

ARTICLE 21

PROCEDURES AND ADMINISTRATION

DIVISION 21.000 PURPOSE

This Article establishes the procedures for all approvals, administrative reviews, and administrative relief required by this Ordinance. This Article provides the user with a guide to the procedures to be followed and the criteria that must be met for some types of applications. It also provides for appeals from decisions taken to the courts.

SECTION 21.010 PROCEDURAL AND ADMINISTRATIVE CHART

Table 21.010 divides the various procedures into groups of reviews that follow a common format. The first column is the actual procedure. Then, each decision has three sub-columns. The first column, labeled "Req'd" indicates whether the procedure is required, optional, or not applicable. The second column, labeled "Days" is the time limit that the agency has to conduct the proceedings. All times are in working days. The third column, labeled "Agency" indicates the responsible agency or board.

**Table 21.010
PROCEDURAL AND ADMINISTRATIVE CHART**

Types	Zoning Change Map, Zoning Change Text, Conditional Use, and Environmental Impact Assessment Report			Variance, and Appeal			Beneficial Use			Interpretation			Limited Use, Zoning Permit, Sign Permit			Occupancy Permit			Concept Plat or			Preliminary Plat, Final Plat, Preliminary Site Final Site Plan			
	Req'd	Days	Agency	Req'd	Days	Agency	Req'd	Days	Agency	Req'd	Days	Agency	Req'd	Days	Agency	Req'd	Days	Agency	Req'd	Days	Agency	Req'd	Days	Agency	
Preapplication Conference	O	10	Zoning Officer	O	3	Zoning Officer	O	10	Zoning Officer										O	10	Zoning Officer	Y	10	Zoning Officer	
Illustrations	Y	Plans or illustrations required, except for text amendments		O	Illustrations that demonstrate the issue recommended but not required		Y	Sec. 21.401						Y	Lot plan - zoning permit Limited use - Sign Permit					Y	Concept Plat or Plan		Y	Plat or Site Plan	
Completeness Review	Y	3	Zoning Officer	Y	3	Zoning Officer	Y	3	City Attorney	Y	1	Zoning Officer	Y	3	Zoning Officer				Y	3	Zoning Officer	Y	3	Zoning Officer	
Fee	Y			Y			Y					Y			Y			Y			Y				
Application Review	Y	15	Zoning Officer	Y	15	Zoning Officer	Y	15	Zoning Officer	Y	5	Zoning Officer	Y	15	Zoning Officer	Y	at counter	Zoning Officer	Y	15	Zoning Officer	Y	15	Zoning Officer	
Notice	Y	Sec. 21.151		Y	Sec. 21.151		Y	Sec. 21.151																	
Public Hearing	Y		Planning Comm.	Y		Zoning Board	Y		Hearing Officer																
Recommendation	Y	30	Planning Comm.	Y		Zoning Board	Y	30	Hearing Officer												Y	30	Planning Comm.		
Notice	Y	Sec. 21.151		Y	Sec. 21.151		Y	Sec. 21.151																	
Public Hearing	Y	20	City Council	Y		Zoning Board	Y		City Council																
Decision	Y	60	City Council	Y	60	Zoning Board	Y	60	City Council	Y	5	Zoning Officer	Y		Zoning Officer	Y	5	Zoning Officer	Y	30	Planning Comm.	Y	30	City Council	
Appeal to Courts	As per Kansas Statutes																								
NOTES Y = required O = optional all times in working days.																									

DIVISION 21.100 PROVISIONS OF GENERAL APPLICABILITY

This Division shall be followed for procedures required by Table 21.010.

SECTION 21.110 PRE-APPLICATION CONFERENCE

- A. **General.** A pre-application conference is mandatory prior to submitting certain applications. The pre-application conference's purpose is to familiarize the applicant with any City concerns and with the Ordinance's applicable provisions. Also, this conference permits Staff to assess the proposal and identify any service problems or concerns.
- B. **Initiation.** An applicant shall request a date for the pre-application conference with Staff. The request shall be accompanied by a description of the character, location, and magnitude of the proposed development and the type of approval sought. If a concept plat or plan is required, then it should be brought to the pre-application conference.
- C. **Scheduling.** Upon receipt of the request for a pre-application conference, the Zoning Officer shall schedule and hold the pre-application conference. The Zoning Officer shall notify the applicant of the time, date, and place of the pre-application conference.
- D. **Conference Determinations.** At the pre-application conference, the Zoning Officer and other Staff shall review the material, make recommendations, and indicate concerns, problems, or other factors the applicant should consider in pursuing the proposal.
- E. **Written Summary.** The Zoning Officer shall mail to the applicant a written summary of the pre-application conference within the time indicated in Table 21.010.

