

ZONING ORDINANCES
FOR THE GOVERNMENTAL UNITS OF
NEWTON, KANSAS
AND
NORTH NEWTON, KANSAS

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with the assistance of the City of Newton Planning Department.)

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ACKNOWLEDGEMENTS

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TABLE OF CONTENTS

	PAGE
ARTICLE I: GENERAL PROVISIONS	
1.1 Title	1.1
1.2 Authority	1.1
1.3 Purpose	1.1
1.4 Intent	1.1
1.5 Abrogation and Greater Restrictions	1.2
1.6 Interpretation	1.2
1.7 Severability and Non-liability	1.2
1.8 Reservations and Repeals	1.2
1.9 Savings Provision	1.3
1.10 Amendments	1.3
1.11 Scope of Controls	1.8
ARTICLE II: ESTABLISHMENT OF DISTRICTS, ZONING MAP, DISTRICT BOUNDARIES AND STREET CLASSIFICATIONS	
2.1 Establishment of Districts	2.1
2.2 Zoning Map	2.1
2.3 District Boundaries on Zoning Map	2.2
2.4 Annexed Land	2.2
2.5 Lot Development	2.2
ARTICLE III: TABLE OF GENERAL REGULATIONS FOR EACH DISTRICT	
3.1 Use and Bulk Tables	3.1
3.2 General Use Regulations	3.1
Table 3.2: General Use Regulations	3.7
3.3 General Bulk Regulations	3.7
Table 3.3: General Bulk Regulations	3.18
ARTICLE IV: SPECIAL USE PERMITS	
4.1 General Consideration	4.1
4.2 Procedures	4.2
4.3 Standards for Issuance of Special Use Permits	4.3
4.4 Uses Permitted by Special Use Permits	4.4
4.5 Provisions for Particular Classes of Special Use Permit Uses	4.4

TABLE OF CONTENTS (cont'd)

	PAGE
ARTICLE V: "PUD" PLANNED UNIT DEVELOPMENT DISTRICT	
5.1 Statutory Authorization	5.1
5.2 Purpose	5.1
5.3 Definitions	5.1
5.4 Permitted Uses	5.2
5.5 Site Development Standards	5.2
5.6 Procedure for Designation of a Planned Development District	5.4
5.7 Approval of the Dist. & Submission of the Final Development Plan	5.6
5.8 Approval of the Final Development Plan	5.7
5.9 Building Permits	5.8
5.10 Staged Development	5.8
5.11 Amendments	5.9
5.12 Bonding	5.9
5.13 Recording	5.9
5.14 Enforcement by the City	5.9
5.15 Fee	5.9
ARTICLE VI: MOBILE HOME SUBDIVISION DISTRICT	
6.1 Intent	6.1
6.2 Permitted Uses Within the M-H Zone	6.1
6.3 Subdivision Size and Lot Size	6.1
6.4 Minimum Requirements for Developer	6.1
6.5 Utility Requirements	6.2
6.6 Streets and Public Right-of-Way	6.2
6.7 Platting Requirements	6.2
6.8 Min. Requirements for Placement of a Mobile Home in a M-H Zone	6.2
6.9 Height Restrictions	6.4
ARTICLE VII: MOBILE HOME PARK DISTRICT	
7.1 Intent and Purpose of District	7.1
7.2 District Regulations	7.1
7.3 Definitions	7.1
7.4 General Requirements	7.1
7.5 Water Supply	7.3
7.6 Service Buildings	7.4
7.7 Sewage and Refuse Disposal	7.4
7.8 Garbage Receptacles	7.4
7.9 Trash Burning Prohibited	7.4
7.10 Animals and Pets	7.4
7.11 Tie Down Requirements	7.4
7.12 Register of Occupants	7.4
7.13 Supervision	7.5

7.14	Permit and Permit Fee	7.5
7.15	Application for Permit	7.5

TABLE OF CONTENTS (cont'd)

PAGE ARTICLE VII: MOBILE HOME PARK DISTRICT (Cont'd)

7.16	Inspection Required	7.6
7.17	Revocation or Suspension	7.6
7.18	Unused Mobile Home Park	7.7

ARTICLE VIII: FLEXIBLE MULTIPLE FAMILY DEVELOPMENT

8.1	General Provisions	8.1
8.2	Procedure	8.1
8.3	Site Development Plan Required	8.1
8.4	Standards	8.2

ARTICLE IX: COMMERCIAL/INDUSTRIAL SITE DEVELOPMENT PROCEDURES

9.1	Intent	9.1
9.2	General Requirements	9.1
9.2-1	Procedure for Site Development Plan Approval	9.1

ARTICLE X: OFF-STREET PARKING AND LOADING REQUIREMENTS

10.1	General Provisions	10.1
10.2	Schedule of Min. Off-Street Parking and Loading Requirements ...	10.3

ARTICLE XI: SIGN REGULATIONS

11.1	General Provisions	11.1
11.2	Definitions	11.1
11.3	Permit Required	11.4
11.4	Prohibited Signs	11.5
11.5	Unsafe and Unlawful Signs	11.7
11.6	Sign Placement and Illumination	11.8
11.7	Frontage	11.8
11.8	Nonconforming Signs	11.9
11.9	Sign Standards.....	11.9
11.10	Table of Permitted Signs	11.13

ARTICLE XII: NONCONFORMING LOTS, STRUCTURES, USES, BULK AND SIGNS

12.1	Applicability	12.1
12.2	Nonconforming Lots of Record	12.1
12.3	Nonconforming Uses of Land	12.2
12.4	Structures with Nonconforming Bulk	12.2
12.5	Nonconforming Uses	12.3
12.6	Status of Special use Permit Uses	12.4

12.7	Nonconforming Signs	12.4
12.8	Substitution of Nonconforming Uses	12.5

TABLE OF CONTENTS (cont'd)

PAGE ARTICLE XIII: JOINT BOARD OF ZONING APPEALS

13.1	General Provisions	13.1
13.2	Appeals to the Joint Board of Zoning Appeals	13.3
13.3	Variances	13.4

ARTICLE XIV: FLOOD PLAIN ZONING DISTRICT

14.1	Statutory Authorization	14.1
14.2	Purpose	14.1
14.3	Warning and Disclaimer of Liability	14.2
14.4	Definitions	14.2
14.5	General Provisions	14.4
14.6	Development Permit	14.6
14.7	Variance Procedures	14.7
14.8	Provisions for Flood Hazard Reduction	14.9
14.9	Certification and Information Required for Floodproofing	14.12
14.10	Penalties for Violation	14.12
14.11	Flood Plain Nonconforming Uses	14.13
14.12	Amendments	14.13

ARTICLE XV: ADMINISTRATIVE PROVISIONS AND ENFORCEMENT

15.1	Enforcement	15.1
15.2	Violations	15.2

ARTICLE XVI: RULES AND DEFINITIONS

16.1	Rules	16.1
16.2	Definitions	16.1

ARTICLE I

GENERAL PROVISIONS

- 1.1. **Title:** This Code shall be known as, referred to, and cited as the "Zoning Ordinance" for the Cities of Newton and North Newton, Kansas.
- 1.2. **Authority:** This Ordinance is adopted under the authority granted by K.S.A. 12-707 et. seq. of the Kansas Statutes and amendments thereto.
- 1.3. **Purpose:** The purpose of this Ordinance is to promote the comfort, health, safety, morals, prosperity, aesthetics, and general welfare of the citizens residing in the communities of Newton and North Newton, by dividing such cities into zones or districts and prescribing regulations and restrictions on the location and use of buildings and the use of land within each district or zone.
- 1.4. **Intent:** It is the general intent of this Ordinance to:
 - A. Regulate the use of all structures and lands in the communities.
 - B. Regulate lot coverage, population density and distribution, and the location and size of all structures.
 - B. Secure safety from fire, flooding, panic, and other dangers.
 - C. Provide adequate light, air, sanitation, and drainage.
 - D. Further the appropriate use of land and conservation of natural resources.
 - F. Obtain the wise use, conservation, development, and protection of the City's water, soil, wetland, woodland, and wildlife resources, and attain a balance between land uses and the ability of the natural resource base to support and sustain such uses.
 - G. Prevent overcrowding and avoid undue population concentration and urban sprawl.
 - H. Stabilize and protect the natural beauty.
 - I. Lessen congestion in and promote the safety and efficiency of the streets and highways.
 - J. Facilitate the adequate provision of public facilities and utilities.

- K. To guide future growth and development and encourage the most orderly and beneficial development of the City.
- L. To bring about the gradual conformity of uses of land to the zoning set forth in this Ordinance, and to minimize the conflicts among uses of land and buildings.

In addition, it is intended to provide for the administration and enforcement of this Ordinance and to provide penalties for its violation.

1.5 **Abrogation and Greater Restrictions:**

1.5-1. **Public Provisions:** The provisions of this Zoning Ordinance are not intended to interfere with, abrogate, or annul any other City rule, regulation, statute, or other provision of law. Where any provision of this Ordinance imposes restrictions different from those imposed by any other statute, rule, regulations or other provision of law, whichever provisions are more restrictive, or impose higher standards, shall control.

1.5-2. **Private Provisions:** The provisions of this Zoning Ordinance are not intended to abrogate any easement, covenant or any other private agreement, or restriction, provided that, where the provisions of this Zoning Ordinance are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of this Zoning Ordinance shall govern.

1.6 **Interpretation:** In their interpretation and application, the provisions of this Ordinance shall be liberally construed in favor of the City, and shall not be construed to be a limitation or repeal of any other power granted by the Kansas Statutes.

1.7 **Severability and Non-liability:** If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

1.8 **Reservations and Repeals:** Upon the adoption of this Zoning Ordinance, the Zoning Ordinance of 1976, adopted October 20, 1976, as amended, is hereby repealed.

1.9 **Savings Provision:** This Zoning Ordinance shall not be construed as abating any action now pending under, or by virtue of, prior existing Zoning Ordinance, or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the City under any section or provision existing at the time of adoption of this Ordinance, or as vacating or annulling any rights obtained by any person, firm, or

corporation, by lawful action of the City, except as shall be expressly provided for in this Ordinance.

1.10. Amendments:

- 1.10-1. Authority: For the purpose of promoting and protecting the public health, safety and general welfare, the City of Newton or North Newton may from time to time, in the manner hereinafter set forth, amend, change, supplement, or revise the regulations imposed in the districts, the district boundary lines, and the Zoning Map.
- 1.10-2. Initiation of Amendments: Amendments may be proposed by the Governing Body, the Planning Commission, or the owner(s) of the property affected.
- 1.10-3. Form of Application: Applications shall be made on forms provided by the Planning Department, and shall be filed in duplicate with the Planning Commission. The application shall be in such form and contain such information as shall be prescribed from time to time by the Planning Commission, but shall in all instances contain the following information:
- A. The applicant's name and address.
 - B. If affecting a change in the regulations, the precise wording of any proposed amendment to these Regulations and a statement indicating the reasons for the proposed change and why the existing language or provision is inadequate.
 - C. If affecting a change in the Zoning Map:
 - 1. The legal description and street address of the property proposed to be reclassified.
 - 2. The name and address of the owner or owners of said property.
 - 3. The present zoning classification and existing uses of the property proposed to be reclassified.
 - 4. The area of the property proposed to be reclassified.
 - 5. An ownership list certified by a registered abstractor which shall include the names and addresses of all owners of record of any property located within 200 feet of the outer limits of said area which the applicant proposes to have reclassified.

- D. Such application shall be accompanied by a one hundred dollar (\$100.00) fee, except for proposals initiated by a governmental body or the Planning Commission.

1.10-4. Procedure for Consideration of Amendment:

- A. Holding Public Hearings: Upon receipt of an application for zoning amendment, the Planning Commission shall hold a public hearing at a reasonable time and place, but not later than sixty (60) days from the date upon which the application was filed with the Planning Commission.
- B. Notice of Hearing: The Planning Commission shall hold at least one public hearing on the proposed amendment, twenty (20) days notice of the time and place of which shall be published in the official City newspaper stating the date, time, and place of the hearing and shall describe such proposal in general terms. If the proposed amendment would change the zoning classification of any property, or the boundaries of any zoning district, such notice shall contain the legal description and street address or general street location of such property, its present zoning classification, and the proposed classification. In such case, the Planning Commission shall mail a written notice of the public hearing thereon, containing the same information as the published notice thereof, to the owner or owners of all property within 200 feet of the boundaries thereof, at least seven (7) days prior to the date of the hearing. Such notice is sufficient to permit the Planning Commission to recommend amendments to zoning ordinances which affect only a portion of the land described in the notice or which give all or any part of the land described a zoning classification or lesser change than that set forth in the notice. The Planning Commission may give such additional notice to other persons as it may from time to time provide by its rules.
- C. Conduct of Hearing: The hearing shall be conducted and a record of the proceedings shall be preserved in such a manner and according to such procedures as the Planning Commission may from time to time prescribe by rule. Any interested person or party may appear and be heard at the hearing in person by agent or by attorney. The Planning Commission may request a report on any proposed amendment from any governmental official or agency, or any other person, firm, or corporation. If such a report is made, a copy thereof shall be made available to the applicant and any other interested person in the offices of the Planning Commission.
- D. Findings of Fact and Recommendation of the Planning Commission: Within sixty (60) days after the close of a public hearing on a proposed amendment, the Planning Commission shall submit a report to the City Governing Body. A copy of the report shall be filed with the City Clerk and with the office of the City Planner and such copies shall be kept available for public

inspection. A vote either for or against an amendment by a majority of all of the Planning Commissioners present constitutes a recommendation of the Planning Commission; whereas a vote either for or against an amendment by less than a majority of all of the Planning Commissioners present constitutes a "failure to recommend." Such report shall contain findings based upon the evidence presented and a recommendation as to whether the proposed amendment should be adopted. The report submitted to the City Governing Body shall be accompanied by a copy of the record of the hearing on the proposed amendment.

1. Amendments to Text: When a proposed amendment would result in a change in the text of these Regulations, but would not result in a change of zoning classification of any specific property, the report of the Planning Commission shall contain a statement as to the effect of such proposed amendment and findings as to the following:
 - (a) Whether such change is consistent with the interest and purpose of these Regulations.
 - (b) The areas which are most likely to be directly affected by such change and in what way they will be affected.
 - (c) Whether the proposed amendment is made necessary because of changed or changing conditions in the areas and zoning districts affected, and, if so, the nature of such changes or changing conditions.

2. Amendments to Change Zoning Districts: When a proposed amendment would result in a change of the zoning classification of any specific property, the report of the Planning Commission shall contain statements as to the present classification, the classification under the proposed amendment, the character of the neighborhood, the zoning and land uses of the properties nearby and findings to the following:
 - (a) Whether the change in classification would be consistent with the intent and purpose of these Regulations, with the City's adopted Comprehensive Plan and other adopted City policies, programs, ordinances, rules, and regulations.
 - (b) Whether every use that would be permitted on the property if it were reclassified would be compatible with the uses permitted on other property in the immediate vicinity; and whether the subject property is suitable for the uses to which it has been restricted.

- (c) Whether adequate sewer and water facilities, and all other needed public services, exist or can be provided to serve the uses that would be permitted on the property if it were reclassified.
- (d) Whether the proposed amendment would correct an error in the application of these Regulations.
- (e) Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such changed or changing conditions; and whether the proposed amendment provides a disproportionately great loss to the individual land owners relative to the public gain.

E. Action by the Governing Body:

1. Receipt of Planning Commission Report and Recommendation: The Governing Body shall act only after the Planning Commission has submitted either a recommendation of approval or disapproval, or a "failure to recommend."
2. Consideration of the Planning Commission Recommendation: The Governing Body shall consider the Planning Commission's recommendation at the next regularly scheduled Governing Body meeting for which the agenda item can be docketed, except that no recommendation on a zoning district amendment shall be considered by the Governing Body until fifteen (15) days after the close of the Planning Commission public hearing on such amendment.
3. Action by Governing Body: The Governing Body shall:
 - (a) Approve the recommendation of the Planning Commission and adopt such recommendation by ordinance; or
 - (b) Take no further action thereon; or
 - (c) Disapprove the Planning Commission's recommendation and return such recommendation to the Planning Commission with a written statement specifying the basis for disapproval, and such recommendation shall be reconsidered by the Planning Commission at its next regularly scheduled meeting; or
 - (d) Take such action as it deems appropriate in the event the Planning Commission submits a "failure to recommend" to the Governing Body as set forth in Section 1.10-4.D of these Regulations.

4. Reconsideration by Planning Commission: Within ten (10) days after receipt at a Planning Commission meeting of the Governing Body's statement specifying disapproval, the Planning Commission shall reconsider such recommendation and resubmit its original recommendation giving the reasons therefore, or submit new and amended recommendations.
5. Reconsideration by the Governing Body: The Governing Body, upon receipt of such recommendation, may adopt or may revise or amend and adopt such recommendation by ordinance, or it need take no action thereon. If the Planning Commission fails to deliver its recommendations to the Governing Body within ten (10) days after receipt of the Governing Body's statement specifying disapproval, the governing body shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.
6. Inaction by Governing Body: If a proposed amendment is considered by the Governing Body but not acted upon finally within 120 days of the date upon which the Planning Commission report and recommendation was considered, such proposed amendment shall be deemed to have been denied, unless the applicant for such amendment shall have consented to an extension of such period in time.
7. Protest: If a protest against the proposed amendment is filed in the office of the City Clerk within fourteen (14) days after the date of the conclusion of the Planning Commission public hearing pursuant to said publication notice, duly signed and acknowledged by the owners of twenty percent (20%) or more of any real property proposed to be rezoned or by the owners of twenty percent (20%) of the total area, excepting public street and ways, located within or without the corporate limits of the City and located within two hundred (200) feet of the boundaries of the property proposed to be rezoned, then such amendment shall not be passed except by at least 3/4 vote of all the members of the Governing Body.

1.11. Scope of Controls:

- 1.11-1. Existing Permits: This Ordinance is not intended to abrogate or annul any building permit, certificate of occupancy, variance or special permit lawfully issued before the effective date of this ordinance, except as follows:

- A. If the applicable regulations of this ordinance or any amendments to the ordinance after issuance of a building permit, granting of a variance or issuance of a special permit make the proposed use under such building permit, variance or special permit nonconforming as to the Use and Bulk Regulations, and no substantial construction or substantial operations for nonbuilding uses have been undertaken on the structure or foundation, or conducted for the nonbuilding uses, within one hundred twenty (120) days after the effective date of the adoption of this ordinance and any amendments thereto, the building permit, special permit, or variance shall be invalid. If substantial construction or substantial operations have taken place and are continuing at the time, the proposed use may be completed.

- B. Nothing herein shall prevent any holder of a variance from applying to the Board of Zoning Appeals for a variance, where appropriate under the currently existing law and facts.

ARTICLE II

ESTABLISHMENT OF DISTRICTS, ZONING MAP, DISTRICT BOUNDARIES AND STREET CLASSIFICATIONS

- 2.1. **Establishment of Districts:** For the purpose of these regulations, the Cities of Newton and North Newton are hereby divided into the following districts, the respective symbol for each district being set forth opposite its title:

Symbol	Title
R-S	Single-family Suburban District
R-1	Single-family Dwelling District
R-2	Two-family Dwelling District
R-3	Multi-family Dwelling District
R-3 (FMFD)	Flexible Multi-family Dwelling District
PUD	Planned Unit Development District
M-H	Mobile Home Subdivision District
M-P	Mobile Home Park District
P-O	Professional Office District
C-T	Transitional Business District
C-1	Neighborhood Business District
C-2	General Business District
C-3	Central Business District
I-1	Light Industrial District
I-2	General Industrial District
F-P	Flood Plain Overlay District

Each such district may be designated on the Zoning Map, in the Use and Bulk Tables, and elsewhere in the text of these regulations by symbol only.

2.2. **Zoning Map:**

- 2.2-1. **General:** The areas and boundaries of such districts are hereby established as shown on the Official Zoning Map dated February 18, 1981, and said Map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of these Regulations.
- 2.2-2. **Zoning Map Changes:** If in accordance with the provisions of these Regulations, changes are made in the district boundaries or on other matter portrayed on the Official Zoning Map, such changes shall be entered promptly after the amendment has been approved by the

legislative body with an entry showing the nature of the change and the date.

2.3. **District Boundaries on Zoning Map:**

2.3-1. Center Lines: Where a district boundary is shown following a street, highway, right-of-way, railroad, or stream, the boundary shall be the center line of same.

2.3-2. Other Lines: If such boundary is shown as following a platted lot line or City limit line, the boundary shall be along said lot line or City limit line.

2.3-3. Variances: When physical or cultural features existing in the ground are at variance with those shown on the Official Zoning Map, the Joint Board of Zoning Appeals shall interpret the district boundaries.

2.4. **Annexed Land:** All requests or proposals for annexation to the City shall be considered only after the Planning Commission has submitted a zoning recommendation to the Governing Body in accordance with the amendment procedures herein contained. The Governing Body shall consider such recommendation promptly upon annexing the subject territory.

2.5 **Lot Development:** Every building hereafter built shall be located on at least one lot, as herein defined, except in commercial and industrial districts. Each lot may be divided into two building sites provided each portion can meet all area, lot width, and setback regulations of the zoning district in which it is located. Each tract of land as herein defined may also support one principle building so long as it complies with all applicable zoning regulations. If more than one building site is desired, the land must be platted pursuant to the City Subdivision Regulations.

