling occupied by not more than 10 persons, including eight or fewer persons with a disability which is a physical or mental impairment as defined by K.S.A. 12-736. The two staff residents need not be related by blood or marriage to each other or to the other residents of the home. Such a dwelling must be licensed by the Kansas Department of Social and Rehabilitation Services or the Kansas Department of Health and Environment. (See DWELLING, SINGLE-FAMILY.)

GUEST HOUSE: A facility catering to social and business groups for the pursuit of common activities and interests which may or may not include sleeping accommodations or meals. Such use may not exceed 30 continuous days and shall be limited to specific numbers of participants. The facility may or may not be occupied by the owner(s) or manager(s).

HAZARDOUS WASTE FACILITY: An on-site or off-site facility or part of a facility or modification of an existing facility which includes all contiguous land, structures and other appurtenances and improvements on the land utilized for the purpose of treating, storing or disposing of hazardous waste. Such term shall also mean a hazardous waste injection well. In addition to this definition of facility, all related definitions pertaining to hazardous wastes as contained in K.S.A. 65-3430 and as may be amended from time to time are hereby incorporated by reference into the definitions of these regulations.

HEIGHT, MAXIMUM: A horizontal plane above and parallel to the average finished grade of the entire zoning lot at the height shown in the district regulations. No part of any structure shall project through such plane except:

1. Chimneys, flues, stacks, fire escapes, gas holders, elevator enclosures, ventilators, skylights, solar panels, water tanks and similar roof structures needed to operate and maintain the building on which they are located and signs where permitted by Article 7; (See Section 7-102C for Height of Sign.)
2. Flagpoles, water towers and tanks, steeples, bell towers, carillons, monuments, cupolas, electric transmission line towers and private wind energy conversion systems. (See Section 6-100B14 for private wind energy conversion systems.); and
3. Communication structures as an accessory structure which do not exceed 60 feet in height in agricultural and industrial districts only. Also an exception to the maximum height in all districts are antennas for licensed amateur radio and citizens band operators as well as wireless cable TV antennas on masts. Communication structures include (1) antennas, and (2) broadcasting and microwave transmitting and relay towers for television, radio and cellular telephone systems and other similar forms of electronic communication. In all districts, applicants may apply to the Planning Commission for a special use to construct a communication structure as a principal use which may exceed the height limitations for such structures. The Planning Commission may adopt criteria in the form of a policy statement to assist in the review of such special use applications. (See Section 6-100B6 for satellite dish antennas, Section 6-100B7 for communication structures, antennas and aerials and Section 3-103G for lot size and bulk regulations exemption.)

HOME OCCUPATION: As defined in Article 6.

HOTEL: A building or portion thereof, or a group of buildings, which provides sleeping accommodations for transients with or without meals, whether such establishments are designated as a hotel, inn, automobile court, motel, motor inn, motor lodge, tourist cabin, tourist court or otherwise, but not a bed and breakfast home or inn.

LANDSCAPING: The improvement of a lot, parcel or tract of land with grass and shrubs and/or trees. Landscaping may include pedestrian walks, flower beds, ornamental objects such as fountains, statuary and other similar natural and artificial objects designed and arranged to produce an aesthetically pleasing effect.

LOT: See LOT, ZONING.

LOT AREA: The area of a horizontal plane bounded by the front, side and rear lot lines.

LOT, CORNER: A lot abutting upon two or more streets at their intersection. (See LOT LINE, REAR and YARD, FRONT.)

LOT COVERAGE: That percentage of a lot which, when viewed directly from above, would be covered by a principal or accessory building(s) or any part thereof, excluding projecting roof eaves, fences, driveways, surface parking spaces and recreational activity areas for basketball, racquetball, swimming, tennis and similar activities. (See BUILDING.)

LOT DEPTH: The distance between the midpoint of the front lot line and the midpoint of the rear lot line.

LOT, INTERIOR: A lot other than a corner lot, i.e., one whose side lot lines do not abut upon any street.

LOT LINE: The boundary line of a zoning lot. (See LOT, ZONING.)

LOT LINE, FRONT: A street right of way line forming the boundary of a lot. (See LOT, CORNER.)

LOT LINE, REAR: The lot line that is most distant from and is or is most nearly, parallel to the front lot line. If a rear lot line is less than 10 feet long or if the lot comes to a point at the rear, the rear lot line shall be a line at least 10 feet long, lying wholly within the lot, parallel to the front line. If a zoning lot has two or more front lot lines, the owner or developer shall designate the yard which is to be the rear yard and/or side yard.