SECTION 21.120 APPLICATIONS

- A. **Initiation.** Unless otherwise indicated in this Article, applications shall be submitted by the owner, or any other person having a contractual interest in the land for which the use is proposed, or an authorized agent.
- B. **Submission of Application.** An application shall be submitted to the Zoning Officer along with a fee established in Section 21.140. Applications received before 1:00 p.m. shall be dated the same working day. Applications received after 1:00 p.m. shall be dated the next working day.
- C. **Inspection and Access.** Accompanying any application for a permit, design review, or other administrative actions shall be a signed statement granting Staff right of reasonable access to view, enter, and inspect the property, or on-site uses or buildings, for compliance with this Ordinance.
- D. **Contents of Application.** The application shall be submitted in or on a form established by staff and made available to the public. An application form, describing the information each application must contain to be considered complete, is available from the Zoning Officer.

SECTION 21.121 APPLICATION COMPLETENESS REVIEW

The Zoning Officer shall determine, within the time specified in Table 21.010, if the application is sufficient and includes data necessary to evaluate the application.

- A. If the Zoning Officer determines the application is not sufficient, a written notice shall be mailed to the applicant specifying deficiencies. No further action shall be taken on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies within thirty (30) working days, the application shall be considered withdrawn and the application fee refunded.
- B. When the application is determined sufficient, the Zoning Officer shall notify the applicant and begin the requisite reviews. If a public hearing is required, the date shall be set to hear the application and the applicant notified in writing.
- C. Any decision by the Zoning Officer regarding sufficiency of the application may be appealed by the applicant to the Board of Zoning Appeals.

SECTION 21.130 REVIEW AND RECOMMENDATION: ZONING OFFICER

The following standards shall apply whenever the Zoning Officer is required to provide a review and recommendation or a decision concerning an application (see Table 21.010).

- A. **Application.** Upon receipt of a complete application, the Zoning Officer shall forward the application to and receive comment from all members of the Staff and any City consultants and inform the applicant when the Zoning Officer will meet with the applicant.
- B. **Recommendation.** Upon completion of the Zoning Officer's review, Staff shall meet with the applicant to review the recommendations. The developer shall be permitted to ask questions and respond to the comments. If revisions to a plat or site plan are required, an additional meeting shall be scheduled.

SECTION 21.140 FEES

The City Council may pass an ordinance establishing fees as needed to defray application processing costs. All applications shall be accompanied by the applicable fee. The fee schedule shall be available for review in the Zoning Office. In addition, the applicant shall be required to post an escrow account with the City to pay all costs of publication, notification, and review by City consultants. The applicant shall maintain the escrow account with a minimum balance of two thousand (2,000) dollars. The city manager shall waive or reduce the amount of escrow upon determining such an escrow will not be required to cover costs. Failure to maintain the balance at the amount set by the city manager shall place the project on hold until such time as the escrow account is replenished. Time limits in Table 21.010 shall not apply during any period the project is on hold. Upon completion of a project, any balance in the escrow account shall be refunded to the developer within thirty (30) days.

SECTION 21.141 USE OF CONSULTANTS BY CITY; PAYMENT OF COSTS

- A. Whenever the Zoning Officer determines it is necessary to obtain the expertise of outside professional consultants, such as traffic engineers or environmental engineers, the applicant shall be responsible for the City's actual costs incurred in obtaining such consultant's services.

- B. The applicant shall be advised by the Zoning Officer of the estimated, or contracted-for, cost of such consulting services prior to commencement of work by the consultant. All fees, charges and other expenses billed by the consultant to the City shall be paid by the applicant prior to approval of the application.
- C. Any decision by the Zoning Officer to utilize a consultant, and any charge that is proposed to be billed, or has been billed, to the applicant may be appealed to the Board of Zoning Appeals.

SECTION 21.150 PUBLIC HEARINGS

All applications for development permits requiring public hearings shall follow this Section's provisions.

SECTION 21.151 NOTICE OF PUBLIC HEARINGS

The Zoning Officer shall be responsible for ensuring notice in newspaper, posted notice, and mailed notice.