ARTICLE III

GENERAL USE REGULATIONS FOR EACH DISTRICT

- 3.1 **Use and Bulk Tables:** The general regulations affecting the use of buildings, structures and land and the bulk and arrangement of buildings and structures, and of materials and equipment occupying land in connection with non-building use thereof for each of the districts established by Article II are hereby established as set forth in this section.
- 3.1-1. Use Table: The accompanying table entitled "Table of General Use Regulations" shall be deemed to be a part of this section and is hereby adopted by reference.
- 3.1-2. Bulk Table: The accompanying table entitled "Table of General Bulk Regulations" shall be deemed to be a part of this section and is hereby adopted by reference.
- 3.2. **General Use Regulations:** (See accompanying Table 3.2).
- 3.2-1. Accessory Uses and Structures: Accessory uses and structures shall be subject to setback requirements as prescribed in Section 3.2-1.B except as provided in this section. The following permitted accessory uses and structures shall be allowed in any zoning district in connection with any permitted principal uses:
- A. Permitted accessory uses and structures include, but are not limited to, the following:
1. A structure for storage incidental to a permitted use, provided no such structure that is accessory to a residential building shall exceed 200 square feet in gross floor area, the use shall be in keeping with the principal structure, and provided that no part of such structure is located in the front yard setback.
 2. A child's playhouse, provided it shall not be more than 120 square feet in gross floor area and further that it not be located in the front yard setback.
 3. A detached garage or other accessory structure, provided that no part of such structure exceeds 800 square feet in gross floor area; or ten percent (10%) of the lot area, whichever is greater. The preceding requirement refers to any and all detached accessory structures.

4. A private swimming pool and bathhouse, provided that a swimming pool shall be allowed within required rear and side yards subject to Section 3.2-5.
5. Statuary, arbors, trellises, flagpoles, fences, walls and hedges shall be allowed within the required setback areas.
6. Signs, when permitted by Article XI of these Regulations and by the individual district regulations.
7. Off-street parking and loading spaces, as permitted by Article X of these Regulations.
8. Restaurants, drug stores, gift shops, clubs, and lounges and newsstands, when located in a permitted hotel, motel, or office building.
9. Employee restaurants and cafeterias, when located in a permitted business, manufacturing or industrial building.
10. Storage as an accessory use, such as boats, boat trailers, camping trailers, motor homes, or converted buses or trucks shall be allowed: (a) within rear and side yards; and (b) within established front yards when placed upon a hard surface as defined in Article X. Such uses shall not include the outdoor storage or parking in a residential district, or in a residential section of a PUD district, of mobile homes, or of commercial buses or trucks which exceed a three (3) ton manufacturer's hauling capacity rating.
11. Satellite dish antennas, except that such accessory structure shall not be allowed within established front yards.
12. One apartment in R-S and R-1 districts when incorporated within an existing single-family residential structure. Such an accessory apartment shall be allowed on a special use permit basis, standards for which are prescribed in Article IV of this Ordinance.
13. Wind Energy Conversion Systems (WECS) shall be allowed in any district on a special use permit basis, standards for which are presented in Article IV of this Ordinance.

B. Bulk Regulations Applicable to Accessory Structures and Uses:

1. No accessory structures or uses shall be located within a required or established front yard, nor closer than seven (7) feet from any side or rear lot line; except that such structures or uses shall be located no closer than

five (5) feet from any side or rear lot line which was platted prior to July 1, 1950; and except that accessory structures which are less than 100 square feet in gross floor area shall be located no closer than three (3) feet from the side or rear lot line.

2. No accessory structure shall be located closer than ten (10) feet to a principal structure on the same lot; except that swimming pools shall be located no closer than seven (7) feet to a principal structure on the same lot.
3. All accessory structures and uses on corner lots shall be set back from the side street a distance not less than that required for the principal structure.
4. A garage, whether it is accessory or detached, shall maintain a twenty (20) foot setback when entered from a street side yard or alley.
5. The maximum sidewall height for all accessory structures shall not exceed twelve (12) feet, and shall contain no more than a single, ground level story, the attic of which shall be designed to carry loads for storage only.

C. Use Limitations:

1. Accessory structures and uses shall comply with the use regulations applicable in the zoning district in which they are located, but no accessory structure shall be constructed and occupied on any lot prior to the time of the completion of the construction of the principal structure to which it is accessory.
2. No accessory building shall be used for dwelling purposes.

3.2-2. Temporary Uses: The following temporary uses of land are permitted subject of the specific regulations and time limits which follow, and to the other applicable regulations of the district in which the use is permitted.

- A. Christmas tree sales in any commercial or industrial district for a period not to exceed sixty (60) days; display of such trees need not comply with the yard and setback requirements of these regulations provided that no tree shall be displayed within thirty (30) feet of the intersection of the curb line of any two streets.
- B. Contractors office and equipment sheds (containing no sleeping or cooking accommodations) accessory to a construction project, and to continue only during the duration of such project.
- C. Real estate offices (containing no sleeping or cooking accommodations) incidental to a new housing development to continue for no more than six (6) months, unless an extension is granted by the Joint Board of Zoning Appeals.

- D. Seasonal sale of farm produce (including Christmas trees) grown on the premises on districts where permitted, to continue for not more than four (4) months per year; except that the time for the sale of produce under a special use permit in a flood plain district as provided in Section 4.5-2 shall be established by a permit. Structures incidental to such sale need not comply with the applicable front yard requirements if the structures are removed or moved back of the required front yard setback line at the end of the season during which they are use.

3.2-3. Home Occupation: An accessory use which meets all of the following conditions:

A. Conditions for Approval:

1. No home occupation sales or deliveries shall generate vehicular traffic which is abnormal to a residential district, or which alters the character thereof, or creates the need for additional parking.
2. No alteration of the principal residential structure shall be made which changes its residential character.
3. The home occupation shall be subordinate to the residential use of the dwelling.
4. No mechanical or electrical equipment greater than one (1) horsepower shall be used.
5. No outdoor storage of equipment or materials used in the home occupation shall be permitted.
6. The home occupation shall be conducted by and involve the employment of only the residents of the dwelling unit and not more than one non-resident.
7. The home occupation may display one wall sign of not more than 1 ½ square feet as per Article XI of this Ordinance.

B. Permitted Home Occupations: In particular, home occupations may include, but are not limited to:

1. Dressmaker, seamstress, tailor.
2. Music and dancing teaching limited to a single pupil at a time, except for occasional groups.
3. Artists, sculptors, authors, composers, photographers.
4. Ministers, rabbis, priests.

5. Professional office for lawyer, planner, engineer, architect, accountant, realtor, or similar use.
6. Office facility for salesman, sales representative, manufacturer's representative, when no wholesale, exchange of goods is transacted on the premises.
7. Home crafts.

C. Prohibited Home Occupations: Home occupations shall not be deemed to include:

1. Automobile repair service.
2. Funeral Homes.
3. Restaurants.
4. Commercial stables, kennels or animal hospitals.
5. Tourist homes, unless specifically permitted by district regulations.
6. Renting of trailers, cars or other equipment.
7. Medical or dental clinics or hospitals.
8. Retail or wholesale sales of antiques or used furniture and furnishings.
9. Manufacturing of goods.

3.2-4. Fences, Walls and Hedges: May be located in required yards as follows:

A. Residential Districts:

1. They may be located in any front yard if not exceeding at any point four (4) feet in height above the elevation of the surface of the ground, and if no traffic hazard is presented as determined by the Director of Public Works.
2. They may be located in side or rear yards if not exceeding six (6) feet in height above the elevation of the surface of the ground; except that rear yard fences shall conform to established front yard setbacks if they are adjacent to a neighboring front yard.

3. In no district shall fences be electrified. Barbed wire shall be allowed only in non-residential districts, installed at a height of greater than six feet above grade.

B. Commercial and Industrial Districts: They may be located in any yard if not exceeding eight (8) feet in height above the elevation of the surface of the ground.

3.2-5. Private Swimming Pools:

A. The pool is intended and is to be used solely for the enjoyment of the occupants of the principal use of the property on which it is located and their guests.

B. The swimming pool shall be walled or fenced by a detached wall or fence at least four (4) feet high and no closer to the perimeter walls of the pool than four (4) feet at any point, so as to prevent uncontrolled access by children from the street, or adjacent properties. The enclosure of the entire property upon which the pool is located by such wall or fence if compliance with this section.

3.2-6. Yard Projections: In any residential district, the following architectural features may project into any required yard:

A. Cornices, canopies, eaves or other architectural features may project a distance not exceeding three (3) feet.

B. Bay windows, balconies, and chimneys may project a distance not exceeding three (3) feet in any side yard.

3.2-7. Averaging Setbacks: In any residential district, where the two adjacent residences have a front yard which is less or greater than the least front yard depth prescribed elsewhere in this Ordinance, the required depth of the front yard on such lot shall be modified. In such case, this shall not be less than the average depth of said existing front yards on the two lots immediately adjoining. However, in no case shall the depth of the front yard be less than ten (10) feet and need not exceed fifty (50) feet. In no event shall the depth of a front yard of a corner lot be less than twenty-five (25) feet.

3.3 **Table of General Regulations:** (See accompanying Table 3.3).

3.2 TABLE OF GENERAL USE REGULATIONS

DISTRICT	PERMITTED PRINCIPAL USES AND STRUCTURES	PERMITTED ACCESSORY USES AND STRUCTURES	ADDITIONAL USE REGULATIONS	USES BY SPECIAL USE PERMIT BY GOVERNING BODY
R-S	<ol style="list-style-type: none"> 1. Single-family dwellings. 2. Historical sites and structures. 3. Public parks and playgrounds 4. Day care homes. 5. Churches and other places of worship. 6. Libraries, schools and museums. 7. Rights-of-way, appurtenances for public utilities and railroads. 	<ol style="list-style-type: none"> 1. Subordinate buildings and uses normally appurtenant to single-family residential uses, such as garages, tool sheds, swimming pools and other recreational structures and equipment. 2. Other accessory uses and structures normally appurtenant to the permitted uses or to the Special Permit uses. 3. Home occupations. 4. Accessory signs subject to Article XI. 5. Accessory parking and loading areas subject to Article X. 6. Chimneys, monuments, spires, church steeples, radio and television antennas may be erected to a height not to exceed sixty (60) feet. 	<ol style="list-style-type: none"> 1. Every building hereafter erected or moved shall be on a lot adjacent to a public street with adequate access for servicing and fire protection. 	<ol style="list-style-type: none"> 1. Any public building erected on land used by any department of the City, county, state, or federal government. 2. Private recreational facilities such as golf courses, tennis and swimming clubs. 3. Child care centers (Permit required only in R-S and R-1 Districts) 4. Halfway houses and similar uses. 5. Public or private parking lots providing such land lies within three hundred (300) feet of a commercial, professional office, or industrial district. 6. Hospitals, sanitariums, rest homes, and nursing homes.

				<ul style="list-style-type: none"> 7. Cemeteries. 8. Accessory Apartment. 9. Agricultural uses in flood plain. 10. Bed-and-Breakfast Facility.
R-1	Same as R-S	Same as R-S	Same as R-S	Same as R-S
R-2	<ul style="list-style-type: none"> 1. Same as R-S. 2. Two-Family Dwellings. 3. Child care centers. 	Same as R-S	Same as R-S	Same as R-S except number 8.
R-3	<ul style="list-style-type: none"> 1. Same as R-2 2. Multi-family dwellings. 3. Lodging, rooming, and fraternity houses. 4. Flexible Multi-family developments. (See Article VIII) 	Same as R-S	Same as R-S	Same as R-S except number 8 & 10.
PUD	See Article V			
M-H	See Article VI			
M-P	See Article VII			
P-O	<ul style="list-style-type: none"> 1. Same as R-S 2. Office, Professional, Governmental, and Business. 3. Medical and Dental diagnostic laboratories. 4. Social halls, meeting rooms, convention and catering facilities whether commercial or nonprofit. 5. Two-family dwellings. 6. Multi-family dwellings. 7. Nursing homes. 8. Parking lots. 	1. Buildings and uses customarily incidental to a permitted use.	1. Where a site adjoins a residential district, a solid fence, wall or obscuring plant material not less than six (6) feet in height shall be located on the common property line, except in a required front yard.	None

	<ol style="list-style-type: none"> 9. Financial institutions. 10. Telephone exchanges. 11. Government buildings. 12. Hospitals. 13. Institutions of higher learning. 14. Any other use determined by the Building and Zoning Administrator to be of the same general character as the above listed uses. 			
C-T	<ol style="list-style-type: none"> 1. Office-Professional, governmental, and business. 2. Medical and dental diagnostic laboratories. 3. Nursing homes. 4. Financial institutions. 5. Telephone exchanges. 6. Restaurants (excluding drive-in or drive-thru restaurants) 7. Print shops. 8. Flower shops. 9. Specialty food shops. 10. Clothes cleaning. 11. Establishments such as hairstyling shops which perform personal services on the premises. 12. Health clubs, when activity 	<ol style="list-style-type: none"> 1. Buildings and uses customarily incidental to a permitted use. 2. Accessory storage of retail goods to be sold or delivered to customers on the premises, provided such goods to be stored and served within completely enclosed building. 	<ol style="list-style-type: none"> 1. Where a site adjoins a residential district, a solid fence, wall, or obscuring plant material not less than six (6) feet in height shall be located on the property line except in a required front yard. 2. All retail sales and service establishments and accessory storage and servicing of goods shall be within completely enclosed buildings. 3. No production of goods is permitted, and all processing and servicing of goods shall be limited to 49% of the floor area and in no event more than 1000 	

	<p>conducted within an enclosed building.</p> <p>13. Church and related facilities.</p> <p>14. Any other use determined by the Building and Zoning Administrator to be of the same general character as the above listed uses which are compatible with adjacent residential use and which generate relatively light vehicular traffic.</p>		<p>square feet.</p> <p>4. When adjacent to a residential district, all structures must maintain a 25-foot setback from their common property line.</p> <p>5. Outdoor areas used for the collection of trash and refuse shall be enclosed or screened with opaque structural or vegetative material so as not to be visible from adjacent properties or any public street.</p> <p>6. Landscaping guidelines: Site development plans as required by Article IX shall follow all guidelines for landscaping which is visually harmonious and compatible with the surrounding land uses, vegetation, and topography to promote quality design, reduce the adverse impact of uncoordinated development and protect and enhance surrounding neighborhoods. Property owners are encouraged</p>	
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			to take advantage of the free services of the City of Newton Park Horticulturist who is scheduled to develop landscaping plans for any new or expanding business and who will incorporate the above stated guidelines in landscaping proposals.	
C-1	<ol style="list-style-type: none"> 1. Any local retail business or service establishment supplying commodities or performing services primarily for residents of the neighborhood on a day to day basis, such as: <ol style="list-style-type: none"> a. Grocery stores b. Supermarkets c. Drug stores d. Barber shops and beauty parlors e. Clothes cleaning f. Business and professional offices g. Restaurants (excluding drive-in restaurants) h. Liquor stores i. Ice cream parlors j. Automobile service stations, 	<ol style="list-style-type: none"> 1. Accessory storage of retail goods to be sold or delivered to customers on the premises, subject to Column 4, No. 2. 	<ol style="list-style-type: none"> 1. Where a site adjoins a residential district, a solid fence, wall or obscuring plant material not less than six (6) feet in height shall be located on the property line common to such district except in a required front yard. 2. All retail sales and service establishments and accessory storage and servicing of goods shall be within completely enclosed buildings. 3. No production of goods is permitted, and all processing and servicing of goods shall be limited to 49% of the floor area and in no event 	<ol style="list-style-type: none"> 1. Parking lots. 2. Agricultural uses in flood plain.

	<p>parking lots</p> <p>k. Automatic car washes</p> <ul style="list-style-type: none"> • Must be in conjunction with a service station, and shall not exceed facilities for washing more than one automobile at any one time. • Water generated by this facility shall ward adjacent properties. • Shall be equipped with a sand trap. <p>Any other retail business or service establishment determined by the Zoning Administrator to be of the same general character as the above listed uses.</p>		<p>more than 1000 square feet.</p> <ol style="list-style-type: none"> 4. Same as #3 in P-O District. 5. See Article IX, Commercial Industrial Site Development Procedures. 6. Outdoor areas accessory to any use and used for the deposit and collection of trash and refuse shall be enclosed or screened with opaque structural or vegetative material in such a manner as not to be visible from adjacent properties or from any public street or other public space. Such enclosure or screening shall be designed so as to prevent trash or refuse from blowing onto other areas of the site or onto adjacent properties or public streets or spaces. 	
C-2	<ol style="list-style-type: none"> 1. The C-2 zone is intended to provide for the general business commercial needs of the City. The zone shall be used by a wide range of retail and service 	None	<ol style="list-style-type: none"> 1. Same as No. 1 in C-1. 2. All outside storage areas shall be screened with a wall, fence, or sight obscuring plant material not less than six (6) feet in height. 	<ol style="list-style-type: none"> 1. Drive-in theaters. 2. Farm implements, mobile homes and construction equipment for sale, display, hire or repair including sales lots.

	<p>establishments</p> <ol style="list-style-type: none"> 2. Same as C-1. 3. Any wholesale business, storage garages, and commercial greenhouses. 4. Wand and automatic car washes; <ol style="list-style-type: none"> a. shall not exceed facilities for washing more than five (5) automobiles at any one time. b. Water generated by this facility shall not run toward adjacent properties, either through the air or on the ground. c. Shall be equipped with a sand trap. 5. Automobiles, trucks, repair garages, body and fender shops, but not within 50 feet of any residential district. 6. Any type of commercial recreation, including baseball fields, swimming pools, skating rinks, golf driving ranges and similar open air facilities, provided such establishments shall be at least 		<ol style="list-style-type: none"> 3. Same as #3 in P-O District. 4. See Article IX, Commercial / Industrial Site Development Procedures. Outdoor areas accessory to any use and used for the deposit and collection of trash or refuse shall be enclosed or screened with opaque structural or vegetative material in such a manner as not to be visible from adjacent properties or from any public street or other public space. Such enclosure or screening shall be designed so as to prevent trash or refuse from blowing onto other areas of the site or onto adjacent properties or public streets or spaces. 5. Exercise runs shall be enclosed on four (4) sides by a sight obscuring, unpierced fence or wall at least five (5) feet in height. 	<ol style="list-style-type: none"> 3. Parking lots. 4. Animal hospitals and dog kennels. 5. Agricultural uses in flood plain.
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	<p>200 feet away from any residential district.</p> <p>7. Hotels and motels.</p> <p>8. Clubs and lodges.</p> <p>9. Carpenter, electrical, plumbing and heating shop, furniture upholstering, and similar enterprises, but not within 50 feet of any residential district.</p> <p>10. Publishing, job printing, lithographing, etc., but not within 100 feet of any residential district.</p> <p>11. Building materials sales yard but not within 75 feet of any residential district.</p> <p>12. Hospitals.</p> <p>13. Restaurants.</p> <p>14. Recreational facilities.</p> <p>Any other uses determined by the Building & Zoning Administrator to be of the same general character as the above listed uses.</p>			
C-3	<p>1. This district is to be used by those retail and service activities which are space intensive.</p> <p>2. Same as P-O,</p>	None	<p>1. Same as C-2 Nos. 1,2,3,4.</p> <p>2. Same as No.3 in P-O District.</p> <p>3. Same as No. 2 in C-1.</p>	None

	<p>No. 2-6.</p> <ol style="list-style-type: none"> 3. Same as C-1, Nos. a thru k. 4. Apartments above first floor. 5. Clubs, lodges. 6. Light assembly operations, provided there is not outside storage and the off-street parking requirement is met. 7. Same as C-2, No. 9. 8. Recreational facilities. 9. Hotels and restaurants excluding drive-in restaurants. <p>Any other use determined by the Building and Zoning Administrator to be of the same general character as the above listed uses.</p>			
I-1	<ol style="list-style-type: none"> 1. Light manufacturing operations, providing that such use is not noxious or offensive by reason or vibration or noise beyond the confines of the building or emission of dust, fumes, gas, odor, or smoke. 2. Building material. 3. Contractor's office. 4. Warehouses. 	<ol style="list-style-type: none"> 1. Storage structures and offices. 	<ol style="list-style-type: none"> 1. Where a side or rear lot line abuts property in an R District, there shall be continued evergreen, vegetative or opaque structural screen not less than six (6) feet in height erected along such lot line, but not within fifteen (15) feet of any street line. 2. Outside storage areas that are visible from any 	<ol style="list-style-type: none"> 1. Dog kennels. 2. Agricultural uses in flood plain.