LOT LINE, SIDE: A lot line which is neither a front lot line nor a rear lot line. (See LOT LINE, REAR.)

LOT OF RECORD: A lot which is part of a subdivision, the plat of which has been recorded in the office of the County Recorder of Deeds or a parcel of land described by metes and bounds of which the deed was recorded prior to adoption of these regulations.

LOT, REVERSE FRONTAGE: A lot whose rear lot line also serves as the street line for a limited access highway or street. With complete access control on the rear lot line, the abutting yard is considered to be a rear yard. (See LOT, THROUGH and YARD, REAR.)

LOT SIZE REQUIREMENTS: Restrictions on the dimensions of lots including (1) minimum lot area, width and depth; and (2) maximum density. Lot area, width and depth establish the minimum size of the zoning lot on which a structure or use or two or more structures or uses, may be constructed or established. (See Section 3-103G for utility and communication facilities exemption.)

LOT, THROUGH: A lot which has a pair of opposite lot lines along two substantially parallel streets and which is not a corner lot. On a through lot, both street lines shall be deemed front lot lines, but in the case of two or more contiguous through lots, there shall be a common front lot line. Sometimes referred to as a double frontage lot. (See LOT, REVERSE FRONTAGE.)

LOT WIDTH: The distance on a horizontal plane between the side lot lines measured at right angles to the lot depth at the established front yard setback line.

LOT, ZONING: A parcel of land that is designated by its owner or developer at the time of applying for a zoning permit as a tract all of which is to be used, developed or built upon as a contiguous unit under single ownership. As long as it satisfies the above requirements, such lot may consist of: (1) a single lot of record, or (2) a portion of a lot of record, or (3) a combination of complete lots of record, complete lots and portions of lots of record, or portions of lots of record.

MANUFACTURED HOME: A factory-built structure or structures equipped with the necessary service connections and made so as to be transportable as a unit or units on its own running gear and designed to be used as a dwelling unit with or without a permanent-type, enclosed perimeter foundation. The transportation system is designed so that the home may be moved from time to time at the convenience of the owner. The term shall also include two or more separately towed units which are designed to be bolted or otherwise fastened together to form a complete living unit. Such homes are built on a chassis consisting of drawbar and coupling mechanism, frame (e.g., steel I-beams), running gear assembly and lights. Removal of any or all of these component parts does not change the definition. All such homes shall be either skirted according to the manufacturer's design and construction

standards or placed on a permanent-type, enclosed perimeter foundation and, according to standards of the State of Kansas under K.S.A. 75-1226, et seq., as amended, shall be anchored to the ground or secured to a permanent-type foundation. All manufactured homes must meet the standards of the National Manufactured Home Construction and Safety Standards of 1976, otherwise referred to as the "HUD Code". Additions may be made to such homes for patios, porches, carports, garages, storage structures and living space provided such additions are designed and constructed by a manufactured home factory or meet applicable City building codes. Overhead structures which cover or enclose a home are not permitted; however, a protective roof covering which is used to remedy a deteriorating roof condition is permitted. Under no circumstances shall two or more single-wide homes be permitted to connect together in any manner on the same zoning lot, nor shall such homes be attached to or integrated with the design of a site-built dwelling unit. (See MOBILE HOME and RESIDENTIAL-DESIGN MANUFACTURED HOME.)

MOBILE HOME: A factory-built structure or structures equipped with the necessary service connections and made so as to be transportable as a unit or units on its own running gear and designed to be used as a dwelling unit with or without a permanent-type, enclosed perimeter foundation. The transportation system is designed so that the home may be moved from time to time at the convenience of the owner. The term shall also include two or more separately towed units which are designed to be bolted or otherwise fastened together to form a complete living unit. Such homes are built on a chassis consisting of drawbar and coupling mechanism, frame (e.g., steel I-beams), running gear assembly and lights. Removal of any or all of these component parts does not change the definition. All such homes shall be either skirted according to the manufacturer's design and construction standards or placed on a permanent-type, enclosed perimeter foundation and, according to standards of the State of Kansas under K.S.A. 75-1226, et seq., as amended, shall be anchored to the ground or secured to a permanent-type foundation. Additions may be made to such homes for patios, porches, carports, garages, storage structures and living space provided such additions are designed and constructed by a manufactured home factory or meet applicable City building codes. Overhead structures which cover or enclose a home are not permitted; however, a protective roof covering which is used to remedy a deteriorating roof condition is permitted. Under no circumstances shall two or more single-wide homes be permitted to connect together in any manner on the same zoning lot, nor shall such homes be attached to or integrated with the design of a site-built dwelling unit. (See MANUFACTURED HOME and RESIDENTIAL-DESIGN MANUFACTURED HOME.)