	<ol style="list-style-type: none"> 5. Animal hospitals. 6. Automatic and wand car washes. 7. Storage garages. 8. Mobile home sales yard. <p>Any other retail business or service establishment determined by the Zoning Administrator to be of the same general character as the above listed uses.</p>		<p>public right of way shall be screened with a wall, solid fence, or sight obscuring plant material not less than six (6) feet in height.</p> <ol style="list-style-type: none"> 3. Outdoor areas accessory to any use and used for the deposit and collection of refuse shall be enclosed or screened with opaque structural or vegetative material in such a manner as not to be visible from any public right of way. 4. See Article IX; Commercial / Industrial Procedures. 	
I-2	<ol style="list-style-type: none"> 1. Same as I-1. 2. Manufacturing or fabrication establishments which are not noxious or offensive by reason of vibration, noise, dust, fumes, gas, odor or smoke. 3. Grain elevators. 4. Other uses not specifically permitted in any other district, but deemed acceptable by the Building & Zoning Administrator and the City. 	Same as I-1.	<ol style="list-style-type: none"> 1. Same as I-1. 2. Outdoor areas accessory to any use or used for the deposit and collection of trash shall be enclosed or screened with structural or vegetative material in such a manner as not to be visible from adjacent properties or from any public street or other public space. Such enclosure or screening shall be designed so as to prevent trash or refuse from 	<ol style="list-style-type: none"> 1. Automobile wrecking yards, salvage yards and scrap processing yards. 2. Petroleum refining. 3. Ready-mix concrete and asphalt mix plants. 4. Storage of bulk oil, gas and explosives. 5. Other uses which may be noxious or offensive by reason of the emission of odor, dust, smoke, gas, noise or

			blowing onto other areas of the site or onto adjacent properties or public street spaces. 3. See Article IX, Commercial / Industrial Development Procedures.	vibration. 6. Agricultural uses in the flood plain.
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3.3 TABLE OF GENERAL BULK REGULATIONS

DISTRICT	MINIMUM LOT AREA (SQ. FT.)	MINIMUM LOT WIDTH AT BUILDING LINE	MINIMUM YARD REQUIREMENTS a. FRONT b. REAR c. SIDE DEPTH (In Feet)	MAXIMUM LOT COVERAGE BY PRINCIPAL & ACCESSORY STRUCTURES	MAXIMUM BUILDING HEIGHT
R-S All Permitted Uses	20,000	100 feet	50, 35, 15*	None	35 feet
R-1 All Permitted Uses	6,000	65 feet	25, 25, 7**+	None	35 feet
R-2 a. All Permitted Uses Except Two-Family b. Two-Family	6,000	65 feet	25, 25, 7**+	None	35 feet
	3,500 per dwelling unit	65 feet	25, 25, 7**+	None	35 feet
R-3 a. All Permitted	6,000	65 feet	25, 25, 7**+	None	35 feet

Uses Except Two-Family and Multi-Family b. Two-Family c. Multi-Family including Lodging, Rooming, and Fraternity Houses	3,500 per dwelling unit 10,000 for the first 4 units or less and 2,000 per dwelling unit thereafter.	65 feet	25, 25, 7**+	None	35 feet
		70 feet	25, 25, 7**+	None	35 feet
PUD	No minimum lot area, width, or yard requirements within the planned development shall be required except for those dictated by health, fire, safety, or buffer consideration, but See Article V for other requirements in this district.				
M-H	See Article Vi		35 feet		
M-P	See Article VII		35 feet		
P-O	a. Residences Same as R-3	Same as R-3	25, 20, 7**+	None	35 feet
	b. All other uses 10,000	50 feet	25, 25, ***	50%	50 feet
C-T	6,500	50 feet	25, 20, ***	70%	50 feet
C-1	6,500	50 feet	25, 20, ***	70%	50 feet
C-2	6,500	50 feet	25, 20, ***	70%	None
C-3	None None	None None	None, None, None None, 15, None	90% None	None None
I-1	None	75 feet	25, 30, 15	None	None
I-2	None	75 feet	35, 35, 15	None	None

- * 25 feet from street side yard if corner lot
- ** 15 feet from street side yard if corner lot
- *** Same as front yard setback if corner lot

+ 5 feet from side yard if platted prior to 07/01/50

3.4 YARD MODIFICATIONS:

- A. Rear yards on irregularly shaped lots must contain at least 1625 square feet, with no part of the principal building lying within fifteen (15) feet of the rear lot line.
- B. In any residential district, the required rear yard of a regularly shaped corner lot may be halved at the owner's option if the street side yard requirement is met and the other side yard is at least equal to the normally required rear yard.
- C. **All buildings located in any commercial or industrial district and adjacent to a residential district must maintain at least a twenty-five (25) foot setback from its common property line.**

ARTICLE IV

SPECIAL USE PERMITS

4.1. General Considerations:

- 4.1-1. Delegation of Power: The Governing Body is hereby authorized to decide whether special use permits shall be granted subject to the general and specific standards contained in the Ordinance; to grant special use permits with such conditions or restrictions as are appropriate to protect the public interest and to secure compliance with this Ordinance; and to deny requests which fail to satisfy the standards and requirements contained herein and which are not in harmony with the purposes and interest of this Ordinance and the health, safety, and welfare of the community. The Governing Body shall decide whether special use permits shall be granted only after having received a recommendation from the Joint Board of Zoning Appeals. In no event shall a special use permit be granted where the proposed use is not authorized by the terms of this Ordinance, or where the standards listed in 4.3. of this Article are not found to exist.
- 4.1-2. Variances: The Joint Board of Zoning Appeals shall not grant any variance of the applicable provisions of these regulations after such special use permit has been granted by the Governing Body; provided, however, that after the granting of a special use permit, the Board may grant a bulk variance for other than minimum lot area only if the Planning Commission, upon review of the proposed site plan, recommends such variance as desirable to promote proper use of the site.
- 4.1-3. Conditions and Guarantees: Prior to the granting of any special use permit the Planning Commission or Governing Body may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special permit use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and conditions herein. In all cases in which a special use permit is granted, the Planning Commission may recommend or Governing Body may require such evidence and guarantees as may be deemed necessary to insure that the conditions stipulated are being and will be fully complied with.

4.2. Procedures:

- 4.2-1. Application: A written application for a special use permit shall be filed with the City Planner and shall include a statement indicating the section of the Ordinance under which the permit is sought, the grounds upon which it is requested, and sufficient evidence to show that the use will conform to the standards set forth in Section 4.3. The application shall be accompanied by an area map and a site plan of the subject property.
- 4.2-2. Fees: Every application for a special use permit shall be subject to a filing fee of fifty (\$50.00) dollars.
- 4.2-3. Site Plan: All applicants for a special use permit shall submit with their application ten (10) copies of a development plan for the property which shall include the following:
- A. A site plan showing:
 - 1. Approximate size and locations of all buildings.
 - 2. Access from streets.
 - 3. Parking arrangements and number of spaces.
 - 4. Interior drives and service areas.
 - 5. Landscaped areas.
 - 6. All proposed signs.
 - B. Location map showing development and zoning of adjacent property within one hundred (100) feet.
 - C. The full legal description of the boundaries of said development area.
 - D. A description of the general character of all buildings.
- 4.2-4. Hearing: Upon receipt of the formal application and all accompanying material, the City Planner shall call a public hearing for the next scheduled meeting of the Joint Board of Zoning Appeals, provided, however, that notice must be published in a newspaper of general circulation at least five (5) days prior to the date set for hearing. The Planning Commission shall submit a recommendation to the Governing Body within thirty (30) days after the close of the public hearing.

- 4.2-5. Findings: In making a recommendation to the Governing Body, the Planning Commission shall specify the particular grounds relied upon and their relation to the proposed use and shall make affirmative findings that the proposed use conforms with the general standards set forth in Section 4.3. In no case shall an exception be granted if the proposed use will constitute a nuisance or a public health or safety hazard to adjacent properties or to the community at large.
- 4.2-6. Action by Governing Body: The Governing Body shall consider the Planning Commission's recommendation at the next regularly scheduled Governing Body meeting for which the agenda item can be docketed. The Governing Body may adopt or may revise or amend and adopt such recommendation by resolution. If the Governing Body fails to act upon a recommendation within 120 days from the receipt thereof, the application shall be deemed to have been denied.
- 4.2-7. Period of Validity of Special Use Permit: A special use permit shall expire automatically, without revocation by the City, unless a building permit to effectuate such specially permitted use is obtained within twelve (12) months after such permit is obtained by the applicant, or if no building permit is required, unless substantial evidence of use is filed with the Zoning Administrator within the twelve (12) months period after such permit is obtained. A special use permit shall expire if the specially permitted use shall cease or be abandoned for more than twelve (12) months.

4.3. Standards for Issuance of Special Use Permits:

- 4.3-1. Generally: Before any permit shall be granted the Planning Commission shall make written findings certifying that adequate provision has been made for the following:
- A. The location and size of the proposed use in relation to the site and to adjacent sites and uses of property; and the nature and intensity of operations proposed thereon.
 - B. Accessibility of the property to police, fire, refuse collection and other municipal services; adequacy of ingress and egress to and within the site; traffic flow and control; and the adequacy of off-street parking and loading areas.
 - C. Utilities and services, including water, sewer, drainage, gas, and electricity, with particular reference to location, availability, capacity and compatibility.
 - D. The location, nature, and height of buildings, walls, fences, and other improvements; their relation to adjacent property and uses; and the need for buffering or screening.

- E. The adequacy of required yard and open space requirements and sign provisions.
- F. The general compatibility with adjacent properties, other properties in the district, and the general safety, health, comfort and general welfare of the community.
- G. The standards and requirements as prescribed in Section 4.5 of this Article.

4.4. Uses Permitted by Special Use Permit:

4.4-1. See Table of General Use Regulations - Section 3.2 of this Ordinance.

4.5. Provisions for Particular Classes of Special Use Permit Uses:

4.5-1. Accessory Apartment in R-S and R-1 Districts: Before a permit shall be granted to allow the incorporation of an accessory apartment into an existing single family dwelling, the Planning Commission shall make written findings certifying that the following provisions have been met:

- A. The structure into which the accessory apartment is to be incorporated shall be occupied by the current owner/applicant.
- B. The accessory apartment shall be incorporated within an existing structure such that a separate housekeeping unit is created which is attached to the existing unit by a common wall, floor or ceiling and not just a breezeway or porch; and such that the exterior single-family appearance of the structure, as viewed from the public right of way, is not altered.
- C. The accessory apartment unit shall be clearly subordinate to the existing unit and shall occupy no more than 45 percent of the entire floor area of the structure.
- D. The application shall comply with all requirements of Article IV, Special Use Permits, and all requirements of this Ordinance which regulate uses in single-family residential districts.

4.5-2. Agricultural Uses in Flood Plain (FP) Zoning District:

4.5-2.1. Permitted Uses: The following uses having a low flood damage potential shall be permitted in an FP District (to the extent that they are not prohibited by any other ordinance) upon application to the Planning Commission and approval by the Governing Body of a Special Use Permit: Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming and wild crop harvesting.

4.5-2.2. Permitted Accessory Uses and Structures: The following accessory uses and structures shall be permitted subject to Section 3.2-1. of this Ordinance:

- A. A structure for storage of agricultural tools and implements required to perform the approved agricultural use at the site, provided that the structure shall not exceed 1600 square feet in gross floor area, and provided that the agricultural use shall exceed 40,000 square feet in minimum area.
- B. A temporary structure for sale of produce grown at the site, provided that such a structure shall be allowed only for a time period to be established by the special use permit.
- C. The gathering by the general public of unharvested produce at the site, provided that the allowed time for such accessory use shall be established by the special use permit.
- D. Exterior storage of agricultural tools and implements required to perform the agricultural use at the site, except that where such use is in or adjacent to a residential district, a solid fence, wall or obscuring plant material not less than six (6) feet in height shall screen the exterior accessory storage from the view of all adjacent public and private property.

4.5-2.3. Standards: Before any special use permit shall be granted for a permitted agricultural use in the FP district, the Planning Commission shall make written findings certifying that the requirements of Article IV, Special Use Permits, and Article XIV, Flood Plain Zoning District, have been met.

4.5-3. Bed-and-Breakfast Facilities:

4.5-3.1. Bed-and-Breakfast Facilities are hereby deemed to be compatible and appropriate property uses in R-S (Single-family Suburban Districts), R-1 (Single-family Dwelling Districts) and R-2 (Two-family Dwelling Districts), provided that such uses are made subject to reasonable limitations and conditions necessary to protect and preserve the residential character and use of properties that are now or may hereafter become located within the District.

4.5-3.2. A special use permit may be granted for a property located in an R-S (Single-family Suburban District), R-1 (Single-family Dwelling District) zoning district for the purpose of the operation of a Bed-and-Breakfast Facility if the following requirements and criteria are satisfied:

- A. All requirements and procedures applicable to special use permits in general under the Zoning Ordinances shall also be applicable to special use permits for the operation of Bed-and-Breakfast Facilities.
- B. In addition to the requirements under the Zoning Ordinances for the submission of a site plan or development plan for the property, such site plan or development plan shall also include a floor plan illustrating the existing layout of all rooms and space within the residential structure, and any proposed alterations thereto, including an identification of the existing and proposed uses of each such room or space therein.
- C. Subject to the limitations set forth in subsection (d) below, the permit shall specify the maximum number of sleeping units which the facility is permitted to maintain and make available to the general public for overnight guests of the Bed-and-Breakfast Facility, and the maximum number of bedrooms/sleeping units that can be maintained within the structure for any purpose, which determinations shall be based upon the following factors:
 - (1) The size of the structure and the number of rooms in the structure which can reasonably be used as sleeping rooms and restroom facilities for overnight guests without impairing the character of the dwelling as a single-family structure and without overcrowding, taking into consideration the number of regular, residential occupants of the structure; and
 - (2) The extent of the parking accommodations that can be made available to overnight guests, taking into consideration the normal parking needs of the regular, residential occupants of the structure and of the neighborhood.
- D. Unless special circumstances or unique characteristics of the property are specifically found to exist, no Bed-and-Breakfast Facility may be permitted for more than four sleeping units that may be provided or used for public accommodation. The number of overnight guests housed in the facility at any given time (not including the number of regular, residential occupants of the structure), may not exceed the number of permitted sleeping units multiplied by three.
- E. The special use permit shall designate the minimum number of off-street parking spaces which must be provided and the maximum number of off-street parking spaces which may be provided. In setting such limitations, consideration shall be given to the following:
 - (1) The extent to which reliance upon on-street parking may cause congestion or inconvenience to the neighborhood; and
 - (2) The extent to which off-street parking accommodations may detract from or impair the residential character of the neighborhood.

- 4.5-3.3. On-site meal service at any Bed-and-Breakfast Facility that is provided for compensation of any kind shall be limited to meal service to the overnight guests of the Facility and to occasional special events. No on-site meal service may be provided to the general public on any ongoing, regular or regularly scheduled basis.
- 4.5-3.4. No Bed-and-Breakfast Facility shall operate in the nature of a rooming house, lodging house or apartment whereby sleeping units are provided for on-going occupancy by any person or persons for compensation of any kind. It shall not be a violation of this provision for a Bed-and-Breakfast Facility to have an occasional guest who stays for an extended period not in excess of sixty days. However, no more than one sleeping unit at a Bed-and-Breakfast Facility may be in occupancy at any given time by a person or persons staying in excess of one week, and the overall, predominant character of the guest-stays shall be in the nature of short-term stays of three nights or less.
- 4.5-3.5. Every Bed-and-Breakfast Facility operating under a special use permit is required to maintain a log recording the name and address of each overnight guest, the date(s) each such guest was lodged at the Facility, and an identification of the unit occupied by each such guest within the Facility. Every such Bed-and-Breakfast Facility must also maintain a log recording the dates and other identifying information regarding any on-site meal service provided at the Facility to persons other than overnight guests, including the nature of the occasion or event giving rise to such meal service, the names and addresses of the hosts or sponsors thereof, and the total number of guests so served. All such logs shall be maintained on-site at all times and shall be available for inspection at any time upon request by any officer or agent of the City authorized to enforce the provisions of this Ordinance. Any such log entries shall be preserved for a period of not less than three years.
- 4.5-3.6. A special use permit for the operation of a Bed-and-Breakfast Facility may be revoked, or may be modified and/or made subject to additional, special conditions, upon a finding by the governing body that such Facility has been operated in violation of the intent, terms or conditions of this Ordinance. Proceedings in this regard may be initiated by the governing body, the Planning Commission, the Zoning Administrator, or by the owners of three or more properties located within the same zoning district as the Bed-and-Breakfast Facility or located within two-hundred feet of the Facility.

The Planning Commission shall conduct a public hearing upon any such complaint with not less than fifteen days notice thereof given in writing to the owners and operators of the Facility and given by publication in the official newspaper of the City. Upon the conclusion of such hearing, the Planning Commission shall enter and transmit to the

governing body its findings and recommendations. The governing body shall receive and consider such findings and recommendations at its next regularly scheduled meeting which is not less than seven days following the date the Planning Commission enters such findings and recommendations.

ARTICLE V
"PUD" PLANNED UNIT DEVELOPMENT DISTRICT

- 5.1. Statutory Authorization:** The provisions relating to planned unit development districts are adopted pursuant to the authorization contained in Kansas Statutes Annotated Sections 12-733. The City Governing Body may by Ordinance approve the establishment of a planned unit development district on any parcel or tract of land which is suitable for and of sufficient size to be developed as a planned unit development consistent with the intent and purpose of this Ordinance and the Comprehensive Plan.
- 5.2. Purpose:** The intent of this Article is to permit greater flexibility and, consequently, more creative and imaginative design for developments than generally is possible under conventional zoning regulations by establishing planned unit development districts which are in general harmony with the purpose and intent of the Zoning Ordinance and with the Comprehensive Plan of the City, but in which permitted uses, densities, open space requirements and other elements may vary from those applicable in any other districts established in this Ordinance. Therefore, it is the purpose of this Article to:
- 5.2-1. Promote flexibility in design and permit planned diversification in the location of structures.
 - 5.2-2. Promote the efficient use of land to facilitate a more economic arrangement of buildings, circulation systems, land use and utilities.
 - 5.2-3. Conserve the value of land by relating the type, design and layout of development to the particular site and its natural features.
 - 5.2-4. Provide for more usable and suitably located recreation facilities and common open space than would otherwise be provided under conventional land development procedures.
 - 5.2-5. Provide the maximum choice in the types of environment and living units available to the public.
- 5.3. Definitions:** The following definitions shall apply and be used whenever these terms appear in this Article:
- A. Homeowners' Association: A non-profit organization of homeowners in which each lot owner in the planned unit development is a member and in which each lot is subject to a charge for a proportionate share of the expenses of the organization's activities, such as maintaining required open space.

- B. **Planned Unit Development:** An area to be developed as a single entity according to an approved plan, containing residential uses and associated nonresidential uses as specified in this Article.
- C. **Screening:** A strip at least 10 feet wide of densely planted trees or shrubs at least eight feet high at the time of planting of a type that will form a year-round screen; or any other artificial or natural divider as may be required and approved by the Planning Commission in the Final Development Plan.
- D. **Net Acre:** The total land area of the PUD exclusive of all-private roads and/or public street right-of-way.
- E. **Usable Open Space:** A generally unobstructed parcel or area of land set aside, dedicated, or reserved for the use and enjoyment of owners and occupants of land within the planned unit development district for recreational or open space activities and uses. Such area shall not be devoted to private roadways, off-street parking or loading, or buildings and structures, except those incidental to the recreational or open space.

5.4. Permitted Uses:

- 5.4-1. **Residential Planned Unit Development:** All residential uses including detached, semi-detached, attached or multi-storied structures in any arrangement or combination thereof, plus non-residential service-oriented uses of a religious, cultural, recreational and business character that are primarily designed and intended to serve the residents of the residential planned unit development.
- 5.4-2. **General Planned Unit Development:** Business and industrial structures and uses exclusively or in combination with residential uses in a unified plan.

5.5. Site Development Standards: Compliance with the following standards, in addition to those that may be required by other provisions of this Ordinance and the Subdivision Regulations shall be required:

- 5.5-1. **Lot Area and Yard Requirements:** No minimum lot size, frontage or yard requirements within the PUD shall be required except those dictated by health, fire safety, function and screening considerations; provided, however, that the PUD will not injure nor hinder or prevent the development of surrounding property in accordance with the Comprehensive Plan.
- 5.5-2. **Height Limitations:** No maximum limits on building heights shall be required, except those that may relate to airports and landing zones.
- 5.5-3. **Access:** All lots should have direct access to a public or private road except residential dwellings, which need not front on a road but which must have access

thereto via a court, walkway, or other area dedicated to public use or owned or maintained by a homeowners' association.

- 5.5-4. **Building Location and Area:** The location and arrangement of all structures, parking areas, walks, lighting and appurtenant facilities should be shown on the preliminary development plan and shall be compatible with the surrounding land uses and the purposes of the planned unit development district; any part of a PUD not used for structures, parking or loading areas, or accessways shall be landscaped, screened or otherwise improved. In residential planned unit developments, the total ground area occupied by structures and buildings shall not exceed 35% of the total ground area of the PUD.
- 5.5-5. **Street Standards:** All private roads, off-street parking areas, and public right-of-way shall be surfaced with asphalt or concrete and shall be so graded and drained as to dispose of all surface water accumulated within the area.
- 5.5-6. **Density:** Any development plan that does not propose more dwelling units per net acre than would be permitted pursuant to the R-3 District regulations shall be qualified for preliminary approval only insofar as residential density is concerned. A greater number of dwelling units per net acre may be permitted, but if the number exceeds that which would be permitted under the R-3 District regulations by more than ten percent (10%), the developer has the burden to show that such excess will not have an undue and adverse impact on the existing public facilities and on the reasonable enjoyment of neighboring property. The Planning Commission, in determining the reasonableness of a proposed increase in the number of dwelling units per net acre, shall recognize that increased density may be compensated for by additional private amenities and by increased efficiency in public services to be achieved by: 1) the amount, location and proposed use of common open space; and 2) the location, design and type of dwelling units. The Planning Commission shall, in its determination, also consider that the physical characteristics of the site make increased densities appropriate in the particular location.
- 5.5-7. **Open Space:** The application for residential PUD shall set aside an area equal to not less than 20% of the total planned unit development for usable open space. The development plan shall include such provisions for the ownership and maintenance of the common open space as are reasonably necessary to insure that remedial measures will be available to the City if the common open space is permitted to deteriorate or is not maintained in a condition consistent with the best interest of the planned development or of the City.
- 5.5-8. **Screening:** When business or manufacturing structures or users in a planned unit development district abut a residential district or residential buildings in the same development, screening shall be provided.

5.6. Procedure for Designation of a Planned Development District.

- 5.6-1. Preliminary Conference: Any owner or developer proposing to develop a planned unit development pursuant to this Article may confer with the Planning staff before submitting an application for rezoning to the PUD District. The preliminary conference would enable the Planning staff to review the proposed development in sketch form and to explain the requirements and procedures of this Article to the owner or developer. The sketch plan would show the location of the proposed development, approximate building sizes and locations, vehicular access drives, location of existing utilities, surrounding right-of-way, pavements, and property lines.
- 5.6-2. Application and Preliminary Development Plan: Application for rezoning to PUD shall be filed in the office of the City Clerk in accordance with Section 1.10 of this Ordinance. In addition to the requirements of Section 1.10, the applicant shall submit ten (10) copies of a Preliminary Development Plan which shall contain all information required for a preliminary plat in the Subdivision Regulations in addition to the following items:
- A. Written Statement: A written statement containing a general description of the project including ownership, number of phases for development, if more than one, the proposed commencement date and estimated completion date of each, the area of each phase, number of buildings, number of units and the number of bedrooms in each unit. Developer must also submit information demonstrating that the development will not impose an undue burden on public services and facilities.
 - B. Survey: A survey by a registered land surveyor showing thereon the exact net area of the site and of each phase, if more than one phase. C. Site Plan: An accurate scale map of the proposed development at a scale of not less than 1" = 100' showing the following where applicable.
 - C. Site Plan: An accurate scale map of the proposed development at a scale of not less than 1" = 100' showing the following where applicable.
 - 1. Topography at two-foot intervals.
 - 2. All existing right-of-way easements, pavements, structures, utilities, drainage facilities, lot lines and natural features such as wooded areas, streams, ponds or marshes.
 - 3. Proposed lot, blocks, easements and public street right-of-way if required.

4. Locations and approximate dimensions of all proposed structures and including on the drawing the locations of all buildings within 100 feet of the property.
 5. Locations and identifications of all recreational facilities.
 6. Locations and dimensions of all proposed roadways, drives, walks and parking lots.
 7. Generalized locations for areas to be landscaped and the nature of plantings.
 8. A statement of the residential density (when applicable), the proposed total gross floor area, the percentage of the development which is to be occupied by structures, and the number of acres to be devoted to each use.
 9. A statement showing the relationship of the planned unit development to the City's Comprehensive Plan.
- D. Ownership Information: Evidence that the entire tract or parcel of land to be occupied by the planned unit development is held in a single ownership, if there are two or more owners that the application by PUD is filed jointly by all owners, and evidence that the applicant has sufficient control over the tract to effectuate the proposed plan, including a statement of all the ownership and beneficial interests in the tract of land and the proposed development.
- E. Common Open Space: When a planned unit development includes provisions for common open space or recreational facilities, a statement describing the provision that is to be made for the care and maintenance of such open space or recreational facilities shall be made.
- F. Covenants: The substance of any covenants, easements, or other restrictions that will be imposed upon the use of land, buildings or structures or that are to be recorded with respect to property, shall be made a part of the planned unit development district.
- G. Other: Additional drawings or information may be required to insure that the purpose of this section is met or to facilitate review of plans involving extraordinary sites.
- H. Partial Submittal: To facilitate and promote proper long range planning, the City Commission may, upon recommendation of the Planning Commission, waive the requirement that any or all of the items listed in the foregoing subsections be

included in the Preliminary Development Plans, except 5.6-2, A, B, C, (1) and C (2).

- 5.6-3. Approval of the Preliminary Development Plan: After approval of the preliminary plan by the Governing Body, the landowner shall file with the Register of Deeds with an exact copy to the City Planning Department that such a plan has been approved by and filed with the City and that such PUD is applicable to certain specified legally described land and that copies of said plan are on file in the Newton Planning Department.

Such statement recorded with the Register of Deeds shall also specify the nature of the plan, the proposed density or intensity of land uses and other pertinent information sufficient to notify any prospective purchasers or users of land of the existence of such a plan.

The recorded statement shall specify that the preliminary development plan shall become binding upon all successors and assigns unless amended in conformance with this act. Substantial or significant changes in the planned unit development shall be made either after rehearing and reapproval of the preliminary plan or by a change in the zoning district in which located under the terms and procedures specified in the statutes for conventional zoning.

5.7. Approval of the District and Submission of the Final Development Plan.

Approval of the district and the preliminary development plan by the Governing Body shall constitute permission to file a Final Development Plan. Amendment of the zoning, however, shall not be officially recorded until the Final Development Plan and Final Subdivision Plat have been approved by the Planning Commission. No building permits shall be issued until the Final Development Plan has been approved. The Final Development Plan shall be submitted in ten (10) copies at a scale of not less than one inch equals 100 feet and shall show the following information:

5.7-1. A Final Subdivision Plat.

5.7-2. Utility Easements: Wherever required by the City.

5.7-3. Public Street Right-of-Way: Where applicable.

5.7-4. Site Plan: An accurate map showing the following:

- A. Precise locations, dimensions, and grades of all structures, and open space, roadways, driveways, parking areas and walks, including all proposed or existing sidewalks adjacent to the site.

- B. The design, location and dimensions of all site details, including lighting, trash enclosures, signs, retaining walls and recreation facilities.
- C. Planting Plan showing specific plant materials and sizes.
- D. If private utilities are to be installed, the plans shall include utility system plans for sanitary storm drainage, water distribution and all private utilities. Plans shall be precisely engineered including locations, grades and sizes and shall show connections to existing utilities. Plans shall include easements and utility lines as may be required.
- E. Preliminary building plans, including floor plans and exterior elevations.

5.7-5. If it is proposed that any open space or recreational facility is to be owned and/or maintained by any entity other than a governmental authority, copies of the proposed articles or incorporation and bylaws of such entity shall be made a part of the planned unit development district and submitted to the Planning Commission for approval.

5.8. Approval of the Final Development Plan. The Planning Commission may not deny approval of the Final Development Plan if it is in substantial compliance with the Preliminary Development Plan. The Final Development Plan shall be deemed to be in substantial compliance with the Preliminary Development Plan as approved, provided that the Final Plan does not:

- A. Vary the proposed gross residential density or intensity of use by more than five percent (5%) or involve the reduction in the area set aside for common open space, nor the substantial relocation of such area.
- B. Increase by more than ten percent (10%) the floor area proposed for non-residential use.
- C. Increase by more than five percent (5%) the total ground area covered by buildings, nor involve a substantial change in the height or location of buildings and/or other major elements of the plan.

5.8-1. Within forty-five (45) days of filing an application for final plan approval, the Planning Commission shall grant such plan final approval provided the plan is in conformance to the preliminary development plan.

5.8-2. In the event the plan submitted contains variations from the plan given tentative approval but remains in substantial compliance with the plan as submitted for tentative approval, the Planning Commission may, after meeting with the landowner, refuse to grant final approval and shall within forty-five (45) days from the filing of the application for final approval so advise the landowner in writing of

said refusal, setting forth in said notice the reasons why one or more said variations are not in the public interest. The landowner may either treat the refusal as a denial of final approval and resubmit said final plan in accordance with the request of the Planning Commission, or he or she may notify the Planning Commission, within forty-five (45) days of notice of the date of refusal, his or her notice to appeal the decision of the Planning Commission. In the event such an appeal is filed, the Planning Commission shall schedule a public hearing, giving such notice as is required for preliminary approval. After a public hearing by the Planning Commission and in the event the landowner is not in agreement with the decisions of the Planning Commission, the landowner may request within thirty (30) days that the application for final plat approval be submitted to the Planning Commission for final decision. Any reason for disapproval of the final development plan by either the Planning Commission or the Governing Body shall be set forth in full. A plan or any part thereof which has been given final approval by the Planning Commission or upon appeal to the Governing Body, shall be so certified by the secretary of the Planning Commission, and shall be filed of record with the Register of Deeds immediately following the satisfying of all conditions precedent and conditioned upon such approval. In the event that a plan or section thereof is given final approval and thereafter the landowner shall abandon said plan or the section thereof finally approved and shall so notify the municipality in writing, or in the event the landowner shall fail to commence the planned unit development within eighteen (18) months after final approval shall terminate and shall be deemed null and void unless such time period is extended by the Planning Commission upon written application by the landowner.

5.9. Building Permits: Building permits will not be issued until the Final Subdivision Plat and Final Development Plans have been approved by the Governing Body. Permits will be issued only when the permit application is in precise conformance to the approved Final Development Plan, and the Director of Planning so certifies on the permit application.

5.10. Staged Development: In accordance with the schedule proposed in the application for approval of the Preliminary Plan, the developer may elect to file an application for final approval of only a geographic area of the total planned unit development and delay, within the time limits authorized in the ordinance approving the Preliminary Plan, application for final approval of other areas. In applying the provisions of this section, where the proposed Final Development Plan is submitted in stages, the Planning Commission may permit in each area deviations from the number of dwelling units per acre established for the entire planned unit development, provided such deviation shall be adjusted for in other sections of the development so that the number of dwelling units per acre authorized for the entire planned unit development is not affected. The developer shall furnish such performance bond, escrow deposit, or other financial guarantees as may be determined by the Planning Commission to be reasonably required to assure

performance in accordance with the development plan and to protect the public interest in the event of abandonment of said plan before completion.

- 5.11. Amendments:** A planned development district ordinance or an approved preliminary or final development plan may be amended by the City Governing Body, but only after a public hearing has been held pursuant to notice, and findings of fact and recommendations have been prepared by the Planning Commission and transmitted to the City Governing Body.
- 5.12. Bonding.** The Governing Body may require the posting of a surety bond prior to the issuance of building permits to guarantee timely completion of all obligations in the contract and in compliance with approved Final Development Plans.
- 5.13. Recording.** Upon approval of the final development by the Planning Commission, the same, together with the final subdivision plat, shall be recorded with the Register of Deeds in the manner prescribed in the City Subdivision Regulations.
- 5.14. Enforcement by the City:** If for any reason the planned unit development in whole or in part has not been completed pursuant to the approved plans, the City may serve written notice upon the owners of the planned unit development stating why the variations or eliminated parts of the plan are not in conformance with the plan. Said notice shall include a demand that such variation(s) and/or deficiencies be completed within three (3) months after receipt of this notice.
- 5.15. Fee:** The fee for approval of a planned unit development shall be \$100.00, which is to be paid with the application for rezoning and approval of the preliminary development plan, and an additional \$50.00 to be paid with submittal of final development plan.

ARTICLE VI

MOBILE HOME SUBDIVISION DISTRICT

- 6.1. Intent:** To permit and establish the criteria for the development of Mobile Home Subdivisions in which individual lots may be purchased for the purpose of placing mobile homes to be used as single-family residential units.
- 6.2. Permitted Uses Within the "M-H" Zone:**
- A. Double wide mobile homes placed on privately owned lots.
 - B. Manufactured housing which meets or exceeds mobile home construction requirements.
 - C. Public parks and playgrounds.
 - D. Churches.
 - E. Public and private schools.
- 6.3. Subdivision Size and Lot Size:** No area of less than 10 acres shall be zoned "M-H", nor shall any lot in an "M-H" zone contain less than five thousand (5,000) square feet.
- 6.4. Minimum Requirements for Developer:**
- A. Setback Requirements:
 - 1. Front - minimum of twenty-five (25) feet setback from the public right-of-way shall be required.
 - 2. Rear - minimum of twenty-five (25) feet setback from the back property line shall be required.
 - 3. Sides - minimum of seven (7) feet setback from the side property lines shall be required.
 - 4. Corner lots - minimum of twenty-five (25) feet setback from the public right-of-way shall be required in the front yard and a minimum of fifteen (15) feet in the street side yard.
- 6.5. Utility Requirements:** Provisions shall be made to place all utilities in a "M-H" zone underground, including but not restricted to electrical and telephone utilities.

- A. Sewer: Each mobile home in an "M-H" zone shall be served with a separate sewer service. Sewer connections for mobile homes which are not attached to a permanent foundation shall consist of a riser. The riser shall be protected with a concrete curb or by a concrete collar at least three (3) inches thick and extending twelve (12) inches from the riser in all directions. The finished grade shall be sloped to divert drainage away from the connection. The connection between the mobile home drain and the sewer shall be watertight.

Provisions shall be made for plugging the drain when a mobile home does not occupy the lot, the plug shall be attached to the riser. Sewer service to a mobile home on a permanent foundation shall comply with Standard City Codes.

- B. Water: Each mobile home in an "M-H" zone shall be served with a separate water service. The water connection shall be located a safe distance from the sewer connection. Water connection for mobile homes which are not attached to a permanent foundation shall consist of a pit which shall be a minimum of thirty (30) inches deep and have a minimum diameter of twelve (12) inches. The water line shall be provided with a stop and waste valve at the bottom of the pit. A minimum of one hose valve shall be provided on each mobile home site to serve a garden hose. Adequate protection shall be provided to prevent freezing of service line, valves and riser pipe. When the lot is unoccupied by a mobile home, the water service pit shall be covered. Water service to mobile homes on permanent perimeter foundations shall comply with Standard City Codes.

6.6. Streets and Public Right-of-Way: Standards for streets and public right-of-way shall be designed in conformance with City of Newton Subdivision Regulations. Streets, as well as city utilities, may be installed by the developer in accordance with City of Newton standards or installed through special assessment procedures.

6.7. Platting Requirements: All land area proposed to be zoned "M-H" shall be platted in accordance with City of Newton Subdivision Regulations.

6.8. Minimum Requirements for Placement of a Mobile Home in a "M-H" Zone:

- A. Permit Required: It shall be the duty of any person proposing to place a mobile home on a lot in a "M-H" zone to secure a "M-H" zone permit through the City of Newton Inspection Department. An "M-H" zone permit application shall be accompanied by a survey and a plot plan showing the location of the mobile home, driveway and parking area. There shall be a fee of \$15.00 for the permit.
- B. Mobile Home Minimum Size Required: The minimum square footage of floor space for a mobile home located in a "M-H" zone shall be seven hundred sixty-eight (768) square feet.

- C. Off-Street Parking Required: Two (2) off-street parking spaces, each with a minimum of one hundred forty-four (144) square feet shall be required. Parking spaces may be side by side or in tandem. Driveway access and parking area shall be paved in accordance with City of Newton standards.
- D. Attached Buildings: Structures may be attached to the mobile home which are constructed on the site in conformance with the City Building Code or which are factory certified to be manufactured in conformance with HUD standards. Such structures may be awnings, porches, patio covers, carports, garages and living space; provided, however, that additions for living space are permitted only on homes with a permanent perimeter foundation.
- E. Accessory Use: Customary accessory uses and structures located on the same lot with the principal use including tennis courts, swimming pools, garden houses, lawn/utility houses, barbecue ovens, and fireplaces, but which do not include uses unrelated to the principal use or any activity commonly conducted for gain.
- F. Placement of Mobile Homes: No more than one mobile home shall be placed on a lot; however, a mobile home may be placed on one or more lots.

- 1. Mobile homes shall be blocked with 8" x 8" x 16" concrete blocks, or equivalent. The blocking points shall be a maximum of 10' on center along the length of each frame. The front and rear blocking points shall be within 12' of the end of the mobile home frame.

The base shall consist of a poured concrete pad 24" x 24" x 8" and shall be 30" below the finished grade, or by an 8" x 16" poured concrete column extending 30" below finished grade. Blocks shall be placed on the pad at right angles to the frame. Shimming material shall not be in excess of 2" total thickness. Total clearance between the ground and the bottom of the mobile home frame shall be no less than 18".

- 2. Skirting shall be provided when a mobile home is not attached to a permanent foundation.
 - a) Noncombustible factory manufactured skirting of material harmonious to the mobile home may be used.
 - b) A footing may be poured and skirting of mortared brick constructed.
 - c) A footing may be poured and a skirting of poured concrete, or mortared concrete block, or a termite treated redwood harmonious to the mobile home may be used.

3. Where a weight bearing perimeter frame is provided as part of the mobile home, the mobile home may be placed on a permanent foundation. Construction of foundations shall comply with the Standard Building Code of the City of Newton. Where a basement is to be constructed under a mobile home, an entrance to the basement must be provided within the mobile home. Basements and cellars may not be occupied for residential purposes until the main structure is completed. A storm cellar may be provided with an outside entrance. The height of the outside entrance shall not exceed 36" above ground grade.
 4. Each mobile home shall be provided with a permanent entrance landing at each door. Landings shall be constructed in conformance with City Building Code.
 5. All mobile homes shall be secured with approved tie-downs, pursuant to Ordinance No. 3281.
- 6.9. **Height Restrictions:** No principal building shall exceed twenty-five (25) feet in height and no accessory structure shall exceed fifteen (15) feet in height.

ARTICLE VII

“M-P” MOBILE HOME PARK DISTRICT

- 7.1. **Intent and Purpose of District.** It is the intent of the “M-P” Mobile Home Park District to permit low-density mobile home uses in a park-like atmosphere. The mobile home park district is intended for those areas where the owner proposes to develop and rent or lease individual sites.
- 7.2. **District Regulations.** In District “M-P”, no building shall be used and no building shall be erected, altered or enlarged, which is arranged, intended or designed for other than independent mobile homes, or independent trailer house coaches, and customarily accessory service buildings.
- 7.3. **Definitions.**
- 7.3-1. Independent Mobile home: A mobile home which has a flush toilet and a bath or shower.
- 7.3-2. Licensee: Any person licensed to operate and maintain a mobile home park under the provisions of this ordinance (resolution).
- 7.3-3. Mobile Home Space: A plot of ground within a mobile home park designed for the accommodation of one (1) mobile home.
- 7.3-4. Natural or Artificial Barrier: Any river, pond, canal, railroad, levee, embankment, or major street.
- 7.3-5. Permittee: Any persons to whom a permit is issued to maintain or operate a mobile home park under the provisions of this ordinance (resolution).
- 7.3-6. Person: Any individual, firm, trust, partnership, association or corporation.
- 7.3-7. Street: Any recognized thoroughfare in the City.
- 7.4 **General Requirements:**
- 7.4-1 The tract to be used for a mobile home park shall be large enough to accommodate twenty-five (25) mobile homes.

7.4-2. The applicant for a zoning change to permit a mobile home park must satisfy the Planning Commission that he is financially able to carry out the proposed plan and shall prepare and submit a schedule of construction, which construction shall commence within a period of one (1) year following approval by the Planning Commission and shall be completed within a period of two (2) years.

7.4-3. The applicant for a mobile home park shall prepare or cause to be prepared an application for rezoning and a development plan and shall present three (3) copies of the plan for review and approval by the Planning Commission. The plot plan shall show topography and location and size of:

- A. Mobile home sites.
- B. Service buildings.
- C. Off-street parking areas.
- D. Electrical outlets.
- E. Sewer outlets.
- F. Water outlets.
- G. Water lines.
- H. Sewer lines.
- I. Recreational area.
- J. Landscaped areas and walls of fences.
- K. Roadways.
- L. Sidewalks.

7.4-4. The mobile home park shall conform with the following requirements:

- A. The park shall be located on a well-drained site, properly graded to insure rapid drainage and freedom from stagnant pools of water.
- B. Mobile home parks shall have a maximum density of eight (8) trailers per gross acre and a minimum space of three thousand (3,000) square feet for each mobile home.

- C. Each mobile home space shall be at least thirty-five (35) feet wide and clearly defined.
- D. Mobile homes shall be so located on each space that there shall be at least twenty (20) feet of clearance between mobile homes; provided, however, that with respect to mobile homes parked end-to-end, the end-to-end clearance may be not less than fifteen (15) feet. No mobile home shall be located closer than twenty-five (25) feet from any building within the park or from any property line bounding the park.
- E. All mobile home spaces shall front upon a private roadway of not less than thirty-one (31) feet in width, which shall have unobstructed access to a public street, alley or highway.
- F. Walkways, not less than thirty (30) inches wide, shall be provided from the mobile home spaces to service buildings.
- G. All roadways and walkways within the mobile home park shall be hard surfaced and adequately lighted at night with electric lamps.
- H. Laundry facilities for the exclusive use of the mobile home occupants may be provided in a service building.
- I. At least one (1) electrical outlet supplying at least one hundred ten (110) volts of 100-amp capacity shall be provided for each mobile home space.
- J. A recreational area shall be provided at a central location in the mobile home park at the rate of two hundred (200) square feet for each trailer space.
- K. A solid fence or wall and a ten (10) foot landscaped buffer area shall be provided between the Mobile Home Park District and any adjoining property zoned for residential purposes. The solid fence or wall shall not be less than four (4) feet high nor more than six (6) feet high. The owner shall be responsible for the maintenance of the fence or wall and the landscaped buffer area.

7.5. **Water Supply.** An adequate supply of pure water for drinking and domestic purposes shall be supplied by pipes to all buildings and mobile home spaces within the park. Each mobile home space shall be provided with a cold water tap. An adequate supply of hot water shall be provided at all times in the service buildings for all washing and laundry facilities.