MEDICAL, DENTAL OR HEALTH CLINIC: Any building designed for use by three or more full-time professional persons engaged in the diagnosis, care and treatment of physical or mental diseases or ailments of human beings; including, but not limited to doctors of medicine, dentists, chiropractors, osteopaths, optometrists, podiatrists and naturopaths, and in which no patients are lodged overnight, but which may include an apothecary.

MINI-STORAGE FACILITY: A building or group of buildings that contain varying sizes of individual, compartmentalized and controlled-access stalls and/or lockers for the indoor storage of customer's goods or wares. Outdoor storage may be permitted, but only when specifically permitted by these regulations. The operation shall not include a transfer and storage business where the use of vehicles is part of such a business.

MODULAR HOME: A single-family dwelling or duplex building located on a permanent foundation and connected to public utilities, consisting of pre-selected, prefabricated units or modules, and transported to and/or assembled on the site of its foundation; in contrast to a residential building which is custom built on the site of its permanent location; and also in contrast to a manufactured or mobile home of any width which is located on a permanent foundation. In general, such modular homes shall have exterior building materials and somewhat similar appearance to custom built residential buildings and meet the standards of any applicable City building codes.

NONCONFORMING LOT OF RECORD: A zoning lot which does not comply with the lot size requirements for any permitted use in the district in which it is located. (See Sections 8-100A and 101 for Nonconforming Lots of Record.)

NONCONFORMING STRUCTURE OR USE: A lawfully existing structure or use at the time these regulations or any amendments thereto became effective which does not conform to the requirements of the zone in which it is located. (See Sections 8-100B and C, 102 and 103 for Nonconforming Structures and Uses.)

NURSING OR CONVALESCENT HOME: An institution for the care of children or the aged or infirm, or a place of rest for those suffering bodily disorders, but not including institutions for the care and treatment of mental illness, alcoholism or narcotics addiction. Regulations of the Kansas Department of Health and Environment designate such homes as "Adult Care Homes."

OCCUPANCY CERTIFICATE: A certificate by which the Zoning Administrator certifies that upon completion of an applicant's proposed structure and/or use or change in use that it complies with these regulations and, therefore, may be occupied and/or used. When applicable, such a certificate may be combined with the issuance of a certificate of occupancy as required by a building code. (See Section 8-103H for Change in Use and Section 9-101B for Occupancy Certificates.)

PERMITTED USE: A use of a structure or land which is permitted outright within a zoning district because of its suitability to the purpose of the other uses so designated. When a use may appear to be classified under more than one permitted use as well as a special or conditional use in any district, the most specific or restrictive description or narrowly defined meaning is applicable. The Zoning Administrator is authorized to issue

zoning permits and occupancy certificates for such permitted uses when all other requirements of the regulations have been met.

PORTABLE STORAGE UNIT: A container specifically designed for storage or a converted former metal shipping container which are used for general storage purposes and painted a neutral color. Such a unit requires location on the ground, but is not permanently attached to the ground or to anything on the ground. Access is gained by doors on one or both ends. No other signage is permitted on the unit other than a business identification sign of modest size. (See Section 2-102 for definition of STRUCTURE.)

PREMISES: A contiguous lot or tract of land together with all buildings and structures thereon.

PRINCIPAL STRUCTURE: A structure in which a principal use of the lot on which the structure is located is conducted.

PRINCIPAL USE: The main use of land or structures as distinguished from a subordinate or accessory use.

RECREATIONAL VEHICLE, (RV): A vehicle or a unit that may be independently motorized or may be mounted on or drawn by another vehicle, which is primarily designed and used for travel, camping, recreation, temporary living or occasional use. Recreational vehicles include motor homes, mini-motor homes, converted buses, converted camper vans, pickup and truck campers, camping trailers, fifth-wheel trailers, boats and boat trailers, jet skis and jet ski trailers, all terrain vehicles (ATV) and similar vehicles. Conventional vans and pickup trucks with or without slide-in pickup campers or toppers are not considered to be recreational vehicles nor are small trailers used for hauling animals, equipment or household goods of the occupant of the dwelling whereon such trailer is parked. (See Section 6-100B for storage of recreational vehicles.)