7.6. **Service Buildings:**

- 7.6-1. Service buildings, housing sanitation and laundry facilities or any other such facilities, shall be permanent structures complying with all applicable codes, ordinances, and statutes regulating buildings, electrical installations and plumbing and sanitation systems.
- 7.6-2. All service buildings and the grounds of the park shall be maintained in a clean, sightly condition and kept free of any debris that will be a menace to the health of any occupant or the public or constitute a nuisance.
- 7.7. **Sewage and Refuse Disposal.** A mobile home space shall be provided with a capped sewer at least four (4) inches in diameter, which shall be connected to receive the waste from the shower, bathtub, flush toilet, lavatory and kitchen sink of the mobile home located in such space and having any or all of such facilities. The capped sewer in each space shall be connected to discharge the mobile home waste into a public sewer system.
- 7.8 **Garbage Receptacles.** Each mobile home unit shall be provided with at least one metal trash and garbage can with a tight-fitting cover to permit disposal for all garbage, trash, and rubbish, or have a dumpster conveniently located for use by the residents.
- 7.9 **Trash Burning Prohibited.** The burning of trash and rubbish is prohibited in a "M-P" Mobile Home Park District.
- 7.10 **Animals and Pets.** No owner or person in charge of any dog, cat or other pet or animal shall permit it to run at large or commit any nuisance within the limits of any mobile home park.
- 7.11 **Tie Down Requirements.** See Ordinance No. 3281.
- 7.12 **Register of Occupants:**
- 7.12-1. It shall be the duty of each licensee and permittee to keep a record of all mobile home owners and occupants located within the park.
- 7.12-2. The mobile home park owners, manager or caretakers shall keep the register available for inspection at all times by law enforcement officers, public health officials and other officials whose duties necessitate acquisition of the information contained in the register.
- 7.12-3. The register record for each occupant registered shall not be destroyed for a period of three (3) years following the date of departure of the registrant from the park.

7.13. **Supervision.** The licensee or permittee, or a duly authorized attendant or caretaker, shall be in charge at all times to keep the mobile home park, and its facilities and equipment, in a clean, orderly and sanitary condition. The attendant or caretaker shall be answerable, with the licensee or permittee, for the violation of any provision of the regulations in the Mobile Home Park District.

7.14 Permit and Permit Fee:

7.14-1. It shall be unlawful for any person to maintain or operate a mobile home park unless a person shall first obtain a permit.

7.37.14-2. The annual permit fee for each mobile home park shall be four dollars (\$4.00) per space which is not refundable.

7.14-3. A mobile home park permit is not transferable.

7.14-4. Expiration date of the mobile home park permit shall be the 31st of December of each year.

7.15. Application for Permit.

7.15-1. A written application for a permit to operate a mobile home park in a "M-P" Mobile Home Park District shall be required for any person, firm or corporation operating the mobile home park. The application shall be filed in duplicate and shall include the following items:

- A. The name and address of the applicant.
- B. The location and legal description of the mobile home park site.
- C. The name and address of the manager of the mobile home park.
- D. The number of mobile homes the mobile home park will accommodate.
- E. A plan showing the location of all mobile homes, buildings, roadways, recreational areas, off-street parking areas, electrical outlets, sewer outlets, water outlets, water mains, sewer mains and other improvements and facilities constructed or to be constructed in the mobile home park. The plan shall be drawn at a scale of one (1) inch equals one hundred (100) feet or larger.
- F. Such further information as may be required to determine if the proposed mobile home park will comply with this article and other city ordinances and requirements.

- 7.15-2. The application shall be filed by the owner or manager of said mobile home park and sworn to before a notary public. The person or persons filing the application and affidavit shall be the person(s) owning or managing the mobile home park and the person(s) responsible for the upkeep and maintenance and sanitary control. Any change in the management of said mobile home park shall be registered with the City Clerk by sworn affidavit by the new manager.
- 7.15-3. Upon receipt of the completed application, plans and filing fees, the City Clerk shall transmit a copy of the application and plans to an approved representative of the City who shall:
- A. Check the application for compliance with this Article and other city codes and ordinances.
 - B. Determine the condition of sanitation of the mobile home park.
- 7.15-4. If the application is found to be in compliance with this Article and other city codes and ordinances, and the site is found to be in conformance with sanitary regulations, a permit shall be issued for a mobile home park.
- 7.16. **Inspection Required.** Upon the issuance of the permit for a mobile home park or court, the City shall have the authority to have said mobile home park inspected by the proper inspecting officer of the City; and if it shall be found that the holder of said permit has made any false or misleading statements in his application or has placed or caused to be placed more mobile homes in said mobile home park or court than provided for and set forth in said application for permit, or that said holder of said permit has violated or caused to be violated any provision of this Article, the City Governing Body shall have the power to revoke said permit.
- 7.17. **Revocation or Suspension.** If the City shall determine, upon proper inspection by the inspecting officer of the City, that the condition of the mobile home park shall have become so unsanitary as to endanger health or welfare of occupants of said mobile home park or the surrounding community, or that said sanitary facilities have become inadequate to properly protect the occupants of said mobile home park, the City Governing Body shall have the power to require the holder of said mobile home park permit within ten (10) days, to set said mobile home park in proper sanitary condition. If, upon notice from the City to the holder of the permit as aforesaid, the owner or manager of said mobile home park shall fail or refuse to place said park or court in sanitary condition, the City Governing Body shall have the right to revoke said permit.
- 7.18. **Unused Mobile Home Park.** When a property zoned "M-P" ceases to be used for such purposes, for a period of two (2) years, the Planning Commission shall

initiate action and hold a public hearing to rezone said property back to its former zoning district classification.

**ARTICLE VIII
FLEXIBLE MULTIPLE FAMILY DEVELOPMENT**

8.1. General Provisions.

- 8.1-1. Intent: To provide the developer with an alternative to the rigid conformity to lot, bulk, and area requirement that is otherwise required in the R-3 District. Such opportunity for flexibility in design, along with density bonuses and other incentives, will enable developers to construct lower cost housing in developed areas of the City with proper consideration for aesthetics, open space needs, buffering, landscaping and other design criteria. The option is only available where all public facilities and services, including water, sewer, storm drainage, schools, parks, streets, and fire service are available at the site and are adequate to handle the needs generated by the proposed development.
- 8.1-2. Maximum Parcel Size. The maximum parcel size for use of the flexible development option is two (2) acres.

8.2. Procedure.

- 8.2-1. Pre-application Conference. The developer shall have a pre-application conference with the Planning Department prior to submitting a site development plan for the purpose of determining the appropriate uses of the flexible development option with respect to the site and to review the particular requirements and incentives that may be applicable.
- 8.2-2. A. The site development plan shall be submitted to the Planning Commission for its review and approval prior to the issuance of a building permit, but in conjunction with an application for the building permit.
- B. In considering the site plan, the Planning Commission may impose, in addition to the regulations and standards expressly specified in this Ordinance, other conditions found necessary to protect the interests of the surrounding property and the City as a whole and to prevent nuisance conditions from arising.
- C. The Planning Commission shall approve, disapprove, or approve with conditions the site development plan within sixty (60) days after its submission by the applicant.

- 8.3. Site Development Plan Required.** In every case where the developer chooses to develop under the flexible development option, he shall submit a site development plan which shall include, but not be limited to, the following:

- A. An area map showing the parcel in relation to adjacent parcels, uses, and structures.
- B. A site plan showing:
 - 1) Approximate size and location of all buildings.
 - 2) Access from streets.
 - 3) Parking arrangements and number of spaces.
 - 4) All site improvements including lighting, landscaping, fences, walls, signs, walks and recreational area, buffering and open areas and significant natural features of the site.
- C. A written statement to include the physical and environmental impact of the proposed development on the site with respect to adjacent land and uses and with particular respect to aesthetics, open space, parking demands, surface drainage, density, buffering, landscaping and other design and physical criteria.

8.4. Standards.

- A. Clustering: The applicant may cluster the buildings on the site without regard for the lot size and bulk requirements otherwise required except those dictated by health, fire safety, function and screening considerations.
- B. Density: The applicant who chooses the flexible development option may be granted a density bonus not to exceed a factor of one hundred twenty-five percent (125%) of the number of dwellings otherwise permitted by the provisions of the R-3 District.
- C. Off-Street Parking: The applicant will be required to provide off-street parking at a ratio of one and one-half (1 1/2) spaces for each dwelling unit.
- D. Buffering: Landscaping or decorative architectural screening shall be required on all sides.
- E. Lighting: Any lighting used to illuminate off-street parking area shall be directed away from residential properties.
- F. Open Space: An area equal to not less than ten percent (10%) of the total acreage shall be set aside for usable open space.

ARTICLE IX

COMMERCIAL/INDUSTRIAL SITE DEVELOPMENT PROCEDURES

- 9.1. Intent.** It is the intent of this Article to allow for greater flexibility and to assure a greater degree of compatibility between land uses with respect to commercial and industrial uses of land by insuring that parking, access, landscaping, buffering, placement of buildings, signs and other design features are appropriate for the site and in relation to surrounding land uses.
- 9.2. General Requirements.** No building permit shall be issued for the construction of any building in the C-1, C-2, C-3, I-1 or I-2 districts until all requirements of this Article and all other applicable provisions of this Zoning Ordinance have been met.
- 9.2-1. Procedure for Site Development Plan Approval: An application for a building permit for any structure in a commercial or industrial district shall be referred to the Planning Department. Said application shall be accompanied by a development plan which shall include the following:
- A. A site plan showing:
 - 1) Approximate size and locations of all buildings.
 - 2) Access from streets.
 - 3) Parking arrangements and number of spaces.
 - 4) Landscaped areas.
 - 5) All proposed signs.
 - 6) Additional drawings or information may be required to insure that the purpose of this section is met or to facilitate review of plans involving extraordinary sites.
 - B. The full legal description of the boundaries of said development area.
 - C. In lieu of constructing or installing the required improvements prior to occupancy, the Governing Body may require that a corporate surety bond, cashier's check, escrow account or other like security, in an amount to be fixed by the Governing Body, and conditioned upon the actual completion of such work or improvements within a specified period. The Governing Body may enforce such bond by all equitable remedies.

9.2-2. Planning Department Action and Standards to be Considered:

A. Within thirty (30) days of the receipt of the application, the Planning Department shall render a decision based on the following standards:

- 1) The provisions and intent of this Article and all applicable provisions of the Zoning Ordinance.
- 2) The relationship between the principal buildings and structures on the parcel.
- 3) The convenience and safety of the parking and loading areas and the interior circulation systems and the access to public streets.
- 4) The adequacy of landscaping and lighting features to screen adjacent residential areas and streets from any potential nuisance features of the use of the parcel.
- 5) Such other criteria as directly relate to the health, safety and general welfare of the surrounding community.
- 6) The aesthetics to the area and the community.

ARTICLE X
OFF-STREET PARKING AND LOADING REQUIREMENTS

10.1. General Provisions:

10.1-1. Applicability: In each zoning district, except for the C-3 District, all structures built and all uses established hereafter shall provide accessory off-street parking and loading spaces as indicated in the requirements set forth in this section. Where an existing structure or use is expanded, accessory off-street parking and loading spaces shall be provided in accordance with the requirements for the area, capacity or additional employees in such expanded area.

10.1-2. Size of Spaces:

- A. Parking Spaces: For the purpose of computing the number of parking spaces in a given area, the formula of two hundred (200) square feet per parking space shall be required. Further, additional space shall be provided for space assignable to moving lanes, access drives, and pedestrian walks.
- B. Loading Spaces: A required off-street loading space or berth shall be at least ten (10) feet in width by twenty-five (25) feet in length, exclusive of aisle and maneuvering space, and shall have a vertical clearance of at least fourteen (14) feet.

10.1-3. Location of Spaces:

- A. Parking Spaces: All parking spaces required to serve buildings or uses shall be located on the same zoning lot as such building or use; provided, however, that if in the opinion of the Joint Board of Zoning Appeals, said spaces cannot be reasonably provided on the same lot, the Board may permit such spaces to be provided on other off-street property located not more than four hundred (400) feet from the principal structure or use.
- B. Loading Spaces: All required loading spaces or berths shall be located on the same lot as the use served.
- C. Site Location: Space allocated to off-street loading shall not be used to satisfy the space requirements for off-street parking; and space requirements for off-street parking shall not be used to satisfy off-street loading requirements. Off-street loading spaces may be located either within a building or in open space.

10.1-4. Access:

- A. Parking Spaces: Each required off-street parking space shall open directly upon an aisle or driveway which provides direct access to a street or alley or shall itself be directly accessible to such street or alley.
- B. Loading Spaces: Each required off-street loading space or berth shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movement and public use of streets, alleys and sidewalks.

10.1-5. Screening and Lighting: All open off-street parking areas containing more than five (5) spaces and all loading spaces which are within a non-residential district and are adjacent to a residential district, shall be screened there from by a wall, solid fence, or hedge not less than six (6) feet nor more than eight (8) feet in height when adjacent to a residential rear or side yard and not less than three (3) feet nor more than four (4) feet when adjacent to a residential front yard. Off-street parking areas permitted as accessory uses in residential districts shall be exempted from these requirements providing a statement of agreement to the exemption signed by the adjacent property owner(s) is submitted with the building permit and recorded with the Harvey County Register of Deeds. Any lighting used to illuminate off-street parking or loading areas shall be directed away from residential properties in such a way as not to interfere with such residential use. Where compliance with this section is not possible because of inclement weather, the Zoning Administrator may grant an appropriate delay but in no case shall such delay exceed one (1) year from the initial date of occupancy or commencement of use.

10.1-6. Surfacing and Drainage: All off-street parking areas including access drives and aisles shall be surfaced with asphalt or concrete with such thickness and standard as required by City Engineering standards established for the intended use and shall be so graded and drained as to dispose of all surface water accumulated within the area. Where compliance with the preceding sentence is not possible because of the season of the year, the Zoning Administrator may grant an appropriate delay, but in no case shall such delay exceed one (1) year from initial date of occupancy or commencement of use.

10.1-7. Performance: In lieu of construction of the required parking lot, the Governing Body of the City may accept a corporate surety bond, cashier's check, escrow account or other like security in an amount to be fixed by the Governing Body and conditioned upon the actual completion of such work or improvement without a specified time, and the Governing Body may enforce such bond by all equitable means.

10.2 SCHEDULE OF MINIMUM OFF-STREET PARKING AND LOADING REQUIREMENTS.

STRUCTURES AND USES	MINIMUM OFF-STREET MINIMUM OFF-STREET PARKING SPACES	LOADING SPACES PER ESTABLISHMENT
Automobile Service	1 per employee plus 3 service bay	One
Bowling Alleys	6 per ally	None required
Churches, Temples, and Synagogue	1 per 6 seats in main unit of worship	None required
Eating & Drinking Establishments	1 per 75 sq. ft. floor area	Two
Educational (Nursery and Primary)	1 per full-time teacher and employee plus 1 per 8 students	Two
Food Store	1 per 100 sq. ft. floor area	Two
Funeral Homes and Chapels	1 per 10 seats in main parlor and 1 per employee plus 1 per vehicle maintained on the premises	One
Hospitals	1 per 3 beds plus 1 per active staff physician assigned to staff plus 1 per 2 equivalent employees	Three
Hotels	1 per each rental unit plus one for each employee	One
Industrial Uses		

	1 per 1 ½ employees on largest shift	Two
Libraries, Museums, & Art Galleries	1 per 500 sq. ft. of floor area	One
Lodging, Boarding & Fraternity Houses	1 per two rooms	None required
Medical & Dental Clinics, Optometry, Chiropractic & Podiatrists Offices	1 per each 200 sq. ft. of floor area finished for occupancy	None required
Mobile Home Park	2 per unit	None required
Motels	1 per each rental unit plus one for each employee	None required
Office and Professional Use	1 per 400 sq. ft. of floor area plus 1 per full-time employee	One
Private Clubs & Lodges	1 per 75 sq. ft. of gross floor area in meeting and/or club room	One
Residential (Multi-family)	2 per dwelling unit	None required
Residential (Single and Two-family)	2 per dwelling unit	None required
Retail Sales Establishment	1 per 200 sq. ft. of gross floor area	One
Shopping Centers	5 per 1,000 sq. ft. of gross leasable area	None required
Sanitariums, Convalescent & Nursing Homes	3 per 5 residents	One
Personal Service Establishments	1 per 200 sq. ft. of gross floor area	One
Theaters, Auditoriums & Places of Assembly	1 per 3 seats of main hall	One
Veterinary Establishments		

Wholesaling & Distributing	1 per doctor and employee plus 1 per examining or treatment room	One
	1 per 800 sq. ft. of gross floor area, plus spaces to accommodate all vehicles used in connection therewith	Two

ARTICLE XI SIGN REGULATIONS

11.1 General Provisions

11.1-1 Statement of Purpose. The purposes of these regulations are to recognize the necessity of signs and to provide reasonable standards for their installation and use, and to prevent any possible proliferation, disrepair, hazard or garishness of such objects that might not serve the best interests of the community.

11.1-2 Applicability. Any sign shall, by definition, be a structure. No land, personal property or structure shall be used for sign purposes except as specified herein. All signs legally existing at the time of passage of these regulations may remain in use under the conditions of legal nonconformance. Signs in legal nonconformance shall not be enlarged, moved, lighted, or reconstructed; however, the change of the advertising display shall not be restricted except as previously stated. No sign shall be erected, enlarged, constructed or otherwise installed without first obtaining a sign permit, and a sign permit shall be legally issued only when in compliance with this sign regulation. All signs shall be constructed in such a manner and of such material that they shall be safe and substantial.

11.2 Definitions. When used in this Article, the following terms shall mean:

1. **Advertising Sign (Billboards):** A sign that is not located on the advertiser's premises.
2. **Awnings, Canopy and Marquee Sign:** A sign, which is mounted or painted on, or attached to an awning, canopy or marquee. No such sign shall project above, below or beyond the awning, canopy or marquee.
3. **Awning:** A temporary shelter composed of non-rigid materials but supported by a rigid framework attached to a building wall.
4. **Banner:** A sign composed of non-rigid material and mounted to a building or wall or structure.
5. **Bulletin Board (announcement board):** An on-premise sign containing the name of the institution or organization, and may also include names of persons connected with it; announcement of persons; events or activities occurring at the institution. Such sign may also present a greeting or similar message.
6. **Business Sign:** A sign located on the premises of the advertised business.

7. **Canopy:** A permanent roofed, open-sided structure independently supported and detached from other structure.
8. **Development Project Signs:** A sign which indicates the architects, engineers, contractors, and owners involved in the design and construction of a structure or project.
9. **Directional Signs:** On site signs needed to control traffic, parking access, etc., but not including any commercial messages.
10. **Festoon:** A string of objects such as pennants, lights, ribbons, balloons.
11. **Flashing Sign:** An illuminated sign on which the artificial light is not constant in intensity and color at all times. Time, temperature, and/or public message boards are not included in flashing sign category.
12. **Ground Sign:** A sign placed on the ground independently of any structure on the property.
13. **Illuminated Sign:** Any sign illuminated by electric lights or luminous tubes.
14. **Illumination, Indirect:** Illumination emanating from a source outside the sign itself and directed toward the sign surface.
15. **Illumination, Direct:** Illumination emanating from the sign can include internal and external lighting.
16. **Interstate Highway Sign:** A sign (other than advertising sign) which serves a retail establishment in an Interstate Highway Sign District established by the governing body for advertising by businesses catering to the Interstate highway motoring public.
17. **Mansard Sign:** A sign that is mounted on or to a mansard roof in such a manner that the highest point on the sign is below the highest point on the roofline.
18. **Marquee:** A permanent roof structure projecting over the sidewalk and attached to and supported by a building.
19. **Message Sign:** A sign on which letters or pictorial panels may be changed either manually or electronically and which displays only a public message and/or time and temperature.
20. **Moving Sign:** Any revolving, rotating, moving, animated signs with moving lights or signs which created the illusion of movement.

21. **Multiple Commercial Occupant Center:** One or more building designed to accommodate more than one business or professional enterprise in a single complex and/or under unified control.
22. **Name Plate Sign:** Name plates showing only the name and/or address of the occupant.
23. **Painted Wall Sign:** A sign painted on the exterior wall of a building other than the storefront.
24. **Parcel:** Any lot, tract of land, or property. (See Section XVI.2(59) for definition of Lot).
25. **Pennant:** A flag, frequently of a triangular shape.
26. **Planning Commission:** The Newton-North Newton Area Planning Commission.
27. **Pole Sign:** An elevated sign supported independent of any other structure.
28. **Political Campaign Sign:** Signs identifying or promoting candidates for public office.
29. **Portable Sign:** Any sign which is designed to be or capable of being readily moved or transported.
30. **Premises:** Same as parcel.
31. **Projecting Sign:** A sign, other than a wall sign, suspended or supported by a structure or building.
32. **Promotional Sign:** Signs, flags and banners relating to temporary promotions.
33. **Public Regulatory Signs:** Signs of a duly constituted governmental body, including traffic or similar regulatory devices, legal notices, warning at railroad crossings and other instructional or regulatory signs having to do with health, hazards, parking, swimming, dumping, etc.
34. **Real Estate Signs:** Signs advertising the sale, rental, or lease of the premises on which the sign is located.
35. **Roof Sign:** Any sign erected, constructed and maintained upon or over the roof of any building with its principal support on the roof structure.
36. **Score Boards:** Score boards in athletic stadiums.

37. **Sign:** For purposes of these regulations, signs shall be defined as visual means of making known the existence of an activity or product that might be of some public interest.
38. **Subdivision Signs:** A sign which displays the name of a subdivision, or similar residential development.
39. **Surface Display Area of Sign:** The entire area within a single continuous perimeter enclosing the extreme limits of such sign, and in no case passing through or between any adjacent elements of same. Such perimeter shall not include any structural elements lying outside the limits of such signs and which cannot form an integral part of the display.
40. **Temporary Sign:** A sign that is limited in the period of time that such sign may remain in use either by the limitations of these regulations or the conditions of the permit.
41. **Under Canopy Sign:** A sign mounted to the under side of a canopy oriented to pedestrian traffic.
42. **Wall Sign:** A sign attached to the wall of a building or structure with the exposed sign face parallel to the plane of the wall.
43. **Window Display Signs:** Signs applied to windows in commercial and industrial districts.

11.3 Permit Required. No sign except exempted signs as provided by 11.4-3 may be erected or altered until a sign permit has been issued by the Zoning Administrator.

11.3-1 Application. Application for permits required under this Article shall be made on forms provided by the Zoning Administrator and accompanied by the following, if required by the Zoning Administrator or if required by the provisions hereof:

- A.** Plans and specifications of the proposed sign; and engineer's certificate certifying the proposed sign and its construction to be of safe design; the right to inspect all permanent signs and marquees prior to their installation and erection and prior to the issuance of a permit.
- B.** A certified certificate of Accident Public Liability Insurance issued to the person or firm installing or erecting a sign or marquee over public property and providing coverage of \$50,000 per person, \$100,000 per accident and \$25,000 property damage.

11.3-2 Permit Fees. Every applicant before being granted a permit hereunder, shall pay to the City the following permit fee for each such sign or other advertising structure regulated by this article:

- A. All signs requiring a permit other than temporary - \$1.00 per square foot;
- B. Temporary Signs - \$10.00, when required.

11.3-3 Inspection. As soon as a sign has been erected, the permittee shall notify the Zoning Administrator who shall inspect such sign and approved the same if it is in compliance with the provisions of this article. The Zoning Administrator may, from time to time, as he deems necessary, inspect all signs or other advertising structure regulated by this article for the purpose of ascertaining whether the same is secure or insecure or whether it is in need of removal or repair.

11.3-4 Permit Revocable at Any Time. All rights and privileges acquired under the provisions of this article or any amendment thereto are mere licenses revocable at any time by the Zoning Administrator; and all such permits shall contain this provision.

11.4 Prohibitions, Restriction and Exceptions.

11.4-1 Prohibited Signs. Signs, whether in a window display, on the exterior of any structure, or free standing shall not contain any of the following elements:

- A. Flashing, blinking, chasing, moving, strobing or any artificial light, which is not constant in intensity and color at all, times. Exception: Electronic message boards.
- B. Signs or elements of signs which move, rotate, oscillate, swing or which are not stationary and rigid. Exception: Banners, Flags, Festoons and Balloons as excepted by Section 11.4-3P.

11.4-2 Restrictions. See Table 11.9. No signs shall extend onto or across a public right-of-way except as permitted by Section 11.9-1.

In zoning districts where permitted, ground signs, pole signs and projecting signs are permitted each to the exclusion of the other two. Each premise is allowed one detached or projecting sign except as permitted by Section 11.8.

11.4-2 Exempt Signs. The following signs shall be exempt from the requirements of this article, except for the requirements specified herein.

- A.** Emblem: Flags or emblems of government or of a political, civic, philanthropic, education, or religious organization, displayed on private property, providing no flashing or direct lighting is used.
- B.** Public Regulatory Signs: Signs of a duly constituted governmental body, including traffic or similar regulatory devices, legal notice, warnings at railroad crossings, and other instructional or regulatory signs having to do with health, hazards, parking, swimming, dumping, etc.
- C.** Directional Signs: On-site operational signs of not over five (5) square feet in area needed to control traffic, parking, access, etc., but not including any commercial message.
- D.** Scoreboards: Scoreboards in athletic stadiums.
- E.** Nameplate Sign: Non-illuminated nameplates showing only the name and/or address of the occupant, fastened flat against the wall and not exceeding six (6) square feet in area.
- F.** Announcement Boards: Announcement boards and signs of twenty (20) square feet or less in area for public, charitable or religious institutions when the sign is located on the premises of the institution. The area may be increased to thirty-two (32) square feet when such premises is adjacent to a roadway with a speed limit of 55 MPH or more.
- G.** Window Display Signs: Non-illuminated display signs affixed to the inside of windows in commercial and industrial districts.
- H.** Subdivision Signs: A sign not exceeding four (4) feet in height nor (32) square feet in face area which displays the name of a subdivision or similar residential development.
- I.** Holiday decorations which are primarily of a decorative nature and clearly associated with any national, state, local or religious holiday.
- J.** Interior signs located within a building interior, an enclosed lobby, or building courtyard, or signs located on the interior of a parcel that is not normally viewed from public right-of-way (such as signs on stadium walls within ball parks); provided they meet the structural, electrical and material specifications in this code.

- K.** Temporary portable signs less than 12 square feet in area, except in residential zones.
- L.** Real Estate Signs: Signs advertising the sale, rental, or lease of the premises on which the sign is located may be erected in any district and shall be removed within one week of the date of sale, rental, or lease. Signs of up to six (6) square feet for residentially zoned properties and up to thirty-two (32) square feet for other properties require no approval. Signs over thirty-two (32) square feet in area may be authorized by the Joint Board of Zoning Appeals, which shall base its decision on setback, traffic speed, sign design, and surroundings.
- M.** Development Project Signs: A sign of thirty-two (32) square feet or less which indicates the architects, engineers, contractors, and owners involved in the design and construction of a structure or project may be erected without authorization in any district on a site under construction. Such signs may be erected at the start of construction and shall be removed upon project completion.
- N.** Political Campaign Signs: Signs not exceeding eight (8) square feet in area identifying or promoting candidates for public office or issued on a public ballot may be erected without authorization, to be removed within two (2) weeks following the election to which the sign relates.
- O.** Home Occupation Signs: Residential properties containing a home occupation are allowed one wall sign with a maximum of (1 ½) square feet of display area.
- P.** Banners, Flags, Festoons and Balloons as defined herein may be temporarily displayed in districts allowing business signing.

11.5 Unsafe and Unlawful Signs. If the Building Administrator shall find that any sign or other advertising structure regulated herein is unsafe or insecure or is a menace to the public or has been constructed or erected or is being maintained in violation of this article, he shall give written notice to the permittee thereof or persons responsible therefore to remove or alter the structure so as to comply with the standard herein set forth within ten (10) days after such notice.

11.5-1 Construction and Stability. Signs shall be constructed to withstand a wind pressure of at least eight (80) MPH and shall be structurally safe and securely anchored so that they will not be a menace to persons or property, and rigidly mounted so as not to swing. Building mounted signs shall be adequately grounded where exposed to lightning. Any metal sign that can be touched by a passerby or that is placed on a metal mounting pole shall have a ground fault electrical connection or an assured grounding means. Flat mounted wall signs

may exceed 24 square feet only if made of noncombustible materials or approved combustible plastics and defined in Standard A60.1-1975 of the American National Standards Institute. Wooden supporting members shall be treated to prevent decomposition wherever they contact the ground. All display signs and the premises surrounding them shall be maintained and be kept free of noxious weeds and rubbish.

11.5-2 Removal of Certain Signs. Any new sign or hereafter existing which no longer advertises a bona fide business conducted, or a product sold shall be taken down and removed by the owner, agent, or person having the control of the building or structure upon which such sign may be found within ten (10) days after written notification from the Zoning Administrator.

11.5-3 Obstruction to Doors, Windows or Fire Escapes. No sign shall be erected, relocated, or maintained so as to prevent free ingress to or egress from any door, window, or fire escape. No sign of any kind shall be attached to a standpipe or fire escape.

11.5-4 Signs Not to Constitute Traffic Hazard. No sign or other advertising structure as regulated by this article shall be erected at the intersection of any street in such a manner as to obstruct free and clear vision; or at any location where, by reason of the position, shape, or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal, or device; or which makes use of the words "Stop", "Look", "Drive-In" or any other word, phrase, symbol or character in such a manner as to interfere with, mislead or confuse traffic.

11.6 Sign Placement and Illumination.

11.6-1 Sign Placement. No pole or ground sign shall be placed within 50 feet of another such sign.

11.6-2 Illumination. Indirect lighting shall be permitted on ground, wall and painted signs. The reflectors shall be provided with proper glass lenses concentrating the illumination upon the area of the sign so as to prevent glare upon the street or adjacent property.

11.7 Frontage. Sign area based on linear street and building frontage.

11.7-1 Linear Street Frontage. Where gross sign area is allocated based on linear street frontage and the tract or parcel is adjacent to more than one street, the linear street frontage shall be computed as follows:

- A. As it pertains to single occupancy commercial development, the linear street frontage shall be the distance of the property line abutting the major street frontage.
- B. As it pertains to commercial multiple occupancy centers, the frontage shall be determined as in "A" above. They shall be allowed one detached sign. No deduction shall be made for attached signs advertising individual businesses in a multiple occupancy center.

11.7-2 Linear Building Frontage. Where gross sign area is allocated based on linear building frontage, each exterior building face shall be considered frontage.

- A. Business with exterior frontage in multiple occupancy centers shall be allowed attached signs based on their exterior building footage.
- B. Businesses with no exterior frontage in a commercial multiple occupancy center shall be allowed an attached sign of no more than twenty (20) square feet on the exterior of the building.

11.8 Nonconforming Signs. Every sign or other advertising structure lawfully in existence on the adoption of this code shall not be altered or moved unless it be made to comply with the provisions of this article, except as otherwise provided for herein.

11.9 Sign Standards. The following standards are based on sign type. The allowable sign area for each type is based on the linear building frontage, linear street frontage, or a set maximum as herein specified.

11.9-1 Awning, Canopy and Marquee Signs. Awning, canopy, marquee and under canopy signs when permitted by Table 11.9, shall meet the following conditions:

- A. Such signs are allowed one (1) per face area of the supporting structure with their maximum size being no greater than 50% of the structure face area.
- B. Such signs shall not extend above or beyond the edge of the structure.
- C. Such signs must have a minimum clearance of eight (8) feet and must have a minimum setback of two (2) feet from the curb line.

11.9-2 Ground Signs. Ground signs when permitted by Table 11.9, shall meet the following conditions:

- A. The top edge of the ground sign shall not exceed ten (10) feet above grade at its base.

- B. The base of the ground sign shall be no less than 50% of the sign width.
- C. The surface display area of any face of a ground sign shall not exceed one (1) square foot per linear foot of street frontage to a maximum of 150 square feet.
- D. No ground sign shall be located closer than five (5) feet from any property line.

11.9-3 Pole Signs. Pole Signs when permitted by Table 11.9, shall meet the following conditions:

- A. The height of Pole Signs shall not exceed twenty-five (25) feet above grade at its base.
- B. The surface display area of any face of a pole sign shall not exceed one square foot per linear foot of street frontage to a maximum of 250 square feet.
- C. The minimum clearance above grade shall be not less than eight (8) feet.

11.9-4 Projecting Signs. Projecting Signs when permitted by Table 11.9, shall meet the following conditions:

- A. The surface display area of any face of a Projecting Sign shall not exceed one (1) square foot per linear foot of building frontage to a maximum of 150 square feet.
- B. The maximum projection of a Projecting Sign shall be seven (7) feet horizontal and it shall not project above the attaching wall.
- C. The minimum clearance above grade to the bottom of a projecting sign shall be ten (10) feet.

11.9-5 Roof Signs. Roof Signs when permitted by Table 11.9, shall meet the following conditions:

- A. The surface display area of any face of a Roof Sign shall not exceed two (2) square feet per linear foot of building frontage.
- B. Roof signs shall not project above or beyond the limits of the attaching roof.

11.9-6 Temporary Portable Signs. Temporary Portable Signs when permitted by Table 11.9, shall meet the following conditions:

- A. One (1) Temporary Portable Sign may be placed on each street frontage on property zoned for commercial and industrial purposes.
- B. Temporary portable Signs shall not exceed thirty-two (32) square feet in area.
- C. Public right-of-way. Temporary Portable Signs shall not be placed within or project over the public right-of-way.
- D. Other Signs. Temporary Portable Signs shall not be placed within 20'0" of any ground sign or another temporary portable sign which pertains to another commercial or industrial property.
- E. Safety. Temporary Portable Signs shall be of rigid construction and anchored or weighted to prevent movement and overturning by the wind.
- F. Electricity. Electrical lines shall not lie on the ground where vehicular or pedestrian traffic is permitted. Use of underground extension cords is prohibited. In addition, the sign must be protected by a ground fault circuit interrupter in accordance with the requirements of the National Electrical Code.
- G. Time Period. Temporary Portable Signs may be placed and displayed by a property owner or business operator (who must keep a log of such placement) up to 60 days during a calendar year. Should a parcel or building change occupancy during the year, the new occupant may place and display a temporary, portable sign up to 60 days during the remainder of the calendar year.
- H. Commercial Multiple Occupancy Centers. Commercial multiple occupancy centers are to be allowed one sign per street frontage for the entire center and each tenant is to be allowed to display a temporary portable sign for the allotted time period.
- I. Flashing Lights. Any light not constant in intensity and color at all times shall not be permitted on a temporary portable sign.

11.9-7 Wall Signs. Wall Signs when permitted by Table 11.9, shall meet the following conditions:

- A. The surface display area of the face of a wall sign shall not exceed two (2) square feet per linear foot of building frontage.

- B. Wall signs shall not project more than twelve (12) inches from the building face.
- C. Wall signs consisting of individually fixed letters shall be sized by multiplying the letter height by the message length.

11.9-8 Interstate Highway Signs and Advertising Signs; Districts; Establishment.

The governing body of the city may from time to time establish one or more districts wherein the location of interstate highway signs and/or advertising signs may be permitted. No interstate highway signs or advertising signs shall be permitted except in such a designated district (unless the sign is specifically allowed under some other provision of the sign regulations). Interstate highway sign and advertising sign districts shall be established under the following procedure:

- A. The governing body or the planning commission may cause the preparation of a district proposal, or may accept for consideration a proposal submitted by others (along with any options thereto as the governing body or planning commission may direct). Any such proposal shall identify with reasonable specificity the area proposed to be included in the district, and shall specify each of the standards and requirements to which such signs are proposed to be subject.
- B. If the governing body or the planning commission decides to proceed with the consideration of any such proposal or proposals, the planning commission shall establish a date and time for the conduct of a public hearing, allowing sufficient time for notice to be given.
- C. Notice shall be given by publication in the same manner as notice is given for the consideration of text amendments to zoning regulations. The governing body or the planning commission may provide for such further notice of the proceedings, as they deem appropriate.
- D. A copy of the proposal or proposals shall be maintained by the city clerk of the city in which such district is proposed to be located, and the city clerk shall provide a copy thereof at no cost to any member of the general public requesting the same.
- E. At the hearing thereon, a presentation shall be made summarizing the features of the proposal or proposals, and then the matter shall be open for public comment, all pursuant to such reasonable rules regarding the conduct of public hearings as may be established from time to time by the planning commission.

- F.** Following the close of the public hearing, the planning commission shall determine and convey to the governing body of the city in which such proposed district would be located a recommendation regarding the proposal. Such recommendation shall then be considered by the governing body in the same manner as recommendations regarding text amendments to the zoning regulations.
- G.** Following receipt and consideration of the planning commission's recommendations, the governing body may establish an interstate highway sign and/or advertising sign district by ordinance, which ordinance shall include a description of the boundaries of the district and shall set forth all standards and regulations regarding the permitted interstate highway signs therein. The details of such ordinance may be different in any respect to those contained in the original proposal or in the planning commission's recommendation, except that the governing body may not increase the area of the district beyond that which was described in the published notice of hearing. The governing body may suspend the proceedings for the purpose of directing the publication of a new notice and the conduct of a public hearing by the planning commission as to any expansion of the proposed area of the district.

11.10 Table of Permitted Signs. The following table is attached to and made part of this Article. Signs shall conform to the limitations of types as set forth in the table, and as limited by the Sign Standards. Exempted signs as permitted by Section 11.5 are allowed in all zoning districts.

SIGN TYPE	ZONING DISTRICT				
	AG-R-S, R-1, R-2, R-3, M-N, M-P	C-T, P-O	C-1, C-2	C-3	I-1, I-2
Advertising Sign	<i>Permitted only in Districts established under Section 11.9-8.</i>				
Awning, Canopy or Marquee Sign	N	Y	Y	Y	Y
Ground Sign	N	Y	Y	Y	Y
Interstate Hwy Sign	<i>Permitted only in Districts established under Section 11.9-8.</i>				
Pole Sign	N	N	Y	Y	Y
Projecting Sign	N	Y	Y	N	Y
Roof Sign	N	N	Y	N	Y
Temporary Portable Sign	N	Y	Y	Y	Y
Wall Sign	N	Y	Y	Y	Y

ARTICLE XII

NONCONFORMING LOTS, STRUCTURES, USES, BULK AND SIGNS

12.1. Applicability: This Article applies only to lots, buildings, structures, signs and non-building uses in existence on the effective date of these Regulations. The lawful use of any premises existing on the effective date of these regulations may be continued as hereinafter provided, although neither such use nor bulk conforms to these Regulations. To avoid undue hardship and to protect lawfully vested rights, nothing in this Article shall be deemed to require a change in the plans, construction or designated use of any buildings on which actual construction was lawfully begun prior to the effective date of these Regulations and upon which construction has diligently proceeded.

12.2. Nonconforming Lots of Record:

12.2-1. Single Lot: In any zoning district in which single-family structures are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot, shall conform to the zoning regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Joint Board of Zoning Appeals.

12.2-2. Lots with Continuous Frontage: If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage of this Ordinance and if all or part of the lots do not meet the requirements established for lot width and area, the land involved shall be considered to be an undivided parcel for the purpose of this Ordinance and no portion of said parcel shall be used in a manner which diminished compliance with lot width and area requirements established by this Ordinance nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this Ordinance.

12.3. Nonconforming Uses of Land: Where, at the time of passage of this Ordinance, a lawful use of land exists which would not be permitted by the Zoning Regulations imposed by this Ordinance, such use may be continued so long as it remains otherwise lawful, provided that:

- A. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that actively occupied by such use at the effective date of adoption or amendment of this Ordinance.
- B. No such nonconforming use shall be enlarged, increased or extended to occupy a greater area of land than was actively being used at the time such use became nonconforming, notwithstanding the fact that the user thereof may own, or have an equitable or a leasehold interest in and to a larger land area than that in active use.
- C. No additional structure not conforming to the requirement of this Ordinance shall be erected in connection with such nonconforming use of land.

12.4. Structures With Nonconforming Bulk:

- 12.4-1. Authority to Continue: Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is either nonconforming as to bulk or area requirements or which is located on a lot which does not comply with the applicable bulk regulations, may be continued so long as it remains otherwise lawful, subject to the restrictions in Section 12.4-2 through 12.4-4.
- 12.4-2. Enlargement, Repair, Alterations: Normal maintenance and repairs, structural alteration, enlargement, or remodeling of a building or structure with nonconforming bulk is permitted if the same does not increase the degree of existing nonconformity or create any new nonconforming bulk in such building or structure. Provided, however, any existing structure which is not less than 5 feet from any side yard, located in any addition to the City of Newton platted prior to July 1, 1950, may be substantially rebuilt, altered, repaired, remodeled or enlarged providing said existing structure and enlargement meet all other provisions of this Ordinance.
- 12.4-3. Damage or Destruction: Any structure which is nonconforming as to bulk, and which is destroyed or damaged by fire or other causes to the extent of fifty percent (50%) or more of its current market value as of date of damage or destruction, excluding the valuation of the land, shall not be repaired or rebuilt except in conformity with these regulations. Any such structure or any part thereof which is damaged to an extent less than fifty percent (50%) excluding the assessed valuation of the land may be

repaired or restored provided that a building permit is obtained and substantial reconstruction is undertaken within one year after such damage and is diligently pursued to completion. Otherwise such building, structure or part thereof shall thereafter be occupied only by a conforming use, and shall conform to the bulk requirements of these regulations. Proof of value, if needed, shall be by three appointed appraisers; one by the owner, one by the City and one by the other two appraisers. Cost of the appraisals shall be borne by the owner.

- 12.4-4. Moving: No structure described in Section 14.2-1 shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

12.5. Nonconforming Uses:

- 12.5-1. Authority to Continue: Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land may be continued, so long as otherwise lawful, subject to the regulations contained in Sections 12.5-2 through 12.5-8 and 12.8.

- 12.5-2. Repair, Maintenance and Remodeling:

- A. Normal maintenance and incidental repair, or replacement, installation or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use; provided, however, that it does not extend the nonconforming use nor violate any other provisions of this Article.
- B. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition (where such restoration will not be in violation of any other provisions of this Article).
- C. No structure that is devoted in whole or in part to a nonconforming use shall be remodeled unless the entire structure and use thereof shall thereafter conform to all regulations of the zoning district in which it is located, except as provided in 12.5-7 of this Article.

- 12.5-3. Extension or Enlargement: No structure that is devoted in whole or in part to a nonconforming use shall be extended, expanded, enlarged or added to in any manner unless such structure and the use thereof conform to the regulations of the district in which it is located.