RECYCLING CENTER: A location where clean, source-separated, recyclable materials are accepted or deposited by the public for transfer elsewhere. As distinguished from the operation of salvage yards or hazardous waste facilities, such recyclable materials consist only of aluminum and steel cans, glass, paper, plastic, reusable containers and materials capable of being composted. A center must be maintained in a litter-free condition on a daily basis. The name and phone number of a responsible party must be clearly posted in case a problem occurs. Such a center may be further classified as follows: (See Sections 6-100B12 and 101G for recycling centers.)

1. **Small recycling collection center:** A center for collection containers or reverse vending machines not exceeding 100 square feet in ground area which may be approved by the Zoning Administrator as an accessory use in all business and industrial districts and on church and public property. Such a center may be located in the required front yard in

business and industrial districts and on public property if proper vehicular safety and parking standards can be maintained.

2. Large recycling collection center: A center for collection containers larger than 100 square feet in ground area, on-site trailers, bulk-feed reverse vending machines, vehicles on-site during operating hours only and the like. As an accessory use, such a center may be approved by the Board of Zoning Appeals as a conditional use in all business and industrial districts and on church and public property.
3. Recycling processing center: A principal use in industrial districts only for handling the collection and processing of large volumes of bulky materials, some of which may originate at other recycling centers. Mechanical equipment may be used such as forklifts, balers, smashers and other related equipment. Outdoor storage may be permitted including composting operations.

REHABILITATION HOME: A residential building which is used by an organized group to supervise the rehabilitation of the individual occupants. Sometimes such homes are known as "halfway houses" for the rehabilitation of wayward juveniles, drug or alcoholic addict or former offenders. For new buildings or modifications of existing buildings, the overall appearance is to remain as a residential type building when located in a residential district.

RESIDENTIAL BUILDING: A building all or part of which contains one or more dwelling units, including single-family dwellings, two-family dwellings, multiple-family dwellings, earth-sheltered housing, lodging houses, dormitories, sororities and fraternities, as well as modular homes.

RESIDENTIAL CENTER: A non-secure facility which provides 24-hour residential care for more than 10 residents unrelated to the caregivers including emergency shelter and maternity homes. Such a facility must be licensed by the Kansas Department of Health and Environment.

RESIDENTIAL-DESIGN MANUFACTURED HOME: A structure manufactured to the standards embodied in the National Manufactured Home Construction and Safety Standards generally known as the HUD Code established on June 15, 1976 pursuant to 42 U.S.C. Sec. 5403. Such units shall provide all of the accommodations necessary to be a dwelling unit and shall be connected to all utilities in conformance with applicable City regulations or provide on-site water supply and sewage disposal. Such a structure shall be on a permanent-type, enclosed perimeter foundation which has minimum dimensions of 22 body feet in width, a pitched roof, siding and roofing materials which are customarily used on site-built homes, and which complies with the following architectural or aesthetic standards so as to ensure their compatibility with site-built housing:

1. The roof must be predominantly double-pitched and have a minimum vertical rise of 2.2 inches for every 12 inches of horizontal run, and must be covered with material that is customarily used on site-built dwellings, including but not limited to approved wood, asphalt compo-

sition shingles or fiberglass, but excluding corrugated aluminum, corrugated fiberglass or metal roof. The roof shall have a minimum eave projection and roof overhang on at least two sides of 10 inches which may include a gutter.

2. Exterior siding shall be of a nonreflective material customarily used on site-built dwellings such as wood, composition, simulated wood, clapboards, conventional vinyl or metal siding, brick, stucco, or similar materials, but excluding smooth, ribbed or corrugated metal or plastic panels. Siding material shall extend below the top of the exterior of the foundation or curtain wall or the joint between siding and enclosure wall shall be flashed in accordance with any applicable City building code.
3. The home shall be installed in accordance with the recommended installation procedures of the manufacturer and the standards set by the International Conference of Building Officials (ICBO) and published in their most current edition of guidelines for such installations. A continuous, permanent concrete or masonry foundation or masonry curtain wall, unpierced except for required ventilation and access which may include walk-out basements and garages, shall be installed under the perimeter of the home, also in accordance with the above guidelines.
4. At the main entrance door there shall be a landing that is a minimum of 25 square feet which is constructed to meet the requirements of any applicable City building code.
5. The moving hitch, axles, wheels and transporting lights must be removed at the time of installation of the home on the lot.
6. The finished floor of the home shall be a maximum of 24 inches above the exterior finish grade of the lot on which it is located, as measured at the main entrance into the dwelling.
7. Any attached addition to such a home shall comply with all construction requirements of any applicable City building code, unless designed and constructed by a manufactured home factory.
8. If 50% or more of the frontage of existing site-built housing on both sides of the street on which the residential-design manufactured home is to be installed have a garage and/or a similar percentage have a covered porch or recessed entry, such a home shall also provide a garage and/or porch or entry based on the percentages determined by the Zoning Administrator. On a corner lot, the street shall mean that street on which the frontage of the facade has been designated for the household address number. External roofing and siding material of such garage, porch or entry shall be similar in appearance to the materials on the roofing and siding of the residential-design manufactured home.

For purposes of these regulations, the term "manufactured home", when used by itself, shall not include a "residential-design manufactured home" as herein defined. Nothing in these regulations shall be construed to preempt

or supersede valid restrictive covenants running with the land as to the placement or location of a residential-design manufactured home. (See MANUFACTURED HOME and MOBILE HOME.)

RESTAURANT: A public eating house, including but not limited to the types of business establishments customarily referred to as cafeterias, coffee shops, dairy bars, fast food restaurants and soda fountains, but not a drive-in establishment unless specifically permitted by the district regulations. Drive-through facilities such as service from a window, however, are permitted. (See DRIVE-IN ESTABLISHMENT.)

RETAIL: Selling on the premises in small quantities to the ultimate consumer for direct consumption and/or use and not for resale. Sales at auctions and sales lots for motorized vehicles and recreational vehicles and the like are not considered as retail sales.

RIGHT OF WAY: The area between boundary lines of a street, alley or other easement of access.

SALVAGE YARD:

1. Any land or building used for the collection or storage or sale of wastepaper, trash, rags, fibrous material, scrap metal or other discarded material; or for the collecting or dismantling or storing or salvaging of machinery or unlicensed motor vehicles not in operating condition, or for the sale of parts thereof, or materials from the demolition of buildings or structures.
2. In residential districts, this definition shall prohibit the storing of no more than two inoperable or unlicensed motor vehicles for a period of more than 72 hours which are in the process of restoration to operating conditions, unless such vehicles are stored inside a structure or screened from public view.

SCREENING: Fencing or evergreen vegetation maintained for the purpose of concealing from view the area behind such fences or evergreen vegetation. When fencing is used for screening, it shall be not less than six nor more than eight feet high, unless otherwise provided.

SETBACK, BUILDING: A line nearest the front of and across a lot or parcel of land establishing the minimum open space to be provided between the front line of a building or structure and the line of the front street right of way. The setback distance shall be measured from the existing right of way line or the proposed right of way line, whichever is the greater. (Note: Proposed right of way lines are based on the Comprehensive Plan and are further specified in the City Subdivision Regulations for arterial, collector, local and marginal access streets.) (See YARD, FRONT.)

SIGN: Any writing (including letters, words or numerals), pictorial representation (including illustrations or decorations), emblem (including

devices, symbols or trademarks), flag, banner, streamer, pennant, string of lights or display calculated to attract the attention of the public or any other figure of similar character which:

- a. Is a structure or any part thereof or a portable display, or is attached to, painted on, or in any other manner represented on a building or other structure or on the ground;
- b. Is used to announce, direct attention to, or advertise; and
- c. Is not located inside a building.

SPECIAL USE: A use of a structure or land which is not permitted outright within a zoning district because of characteristics that might have an adverse affect upon nearby properties or the future development of the district unless certain conditions can be placed on the use which would make it suitable to the purpose of the district and compatible to the other uses so designated. Such uses are "special" in that they are often large, one-of-a-kind, private or public uses serving as community facilities and/or whose location would have planning implications for a neighborhood or the entire City. Designated special uses are processed in the same manner as zoning amendments for the hearing, except that a particular use is applied for within a district and conditions may be recommended by the Planning Commission and attached to their approval by the Governing Body. (See Section 11-101 for Special Uses.)

STORAGE, OUTDOOR: The storage of goods and materials outside of any building or structure when specifically permitted by these regulations, but not including storage of a temporary or emergency nature or of new or used goods and materials on display for sale except when such display is permitted. Such storage does not permit the storing or parking of motor vehicles including recreational vehicles or utility trailers for sale at any location in any residential district. (See Section 5-100A1 for utilization of parking facilities exemption and Section 6-100B13 for outdoor storage.)