- 12.5-4. **Damage or Destruction:** Any structure which is occupied by a nonconforming use, and which is destroyed or damaged by fire or other causes to the extent of fifty percent (50%) or more of last full value as shown by the Assessor's records, excluding the assessed valuation of the land, shall not be re-occupied by the nonconforming use unless the Joint Board of Zoning Appeals permits the resumption of the nonconforming use under Section 12.5-5 of this Ordinance. Any such structure or any part thereof which is damaged to an extent less than fifty percent (50%) of last full value as shown by the Assessor's records, excluding the assessed valuation of the land, may be repaired or restored as per Section 12.4-3 of this Ordinance.
- 12.5-5. **Abandonment or Discontinuance:** In order for the nonconforming use of land, structure, or structure and land in combination, to lawfully continue, the same must be a continuous active use. Cessation of such active nonconforming use of land, structure, or structure and land in combination for nine (9) consecutive months or for fifteen (15) months during any two-year period shall cause the forfeiture of such nonconforming use privilege. Any subsequent use of land, structure or structure and land in combination thereafter shall conform to the regulations and uses permitted in the district in which such land or structure is located, except that a forfeited nonconforming use privilege shall lawfully resume should the Newton/North Newton Area Planning Commission under Section 12.8 of this Ordinance permit the substitution of a nonconforming use.
- 12.5-6. **Nonconforming Accessory Uses:** No use which is accessory to a principal nonconforming use shall continue after such principal use shall cease or terminate.
- 12.5-7. **Nonconforming Residential Uses:** Notwithstanding the provision of Sections 12.5-2 and 12.5-3, any structure which is devoted to a residential use and which is located in a commercial or industrial district, may be remodeled, extended, expanded and enlarged; provided that after any such remodeling, extension, expansion, or enlargement, such structure shall not be used to accommodate a greater number of dwelling or lodging units than such structure accommodated prior to any such work.
- 12.6. Status of Special Use Permit:** Any use which lawfully exists at the effective date of this Ordinance as a special permit use under the terms of this Ordinance shall not be deemed to be a nonconforming use in such district but shall, without further action, be considered a conforming use.
- 12.7. Nonconforming Signs:** All existing signs which are not specifically permitted or which do not comply with all of the provisions of these regulations for the zoning

district in which it is located, as of the date of adoption of these regulations, shall be considered nonconforming signs.

12.7-1. Repairs and Damage: Nonconforming signs may not, after the effective date of these regulations, be enlarged, structurally altered or extended unless such sign shall be made to comply with all of the provisions of these regulations, except that normal repairs and repainting of nonconforming signs are permitted. When a permanent nonconforming sign is destroyed or damaged by any means to the extent of fifty percent (50%) or more of its present day replacement value, it shall not thereafter be restored unless such sign shall be made to conform to all of the provisions of these regulations.

12.8. Substitution or Reinstatement of Nonconforming Uses:

12.8-1 The Joint Board of Zoning Appeals may permit the substitution of a nonconforming use for an existing or forfeited nonconforming use and may permit specified structural alterations provided that the parking requirements for the proposed use as prescribed in Article X of this Ordinance are either complied with, or are amended through a variance as provided in Section 13.3 of this Ordinance.

12.8-2 When a nonconforming use has been changed to any conforming use, it shall not thereafter be changed back to a nonconforming use; except, however, that the Joint Board of Zoning Appeals may permit the reinstatement of a nonconforming residential use of a structure located in a commercial zoning district if the essential character and appearance of the existing structure is that of a residential structure, and if the Board finds that such reinstatement will not place any unreasonable burdens or create any unreasonable conflicts with existing commercial uses or with the further commercial development of the district or area in which such structure is located.

12.8-3 In authorizing any substitution or reinstatement of nonconforming uses, the Board may attach thereto such conditions and restrictions regarding the location, character and other features of the proposed structure or used as it may deem necessary in the interest of the furtherance of the purpose of the Code and in the public interest.

ARTICLE XIII
JOINT BOARD OF ZONING APPEALS

13.1. General Provisions:

- 13.1-1. Authorization: A Joint Board of Zoning Appeals has been established by the Newton City Commission and the North Newton City Council pursuant to K.S.A. 12-714.
- 13.1-2. Membership: The Newton/North Newton Area Planning Commission shall perform the duties of the Joint Board of Zoning Appeals as authorized by City of Newton Ordinance 4035-92 and by City of North Newton Ordinance 356. The officers of said Commission shall also serve as officers of said Board.
- 13.1-3. Meetings: All meetings of the Joint Board of Zoning Appeals shall be held at the call of the Chairman and at such other times as the Board may determine; and shall be open to the public.
- 13.1-4. Records: The Board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the Board, decisions of the Board and the vote upon each question. Records of all official actions of the Board shall be filed in its office and shall be a public record.
- 13.1-5. Filing Fee: For the purpose of wholly or partially defraying the cost of the proceedings prescribed herein, including publication costs, the applicant wishing to appear before the Board shall pay a fee in the amount of fifty dollars (\$50.00).
- 13.1-6. List of Property Owners: Any person desiring a variance, temporary structure and use permit, or a substitution of a nonconforming use shall file with the application a certified ownership list of names and addresses of all owners of all properties lying within 100 feet of the outer limits of the land in question.
- 13.1-7. Powers: The Joint Board of Zoning Appeals shall have the following powers and duties pursuant to K.S.A. 12-715 of this Ordinance:
- A. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the Zoning Administrator or any other administrative official in the enforcement of the Zoning Ordinance.

- B. To hear and decide upon applications for variances from the regulations and restrictions imposed by this Ordinance in the manner and subject to the procedures and standards set forth in Sections 13.3-2 and 13.3-4 of this article.
- C. To hear and decide upon applications for temporary structure and use permits provided such use is of a temporary nature and does not involve the erection of a substantial structure. A zoning certificate for such use shall be granted in the form of a temporary and revocable permit for not more than 12 months subject to such conditions as will safeguard the public health, safety, conveniences and general welfare.
- D. To hear and decide upon applications for a substitution of nonconforming use pursuant to Article XII, Section 7.8 of the Zoning Code.
- E. To hear and decide, in accordance with the provisions of any regulations, requests for interpretation of any map and all other matters referred to it upon which the Board is required or authorized to pass by this Ordinance.
- F. In exercising the abovementioned powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision or determination as shall be proper, and to that end shall have all the powers of the administrative officer from whom the appeal is taken. The concurring vote of a majority of members present shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or to decide in favor of the applicant or any matter upon which it is required to pass under this Ordinance, or to effect any variation in this Ordinance.

13.1-8. Finality and Judicial Review of Decisions: All decisions and findings of the Joint Board of Zoning Appeals on appeal or upon application for a temporary structure and use permit or substitution of a nonconforming use shall be final decisions, and shall in all instances be subject to judicial review provided in K.S.A. 12-715. Any person, official or governmental agency aggrieved with any decision or determination of the Joint Board of Appeals may present a petition within fifteen (15) days after the filing of the Board's decision, to the District Court of Harvey County to determine the reasonableness of any such order of determination.

13.2 Appeals to the Joint Board of Zoning Appeals:

13.2-1. Authorization: An appeal from a decision of the Zoning Administrator or any other administrative official or agency with respect to the interpretation or application of this Ordinance may be taken to the Joint Board of Zoning Appeals by any person aggrieved or by any officer, department, board or

governmental agency or body affected by such decision of the Zoning Administrator, or other administrative official or agency.

- 13.2-2. Time for Appeals: The Board of Appeals shall prescribe the time for taking appeals by general rule. Appeals shall be taken within the prescribed time by filing a notice of appeal to the Joint Board of Zoning Appeals specifying the grounds therefore and paying the fee specified. The official or agency from whom the appeal is taken, when notified by the Board or its agent of such appeal, shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed was based.
- 13.2-3. Stay of Proceedings: An appeal shall stay all legal proceedings in furtherance of the action appealed from unless the Zoning Administrator or other administrative official or agency certifies to the Joint Board of Zoning Appeals, after notice of the appeal has been filed, that by reason of specified facts stated in the certificate of a stay would, in his/their judgment, cause imminent peril to life or property. In such case, the proceedings shall not be stayed otherwise than by a restraining order which may be granted by a court of record upon application; upon notice to the Zoning Administrator; and upon due cause shown.
- 13.2-4. Hearing and Notice: The Joint Board of Zoning Appeals shall fix a reasonable time and place for the hearing of the appeal or any other matter referred to it. Public notice of the time, place, date and subject of such hearing shall be published once in the official City newspaper at least twenty (20) days prior to the date fixed for hearing. A copy of such notice shall be mailed to each party in interest. Any party in interest may appear and be heard at the hearing in person, by agent or by attorney.
- 13.2-5. Decision: The Joint Board of Zoning Appeals shall render a written decision on the appeal without unreasonable delay after the close of the hearing, and in all cases, within thirty (30) days after the close of the hearing. In rendering the decision, the Joint Board of Zoning Appeals shall be bound by the provisions of this Ordinance.

13.3. Variances:

- 13.3-1. Authorization of Variances: The Joint Board of Zoning Appeals may authorize such variances from the terms of this Ordinance as will not be contrary to the public interest. Variances may be authorized only when the Board has made findings of fact based upon the specific standards set

forth in Section 13.3-4 of this Article, that owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in unnecessary hardship for the owner, lessee or occupant of land or structures.

13.3-2. Application for Variance: A written application for a variance shall be filed with the Joint Board of Zoning Appeals which shall contain the following information, as well as such additional information as may be prescribed by rule or regulation of the Joint Board of Zoning Appeals:

- A. The particular requirements of this Ordinance which prevent the proposed use or construction.
- B. The characteristics of the subject property which prevent compliance with the requirement of this Ordinance.
- C. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction.
- D. The particular hardship which would result if said particular requirements were applied to the subject property or structure.

13.3-3. Notice and Hearing: Notice shall be given in the manner required for hearings on appeals by Section 13.2-4 of this Article; provided that in addition to the time, place, date and subject, such notice shall also include a description of the property involved and a brief description of the relief sought.

13.3-4. Standards for Granting Variances: The Board of Zoning Appeals shall not grant a variance as authorized by Section 13.3-1 of this Article unless it shall, in each case, make specific written findings of fact directly based upon the evidence presented to it that support conclusions that:

- A. The variance requested arises from such conditions which are unique to the property in question and which are not ordinarily found in the same zoning district and which were not created by an action of the property owner or the applicant.
- B. The granting of the variance will not adversely affect the rights of adjacent property owners or residents nor will it confer upon the applicant any special privileges denied by this Ordinance to other land or structures in the same district.
- C. The strict application of the provisions of this Ordinance from which a variance is requested will constitute unnecessary hardship upon the applicant.

- D. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare.
- E. The variance requested is the minimum variance that will make possible the reasonable use of the land or structure.
- F. Granting the variance requested will not be opposed to the general spirit and intent of this Ordinance.

13.3-5. Conditions and Restrictions: In granting a variance, temporary structure and use permit, or a substitution of a nonconforming use, the Board may impose such conditions, safeguards and restrictions upon the subject property as may be necessary to insure compliance with the standards set forth in Section 13.3-4, to reduce or minimize any potentially injurious effect of such variance upon other property, and to fulfill the general purposes and intent of this ordinance. Failure to comply with any of the conditions or restrictions imposed on the variance shall constitute a violation of this ordinance.

13.3-6. Prohibitions: Under no circumstances shall the Board of Appeals grant a variance to allow a use that is not permissible under the terms of this ordinance in the district involved. No nonconforming use of adjacent lands or structures in the same district and no permitted or nonconforming use of adjacent lands or structures in the same district and no permitted or nonconforming use of lands or structures in other districts shall be considered grounds for the issuance of a variance.

13.3-7. Decision: The decision shall be rendered in the manner required and subject to the provisions of Section 13.2-5 of this Article.

**ARTICLE XIV
FLOOD PLAIN ZONING DISTRICT**

14.1. Statutory Authorization. The provision for flood plain protection is adopted pursuant to the authorization contained in Kansas Statutes Annotated Sections 12-705, 12-707, 12-710 and 12-734, 735 (1973 Supp.).

14.2. Purpose. The uncontrolled use of flood plains, rivers and streams, as well as filling, construction and certain other land practices in the flood plain of the City of Newton adversely affect the public health, safety and welfare and impairs the tax base of the City. In addition, extraordinary public expenditures may be required for the protection of persons and property and for the relief of distress in areas subject to periodic flooding. Therefore, it is the purpose of this section to:

14.2-1. Prohibit the placement of fill, materials, and structures which would obstruct flood flows and decrease the storage capacity of the floodway.

14.2-2. Protect human life and health, prevent property damage, minimize business interruptions and minimize rescue and relief efforts, which generally must be undertaken at public expense.

14.2-3. Require that uses vulnerable to floods, including public facilities which serve such uses, provided with flood protection at the time of initial construction.

14.2-4. Minimize expenditures of public monies for costly flood control projects and minimize the damage to public facilities in the flood plain, such as water mains, sewer lines, streets and bridges.

14.2-5. Minimize flood blight areas and maintain property values and a stable tax base adjacent to the floodplain.

14.2-6. Discourage the victimization of unwary home and land buyers.

14.2-7. To assure that eligibility is maintained for property owners in the community to purchase flood insurance in the Federal Flood Insurance Program.

14.3. Warning and Disclaimer of Liability: The degree of flood protection required by this section is considered to be reasonable for regulatory purposes and is based on engineering and scientific methods of study, review and evaluation conducted by the Federal Insurance Administration. However, larger floods may occur on rare occasions or the flood height may be increased by manmade or natural causes. This section does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood

damage. This section shall not create liability on the part of the City or any officer or employee thereof for any flood damages that result from reliance on this section or on any administrative decision lawfully made thereunder.

14.4. Definitions: Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

Appeal means a request for a review of the Zoning Administrator's interpretation of any provision of this ordinance or a request for a variance.

Area of special flood hazard is the land in the flood plain within a community subject to a one percent (1%) or greater chance of flooding in any given year. **Channel** is a natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water. **Channel flow** thus is that water which is flowing within the limits of the defined channel. **Development** means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Hazard Boundary Map (FHBM) and Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Flood Insurance Study has delineated the Flood Hazard Boundaries and the zones establishing insurance rates applicable to the community.

Flood Insurance Study is the official report provided by the Federal Insurance Administration. The report contains flood profiles, as well as the Flood Boundary-Floodway Map and the water surface elevation of the base flood.

Flood Profile is a graph or a longitudinal profile showing the relationship of the water-surface elevation of a flood event to location along a stream or river.

FloodPlain is the land adjacent to a body of water which has been or may be hereafter covered by floodwater including but not limited to the regulatory flood.

Flood-Proofing means a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding primarily for the reduction or elimination

of flood damages to properties, water and sanitary facilities, structures, and contents of buildings in a flood hazard area.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Floodway Fringe is that area of the flood plain, outside of the floodway, that on the average is likely to be flooded once every 100 years (i.e. that has a one percent (1%) chance of flood occurrence in any one year).

Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

Manufactured Home Park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New construction means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

Obstruction is any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood hazard area which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the flow of water might carry the same downstream to the damage of life or property.

Start of construction means (for other than new construction or substantial improvements under the Coastal Barrier Resources Act, Pub. L. 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings,

the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure means a walled and roofed building that is principally above ground, as well as a mobile home.

Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent (50%) of the market value of the structure either (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Variance is a grant of relief to a person from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

14.5. General Provisions:

- 14.5-1. Lands to Which the Flood Plain Section Applies. This section shall apply to all flood plain areas within the City of Newton and to all flood plain areas in incorporated territory lying outside of but within three (3) miles of the nearest point of the City limits provided that the unincorporated territory has not been designated a flood plain zone or district by any other government unit or subdivisions.
- 14.5-2. Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administration through a scientific and engineering report entitled "The Flood Insurance Study for the City of Newton" with accompanying Flood Insurance Rate Maps and Flood Boundary and Floodway Maps and any revision thereto are hereby adopted by reference and declared to be a part of this ordinance.

- 14.5-3. National Flood Insurance. Nothing in this section or in any regulations adopted hereunder shall be construed as affecting the eligibility of any existing structure upon the publication of the Flood Insurance Rate Map.
- 14.5-4. Compliance. No structure, land or water shall hereafter be used and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.
- 14.5-5. Establishment of Development Permit. A development permit shall be required in conformance with the provisions of this ordinance.
- 14.5-6. Rules for Interpretation of District Boundaries. The boundaries of the floodway fringe overlay districts shall be determined by scaling distances on the official zoning map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the Zoning Administrator shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Zoning Appeals will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence, if he so desires.
- 14.5-7. Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- 14.5-8. Interpretation. In the interpretation and application of ordinance, all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit or repeal any other powers granted under state statutes.

14.6. Development Permit:

- 14.6-1. Permit Required. No persons, firm or corporation shall initiate any development or cause the same to be done without first obtaining a separate permit for development for each such building or structure.

- 14.6-2. Application for Permit. To obtain a permit, the applicant shall first file an application therefore in writing on a form furnished for that purpose. Every such application shall:
- A. Identify and describe the work to be covered by the permit for which the application is made.
 - B. Describe the land on which the proposed work is to be done by lot, block tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or work.
 - C. Indicate the use or occupancy for which the proposed work is intended.
 - D. Be accompanied by plans and specifications for proposed construction.
 - E. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.
 - F. Within designated flood prone areas, be accompanied by elevations (in relation to mean sea level) of the lowest floor (including basement) or in the case of floodproofed non-residential structures, the elevation to which it has been floodproofed. Documentation or certification of such elevation will be maintained by the Zoning Administrator.
 - G. Provide a certificate from a registered professional engineer or architect that the non-residential floodproofed structure is adequate to be watertight with walls impermeable to the passage of water and withstand the hydrodynamic forces associated with the 100-year flood.
 - H. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.
 - 1) Notify, in riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Administrator;
 - 2) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
 - I. Give such other information as reasonably may be required by the Zoning Administrator.
 - 1) A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross sectional areas to be corrupted by the proposed development and higher water information.

- 2) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations, size, location and spatial arrangement of all proposed and existing structures on the site; location and elevation of streets, water supply, sanitary facilities, photographs showing existing land uses and vegetation upstream and downstream, soil types, and other pertinent information.
- 3) Profile showing the slope of the bottom of the channel or flow line of the stream.

14.6-3. Zoning Administrator. The Zoning Administrator shall review all building permit applications to determine if the site of the proposed development is reasonably safe from flooding, and that all necessary permits have been received as required by Federal or State law.

14.7. Variance Procedures:

14.7-1. The Board of Zoning Appeals of the City shall hear and decide appeals and requests for variances from the requirements of this ordinance and shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Zoning Administrator, in the enforcement or administration of this ordinance.

14.7-2. In passing upon such applications, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

- A. The danger that materials may be swept onto other lands to the injury of others;
- B. The danger to life and property due to flooding or erosion damage;
- C. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- D. The importance of the services provided by the proposed facility to the community;
- E. The necessity to the facility of a waterfront location, where applicable;
- F. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- G. The compatibility of the proposed use with existing and anticipated development;

- H. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
- I. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- J. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- K. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- L. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items A, B, and C of Section 14.7-5 have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

14.7-3. Upon consideration of the factors listed above and the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

14.7-4. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

14.7-5. Conditions for Variances:

- A. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- B. Variances shall only be issued upon (1) a showing of good and sufficient cause, (2) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- C. Any applicant to whom a variance is granted shall be given a written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

- D. The Zoning Administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

14.8. Provisions for Flood Hazard Reduction:

- 14.8-1. General Standards. In all area of special flood hazards, the following provisions are required:

- A. All new construction including manufactured homes and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- B. All new construction and substantial improvement shall be constructed with materials and utility equipment resistant to flood damage.
- C. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- D. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- E. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- F. On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- G. The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.
- H. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.
- I. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

- 14.8-2. Specific Standards. In all areas of special flood hazards where base flood elevation data has been provided, the following provisions are required:

- A. Residential Construction. New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one or more feet above base flood elevation.
- B. Nonresidential Construction. New construction or substantial improvement of any commercial, industrial or other nonresidential structure shall have the lowest floor, including basement, elevated to or above the base flood elevation, or floodproofed to one or more feet above the base flood elevation. This shall include attendant utility and sanitary facilities. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied.
- C. In those areas where base flood elevation data have not been provided, the Zoning Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer the provisions of Section 14.8.
- D. Agricultural Uses on a Special Use Permit Basis. Refer to Section 4.5-2 of this Ordinance.
- E. Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

14.8-3. Manufactured Homes and Residential Subdivisions.

- A. All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with state and local building codes and FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:
 - 1) Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side.

- 2) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side.
 - 3) All components of the anchoring system be capable of carrying a force of 4,800 pounds.
 - 4) Any additions to the manufactured home be similarly anchored.
- B. Require that all manufactured homes to be placed within Zones A1-30, AH and AE on the community's FIRM, be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 14.8-3-A.
- C. Standards for Residential Subdivision Proposals.
- 1) All subdivision proposals and other proposed new developments, including manufactured home parks or subdivisions, shall be consistent with the need to minimize flood damage.
 - 2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
 - 3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
 - 4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions), which is greater than either 50 lots or 5 acres.

14.8-4. In the Floodway Portion of the Flood Plain District.

- A. Encroachments, including fill, new construction, substantial improvements and other developments are prohibited unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.
- B. The storage of materials that are in time of flooding buoyant, flammable, explosive or potentially injurious to human life or property shall be prohibited; storage of

other materials may be allowed if not subject to major damage by floods, and if firmly anchored to prevent flotation, or is readily removable after flood warning.

14.9. Certification and Information Required for Floodproofing:

- 14.9-1. Floodproofing. Applicants shall provide certification by a registered professional engineer or architect that the floodproofing plans are adequate to be watertight with walls impermeable to the passage of water and withstand the hydrodynamic forces associated with the 100-year flood.
- 14.9-2. Floodproofing of residential structures will not be allowed unless the community is specifically granted an exception from the provisions of this ordinance by the Administrator of the Federal Insurance Administration.
- 14.9-3. Elevation of Property. The applicant shall provide information identifying the elevation of the property in relation to mean sea level of the lowest flood (including basement of the proposed structure) to which structures are floodproofed. In addition, the applicant shall provide this information for the second lowest floor when the lowest floor is below grade on one or more sides.
- 14.9-4. The Zoning Administrator will maintain the records of certification when issuing development permits in conformance with this section.
- 14.10. **Penalties for Violation:** Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

Nothing herein shall prevent the governing body or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

- 14.11. **Flood Plain Nonconforming Uses:** Whenever any structure subject to the Flood District requirements becomes a nonconforming use under these provisions it shall be subject to the requirements and provisions of Article XII of these Regulations.
- 14.12. **Amendments:** The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster

Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 20 days notice of the time and place of such hearing shall be published in a newspaper of general circulation in this City. The regulations of this ordinance are in compliance with the National Flood Insurance Program Regulations as published in the Federal Register, Volume 41, Number 207, dated October 26, 1976.

ARTICLE XV

ADMINISTRATIVE PROVISIONS AND ENFORCEMENT

15.1. Enforcement:

- 15.1-1. Zoning Administrator: These regulations shall be enforced and administered by a Zoning Administrator who shall be appointed by the City Manager and who may be provided with the assistance of such other persons as the Commissioners may direct in order to carry out the following duties and responsibilities:
- A. Conduct inspections of structures and uses of land to determine compliance with the provisions of this Ordinance.
 - B. Receive, file, and forward to the Joint Board of Zoning Appeals the records in all appeals and all applications for variances, temporary structure and use permits, and substitution of nonconforming uses.
 - C. Maintain permanent and current records of the Zoning Ordinance including but not limited to all zoning maps, amendments, variances, appeals and applications thereof and records of hearings thereon.
 - D. Prepare and have available in book, pamphlet or map form each year:
 - 1) The compiled text of the Zoning Ordinance and amendments thereto, including all amendments.
 - 2) A zoning map or maps showing the zoning districts, divisions and classifications.
 - E. Maintain a supply of copies of the compiled text of the Zoning Ordinance and the rules of the Joint Board of Zoning Appeals. A fee for each copy shall be charged to defray the cost of printing.
 - F. Provide such clerical, technical and consultative assistance as may be required by the Joint Board of Zoning Appeals and other boards, commissions and officials in the exercise of their duties relating to this Ordinance.

Whenever the Zoning Administrator shall find that any of the provisions of this Ordinance have been or are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the

action necessary to correct it. He may order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings, structures or additions or alterations thereto; discontinuance of any illegal work being done; or take any other appropriate action authorized by this Ordinance to insure compliance with, or to prevent violation of its provisions.

- 15.1-2. Approval of Building Permits. The Zoning Administrator shall examine all applications for building permits submitted to him by the Building Inspector as provided by the Building Code to insure that the proposed construction and use is in conformance with all the provisions of the Zoning Ordinance. Within ten (10) days after receipt of such application, the Zoning Administrator shall either approve the same and return the application to the Building Inspector, or shall disapprove the same and return it with his findings and determination of non-compliance.
- 15.1-3. Appeal for Disapproval. Any applicant may appeal the findings and determination of non-compliance to the Board of Zoning Appeals in accordance with Article XIII of this Ordinance.

15.2. Violations:

- 15.2-1. Complaints of Violations. Any person may file a written complaint with the Zoning Administrator of an alleged violation of this Ordinance stating fully the causes and basis for such violation. The Zoning Administrator shall record such complaint, investigate it and take appropriate action as provided by these Regulations.
- 15.2-2. Penalties. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any of the provisions of this ordinance shall be guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred dollars (\$100) for each offense. Each and every day that such violation or failure to comply continues to exist after notification shall constitute a separate offense.
- 15.2-3. Remedies. In the event that any building or structure is constructed, reconstructed, relocated or maintained or any building, structure, lot or land is used in violation of any of the provisions of this Ordinance, an appropriate action or proceeding in law or in equity may be instituted to prevent such unlawful development, construction, reconstruction, alteration, relocation, maintenance or use, or to restrain, abate, enjoin or correct such violation, or to prevent the occupancy of such building or structure or unlawful use of such land and to prevent illegal acts, conduct, business or use in and about the premises. These remedies shall be in addition to the penalties prescribed in Section 15.2-2 above.

ARTICLE XVI

RULES AND DEFINITIONS

16.1. Rules: For the purpose of this Ordinance the following rules shall apply:

- A. Words and numbers used singularly shall include the plural. Words and numbers used plurally shall include the singular. Words used in the present tense shall include the future.
- B. The word "persons" includes a corporation, members of a partnership or other business organization, a committee, board, trustee, receiver, agent or other representative.
- C. The word "shall" is mandatory.
- D. The words "use," "used," "occupy" or "occupied" as applied to any land or building shall be construed to include the words "intended," "arranged" or "designed" to be used or occupied.

16.2. Definitions: For the purpose of this Ordinance, certain terms or words used herein shall be interpreted or defined as follows, unless the context clearly indicates otherwise.

Accessory Building: A subordinate building or portion of the main building, the use of which customarily is incidental to that of the main building or to the main use of the premises. An accessory building shall become a part of a main building when the structures are substantially joined and of such design and so constructed and joined as to present a uniform architectural effect of one building, all parts of which are accessible to each other within the confines of the walls of the structure.

Accessory Use: A use of land customarily incidental and subordinate to the use of the principal building on the same lot or tract.

Alley: A public thoroughfare which provides only a secondary means of access to abutting property, the right-of-way of which is twenty (20) feet or less in width.

Alterations: As applied to a building or structure, a change or rearrangement in the structural components, or an enlargement, whether by extending on a side or by increasing in height, or the moving of one location or position to another, shall be considered as an alteration.

Animal Hospital or Clinic: An establishment where animals are admitted principally for examination, treatment, board or care by a Doctor of Veterinary Medicine.

Applicant: The owner or duly designated representative of land proposed to be subdivided, or for which a special permit, zoning amendment, variance, temporary structure and use permit, substitution of a nonconforming use, building permit or certificate of occupancy has been requested.

Area: A piece of land capable of being described with such definiteness that its location may be established and boundaries definitely ascertained.

Automobile Service Station: Buildings and premises where gasoline, oil, grease, batteries, tires and automotive accessories may be supplied and dispensed at retail; and where, in addition, servicing, repair, and replacement of parts may be done.

Awnings, Canopy and Marquee Sign: See Section 11.2(2).

Basement: That portion of a building which has more than one-half (1/2) of its interior height, measured from floor to finished ceiling, below the average finished grade of the ground adjoining the building.

Bed-and-Breakfast Facility: A residential structure constructed and maintained in the manner and form as a single-family dwelling which is used and held open to the public on a regular basis by the occupants to house and provide limited meal service for overnight guests for hire.

Buffer Area: Open and unobstructed ground area, in addition to any required yards or road widenings around the perimeter of any lot.

Buildable Area: The portion of a lot remaining after required yards have been allocated.

Building: Any structure built for the support, shelter or enclosure of persons, animals, chattels, or movable property of any kind, and including any structure.

Building Height: The vertical dimension measured from the curb level opposite the center of the front of a building, or where no curb level has been established, from the mean elevation of the finished lot grade at the front of the building to the highest point of the underside of the ceiling beams; in the case of a flat roof, to the deck line of a mansard roof; and to the mean level of the underside of the rafters between the eaves and the ridge of a gable, hip or gambrel roof.

Building, Principal: A building in which is conducted the main or principal use of the lot on which said building is situated.

Bulk: The size and shape of buildings and their physical relationship to lot lines, setback requirements and other buildings, structures and uses on the same lot and on adjoining lots. Bulk regulations prescribe requirements for lot area, lot area per dwelling unit, lot frontage, width, depth and height of buildings.

Bulk, Nonconforming: That part of a building, structure or use that does not conform to one or more of the applicable bulk regulations herein.

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, including regulations controlling maximum height, maximum lot coverage and minimum yards and setbacks.

Campground: Any premises where two or more camping units are parked or placed for camping purposes, or any premises used or set apart for supplying to the public camping spaces, which include any buildings, structures, vehicles or enclosures used or intended for use for the accommodation of transient campers and camping vehicles.

Certificate of Occupancy: A permit issued by the Zoning Administrator after certification that such land, use, structure or building is fit for human occupancy and complies with all of the provisions of the zoning and subdivision regulations and other applicable codes and regulations.

Child Care Center: A day nursery providing care for seven (7) or more children, for part or all day or night away from the home of the parent or guardian; and includes full day child care, nursery schools, play groups, Head Start, and other establishments offering care to groups of children for part or all of the day or night.

Club or Lodge: A nonprofit association or organization formed for either fraternal, social, education, philanthropic or other similar purposes, including unions and professional organizations.

Comprehensive Plan: A plan for the future development of the City and adopted by the Newton-North Newton Area Planning Commission and City Commission.

Day Care Home: A home in which care is given for less than 24 hours a day to six (6) or fewer children away from their own homes, who are not related to the persons giving care. The number of children includes the family's own preschool children.

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

District: Any area designated on the zoning map for which detailed regulations are established herein pertaining to the uses permitted, the bulk of buildings and structures, and the size of yards and buildable area.

Dormitory: A building on a college or university property in which students attending the college or university reside. A lot on which a dormitory is erected shall contain a minimum of sixty-five hundred (6500) square feet.

Drive-in Establishment: A place of business operated for the sale and purchase at retail of food and other goods, services or entertainment, which is laid out and equipped so as to allow its patrons to be served or accommodated while remaining in their automobiles, or which allows the consumption of any food or beverage in automobiles or on the premises, but outside of any completely enclosed structure.

Dwelling: Any building or portion thereof, other than a mobile home, which is permanently affixed to a foundation imbedded in the soil and used exclusively for residential purposes.

Dwelling, Multiple Family: A building or portion thereof having accommodations for and intended to be used for occupancy by three (3) or more families living independently from one another.

Dwelling, Single Family: A building having accommodations for and occupied exclusively by one (1) family.

Dwelling, Two Family: A building having accommodations for and intended for use or occupancy by two (2) independent families.

Dwelling Unit: A building, or part thereof, containing complete housekeeping facilities for a single family.

Easement: Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of his property.

Exceptions: Uses that are not appropriate generally in a particular district without restriction, but which, if controlled as to number, area, location, relation to adjoining properties and other factors can be appropriate. Such uses that may be permitted in particular districts as exceptions are allowed only if expressly provided for herein.

Family: One or more persons related by blood, marriage, or adoption, living together as a single housekeeping unit; or a group of not more than four (4) unrelated persons living together as a single housekeeping unit.

Fence: A free-standing structure of metal, masonry, composition or wood or any composition thereof resting on or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes.

Final Plat: The map or plan or record of a subdivision, and accompanying documents and materials, as described and defined in the subdivision regulations.

Frontage: That side of a lot abutting on a street and ordinarily regarded as the front of the lot.

Garage, Private: An accessory building designed and used for the storage of not more than four (4) motor-driven vehicles owned and used by the occupants of the building to which is it accessory.

Governing Body: a) Newton City Commission, b) North Newton City Council

Grade: The slope of a road, street or other public way.

Ground Sign: See section 11.2 (11).

Hanging Sign: See Section 11.2 (12).

Home Occupation: A profession or other occupation not otherwise permitted in the district, which is conducted as an accessory use on a residential lot by one (1) or more members of the family residing on the premises and which conforms to the requirements established in Section 3.2-3.

Hospital: An establishment used primarily for inpatient care and provides health, medical and surgical care of the sick or injured.

Hotel or Motel: A building or portion thereof, or group of buildings which has living and sleeping accommodations for hire for ten (10) or more persons, which is open for year-round occupancy, whether designated as hotel, motel, inn, automobile court, motor lodge, motor court, tourist cabin or other similar designation.

Incompatible Use: A use which is unsuitable for direct association with certain other uses because it is contradictory, incongruous or discordant.

Institution (Nonprofit): A building occupied by a nonprofit corporation or a nonprofit establishment for public use.

Joint Board of Zoning Appeals: The Board established in accordance with K.S.A. 12-714 et. seq. and with the powers and authority therein granted.

Junk Yard (Salvage yard): An area of land with or without buildings, used or occupied by a deposit, collection or storage, outside a completely enclosed building or used for discarded materials; used building materials, house furnishings, machinery, vehicles or parts thereof whether with or without the dismantling, processing, salvage, sale or other use or disposition of same.

Kennel: Any premise, except a veterinary hospital, where there is being harbored either a total of more than two (2) dogs over the age of six (6) months, or a total of more than three (3) dogs over the age of six (6) months if at least one (1) such dog is specially trained and certified to perform functions and duties for a public safety agency or to assist disabled persons and if such certification is on file with the City Clerk.

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

Light Assembly Operations: Those businesses that assemble products which would be legal for sale within the C-3 district.

Loading Space: Space logically and conveniently located for building pickups and deliveries and accessible to delivery vehicles when required off-street-parking spaces are filled.

Local Road: A road intended to provide access to other roads from individual properties.

Lodging House (including Boarding, Rooming, Fraternity and Sorority Houses): In a residential building, or portion thereof, other than a motel, apartment hotel, or hotel, as containing lodging rooms which accommodate persons, not exceeding 20 in number, who are not members of the keeper's family. An establishment where meals are served for compensation for more than 20 people shall be deemed a restaurant.

Lodging Room (Rooming Unit): A room rented as sleeping and living quarters, but without cooking facilities and with or without an individual bathroom. In a suite of rooms without cooking facilities, each room which provides sleeping accommodations will be counted as one "lodging room" for the purposes of this ordinance.

Lot: A portion of a subdivision intended as unit for the purpose, whether immediate or future, of transfer of ownership or building development or use. The area bounded by the front, side and rear lot lines.

Lot, Corner: A lot situated at the intersection of two (2) streets.

Lot, Depth: The distance between the midpoints of straightlines connecting the foremost points of the side lot lines in front and in the rear of the lot.

Lot Improvement: Any building, structure, or other object or improvement of the land on which they are situated constituting a physical betterment of real property.

Lot, Interior: A lot other than a corner lot, having a single frontage on a street.

Lot Line, Front: A street right-of-way line forming the boundary of a lot.

Lot Line, Side: A lot line which is neither a front or rear lot line.

Lot of Record: A lot which is part of a subdivision, the plat of which has been recorded in the Office of the Register of Deeds or a parcel of land, the deed to which was recorded prior to adoption of these Regulations.

Lot Width: The distance between straight lines connecting front and rear lot lines at each side of the lot measured across the rear of the required front yard.

Major Recreational Equipment: Boats and boat trailers, travel trailers, pickup campers or coaches, designed to be mounted on automotive vehicles, motorized dwellings, tent trailers and the like and recreational vehicles.

Manufacture: Any method of processing, developing, fabricating, assembling, either raw materials, semi-finished materials or parts into a semi-finished or finished product.

Medical, Dental or Health Clinic: Any building designed for use by one or more persons lawfully 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 and podiatrists; and in which no patients are lodged overnight.

Mobile Home Dwelling: Any vehicle, trailer or similar portable structure, mounted or designed for mounting on wheels, used or intended for use for single-family dwelling purposes only, including structural additions, except parked or unoccupied camping-type trailers. Any such vehicle, trailer or structure shall be deemed to be a mobile home whether or not resting upon a temporary or permanent foundation.

Mobile Home Site: A plot of ground designed for accommodation of a single mobile home dwelling.

Mobile Home Park: An area of land upon which two (2) or more mobile home dwellings are parked and connected to utilities or which is held out or used for the purposes of supplying to the public, parking spaces for two (2) or more mobile homes, and shall include all buildings, structures, land uses and equipment utilized in connection with such park.

Nonconforming Lot of Record: An unimproved lot which does not comply with the lot size requirements for any permitted use in the district in which it is located.

Nonconforming Structure: A structure which does not comply with the lot size requirements or bulk regulations applicable to new structures in the zoning district in which it is located.

Nursing Homes: An establishment or agency licensed by the State of Kansas for the reception, board, care or treatment of three (3) or more unrelated elderly individuals.

Parking Garage: A building used for the storage of motor vehicles which contains space rented to the general public.

Parking Lot: Any surfaced area used for the storage of motor vehicles by employees or the general public.

Parking Space: A surfaced area, enclosed in the main building or in an accessory building, or unenclosed, exclusively of driveways, permanently reserved for the temporary storage of one automobile and connected with a street or alley by a surfaced driveway which affords satisfactory ingress or egress for automobiles.

Planned Development: District allowing flexible development of certain tracts of land, when planned and designed as a unit for one or more land uses under the provisions of these regulations.

Planning Commission: The Newton-North Newton Area Planning Commission as established in K.S.A. 12-704, et. seq.

Platting: Whenever the term platting, platted or subdivided is used in this Zoning Ordinance, it shall refer to the process established by the duly adopted Subdivision Regulations by the Newton-North Newton Area Planning Commission.

Pole Sign: See Section 11.2 (28).

Portable Sign: See Section 11.2 (30).

Preliminary Plat: The preliminary drawings and information which indicate the proposed layout of a subdivision, as described and defined in the subdivision regulations.

Projecting Sign: See Section 11.2 (32).

Professional Office: Any building or part thereof used by one (1) or more persons engaged in the practice of law, accounting, architecture, engineering or other occupation customarily considered as a profession.

Public Improvement: Any drainage facility, roadway, street, sidewalk, sewer or water facility or other improvement for which the government body may ultimately assume the responsibility of maintenance and operation.

Public Utility: Any business which furnishes to the general public (a) telephone service, (b) telegraph service, (c) electricity, (d) natural gas, (e) water, (f) sewer and (g) other services so affecting the general public interest as to be subject to the supervision or regulation of a State agency.

Railroad Right-of-Way: A strip of land with tracks and auxiliary facilities for track operation, but not including freight depots or stations, loading platforms, train sheds, warehouses or car yards.

Recreation Vehicle: See Major Recreational Equipment.

Remodeling: Any change in a structure (other than incidental repairs and normal maintenance) which may prolong its useful life; or the construction of any addition to, or enlargement of, a structure; or the removal of any portion of a structure.

Residence: See Dwelling Unit.

Restaurant: A public eating establishment at which the primary function is the preparation and serving of food.

Right-of-Way: A strip of land occupied or intended to be occupied by a street, road, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for other similar use.

School: A public elementary or secondary educational facility which is under direction and control of the State Board of Education and the State Superintendent of Public Instruction and/or a parochial elementary or secondary educational facility which offers the same general curriculum as that provided by a comparable public educational facility.

Screening: Decorative fencing or dense vegetation maintained for the purpose of concealing certain structures or uses from view.

Service Station: An establishment consisting of a building or group of buildings and surfaced area where automotive vehicles may be refueled and serviced; such service shall not include tire recapping, body repairs or major overhaul.

Setback: The distance between any lot line and the foundation of the principal building and accessory buildings on the lot.

Sign: See Section 11.2 (37).

Sketch Plat: A sketch preparatory to preparation of the preliminary plat to enable a subdivider to reach general agreement with the Planning Commission at the earliest possible time.

Special Exception: See Exceptions.

Storage Garage: A building, or portion thereof, designed and used exclusively for housing motor driven vehicles, recreational vehicles, boats, trailers, and camper tops and all related accessories.

Street: A right-of-way dedicated to the public use which provides vehicular and pedestrian access to adjacent properties.

Structure: Anything constructed or erected above or below ground, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground.

Structural Alterations: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any complete rebuilding of the roof or the exterior walls. For the purpose of this ordinance, the following shall not be considered structural alterations.

- a. Attachments 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. Minor repair or replacement of nonstructural members.

Subdivision: Any land, vacant or improved, which is created into one lot or which is divided or proposed to be divided into two (2) or more lots for the purpose of offer, sale, lease or development.

Tavern: An establishment in which the primary function is the public sale and serving of malt beverages.

Temporary Use: A use permitted in a zoning district subject to a specific time limit.

Tract: A plot or parcel of land, other than a lot, in a subdivision which has been recorded prior to November 25, 1977, in the office of the Register of Deeds of Harvey County as a single plot or parcel of land under individual ownership.

Trailer: A vehicle standing on wheels or on rigid supports which is used for transporting boats, cargo or property.

Usable Open Space: That part of the ground area of a lot or development devoted to outdoor recreational space, but excluding private or public roadways, accessory off-street parking and loading and other uses and structures.

Use: Any purpose for which a structure or 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: Regulations identifying permitted and exceptional uses, accessory uses, use limitations and use conditions.

Variance: A relaxation of the literal terms of the zoning regulations where applicable to avoid undue hardship to a property owner and where the public interest will be served.

Wall Sign: See Section 11.2 (41).

Warehouse: A structure or room for the storage of merchandise commodities, household goods and personal property.

Yard: Open space on a lot which is unoccupied and unobstructed from the ground to the sky, except for permitted obstructions.

Yard, Front: A yard extending along the full length of the front lot line from said line to a line drawn parallel to it equal to the depth of the required front yard. On corner lots, the Zoning Administrator shall determine the front yard requirement subject to the limitation that at least one front yard shall have the required front yard depth and the other shall have no less than fifteen (15) feet.

Yard, Rear: A yard extending across the full width of the lot, the depth of which is the least distance between the rear lot line and the rear setback line, except for three and five sided lots, in which the following shall apply: A yard extending across the full width of the lot between the rear of the principle building and the rear lot line which contains at least 1625 square feet, with no part of the principle building lying within fifteen (15) feet of any rear lot line.

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 there from, equal to the width of the required minimum side yard, but excluding any area encompassed within a front yard or rear yard.

Zone: See District.

Zoning Administrator: The person or persons authorized and empowered

by the City Commission and City Council of Newton and North Newton to administer and enforce the requirements of these Regulations.

Zoning Regulations: The official Zoning Regulations of the Cities of Newton and North Newton together with all amendments thereto.