STRUCTURAL ALTERATION: Any change in a structure other than normal repairs and maintenance which may prolong its useful life; or the useful life of its supporting members such as bearing walls or partitions, columns, beams, girders or foundations; or any complete rebuilding of the roof; or the exterior walls; or the construction of any addition to or enlargement of a structure; or the removal of any portion of a structure. For the purpose of these regulations, the following shall not be considered a structural alteration:

- a. Attachment of a new front where structural supports are not changed.
- b. Addition of fire escapes where structural supports are not changed.
- c. New windows where lintels and support walls are not materially changed.
- d. Repair or replacement of non-structural members.

(See Section 3-100C for Structural Alterations and Section 3-103F for Permitted Obstructions in Required Yards regarding fire escapes.)

STRUCTURE: Anything constructed or erected which requires location on the ground or attachment to something having a location on the ground, but not including hard surfaced walks, mail boxes or public items such as street or road surfacing, utility poles, fire hydrants, street light fixtures or traffic signs. Fences, driveways and parking spaces and signs not otherwise identified as traffic signs are considered to be structures. (See Section 3-100 E1 for Exemptions.)

TAVERN AND DRINKING ESTABLISHMENT: An establishment which may be open to the general public wherein alcoholic liquor or cereal malt beverages are sold by the individual drink to customers for consumption on the premises. Such establishments shall include a Class B club. (See CLUB.)

USE: Any purpose for which a structure or a tract of land may be designed, arranged, intended, maintained or occupied; also, any activity, occupation, business or operation carried on, or intended to be carried on, in a structure or on a tract of land.

USE REGULATIONS: The provisions of these regulations which identify permitted, special and conditional uses, impose use limitations, and regulate accessory and temporary uses and home occupations.

VARIANCE: See Section 10-107 for description.

VISION TRIANGLE: A triangular area at the intersection of streets maintained in such a manner as to provide a safe and open line of vision for drivers of vehicles approaching the intersection. Within the vision triangle, no one shall install, construct, plant, park or maintain any sign, fence, hedge, shrubbery, tree, natural growth or other obstruction including automobiles, trucks and other large vehicles or trailers which would materially impede vision between the heights of 33 inches and eight feet above the street level. These restrictions shall not apply to signs as provided for in Section 7-102J2 as well as official traffic signs, signals and utility poles. Such area on a corner lot shall have two sides which are measured from the intersection of the lot lines and a third side across the lot joining the ends of the other two sides. Where the lot lines at intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection. In all residentially zoned districts, the two sides forming the lot line intersection shall be a minimum distance of 30 feet and in all other zoning districts such distance shall be 20 feet, except that there shall be no vision triangle requirements in the B-1 Central Business District.

YARD: Open space on a lot which is unoccupied and unobstructed from its lowest level to the sky, except for the permitted obstructions listed in Section 3-103F.

YARD, FRONT: A yard extending along a full length of a front lot line and back to a line drawn parallel to the front lot line at a distance therefrom equal to the depth of the required front yard. On a corner lot, each yard that abuts a front lot line shall be considered a front yard. (See LOT LINE, FRONT and SETBACK, BUILDING.)

YARD, REAR: A yard extending along the full length of the rear lot line and back to a line drawn parallel to the rear lot line at a distance therefrom equal to the depth of the required rear yard. (See LOT LINE, REAR and LOT, REVERSE FRONTAGE.)

YARD, SIDE: A yard extending along a side lot line and back to a line drawn parallel to the side lot line at a distance therefrom equal to the width of a required minimum side yard, but excluding any area encompassed within a front yard or rear yard. Dimensions of minimum side yards specified in the district regulations of these regulations refer to the required width of each side yard rather than to the total width of both side yards, unless otherwise specified. (See LOT LINE, SIDE.)

ZONING ADMINISTRATOR: The person appointed by the Mayor with the consent of the City Council to administer and enforce the requirements of these regulations. (See Section 9-100 for Office of the Zoning Administrator.)

ZONING PERMIT: A certificate by which the Zoning Administrator certifies to an applicant that their proposed structure and/or use are in conformance with these regulations. Such a certificate may be combined with the issuance of a building permit as required by a building code; provided, that all information required for approval of a zoning permit is also contained thereon. (See Section 9-101A for Zoning Permits.)