- A. **Public Notice in Official City Newspaper.** Notice of the Planning Commission public hearing on the application shall be published in the official City newspaper. Notice shall appear no more than thirty (30) days before and no less than twenty (20) calendar days prior to the public hearing date. In computing the time both the day of publication and the day of the public hearing shall be excluded. Notice shall contain the following information:
 - 1. The type of application sought: i.e. conditional use, variance, amendment to the Zoning Map, amendment to the Zoning Ordinance.
 - 2. A short description of the proposed action requested.
 - 3. A legal description of the parcel, the general street location or address, where possible, and the name of the person seeking the application.
 - 4. The location, address, date, and time of the public hearing.
 - 5. Information on where full details of the application may be obtained, including the location, business hours, and telephone number.
 - 6. The applicant shall be responsible for providing the Zoning Officer with the notice.
- B. **Notices to Surrounding Property Owners.**
 - 1. Unless otherwise specifically provided in this Article, whenever notice to surrounding property owners is required for consideration of an application, such notice shall be given as follows: The applicant shall mail all notices at least 20 days prior to the public hearing, thus notifying such property owners of the opportunity to be heard. Notice shall be mailed to all owners of record of land within 200 feet of the property subject to the application. If the subject property is located adjacent to unincorporated property outside the City's limits, including property within the City's Community Growth Area, then the area of notification shall be extended to include all unincorporated land within 1000 feet of the subject property. For the purposes of this Article, the phrase "adjacent to unincorporated property outside the City's limits" shall mean property which lies upon or touches (1) the City boundary line; or (2) a street or public way railway or watercourse which lies upon the City boundary line. Such mailed notice shall be given by certified mail, return receipt requested, and shall be in letter form stating the time and place of the hearing, a general description of the proposal, the legal description and general street location of the property subject to the proposed change, and a statement explaining that

the public may be heard at the public hearing. In cases of applications for which protest petitions may be submitted, the notice shall also contain a statement explaining that property owners required to be notified by this Section shall have the opportunity to submit a protest petition, in conformance with this ordinance, to be filed with the office of the City Clerk within 14 days after the conclusion of the public hearing. Mailed notices shall be addressed to the owners of the property and not to mere occupants thereof. When the notice has been properly addressed and deposited in the mail, failure to receive mailed notice shall not invalidate any action taken on the application. Mailed notice may be waived provided that a verified statement specifically indicating such waiver is signed by all property owners within the notification area and filed with the Planning Commission, or the Board of Zoning Appeals, as the case may be, at least two business days prior to the hearing. No fewer than seven days prior to the public hearing, the applicant shall file with the Planning Commission, or the Board of Zoning Appeals, as the case may be, the returned receipts from the certified mailings and an affidavit stating the names and addresses of the persons to whom notice was sent; failure to submit the affidavit prior to the hearing may result in a continuance of the hearing.

- B. **Posted Notice.** The Zoning Officer shall post a public hearing notice (sign) on all subject properties at least fifteen (15) calendar days in advance of the public hearing.
1. One (1) sign shall be placed on the parcel for which the particular application was filed. The Zoning Officer shall determine the number of additional signs to be placed on the parcel necessary to carry out this Ordinance's intent.
 2. Signs shall be readable and shall include that a public hearing will be held and the purpose, location, and time of the meeting.
 3. The sign(s) shall be set back no more than five (5) feet from the street right-of-way.
 4. All signs shall be placed in a conspicuous location so as to be clearly visible to the traveled portion of the respective street. Where the land does not have frontage on a public street, an additional sign shall be erected on the nearest street right-of-way with an attached notation indicating generally the direction and distance to the land subject to the application.
 5. The sign shall be removed after the close of the hearing on the application.
 6. The failure of any such posted notice to remain in place after the notice has been posted shall not be deemed a failure to comply with the standards or be grounds to challenge the validity of any decision made on the application.
 7. Zoning regulation text amendments shall be exempt from the requirements of this subsection.
- C. **Additional Notice.** Fifteen (15) days prior to the public hearing, the Zoning Officer shall furnish a copy of the hearing notice to Miami County, any rural water district serving the area of the subject property, and the Miami County Public Works Department.

SECTION 21.152 PUBLIC HEARING PROCEDURE

A public hearing held pursuant to this Ordinance shall comply with the following procedures:

- A. **Setting the Hearing.**

1. When the Zoning Officer determines an application is sufficient and a public hearing is required by this Ordinance, the Zoning Officer shall schedule a place and time for the public hearing.
2. Pursuant to Section 21.151, the hearing shall be scheduled for the first available regularly scheduled Planning Commission meeting by the time the public notice requirements can be satisfied or such time as is mutually agreed upon between the applicant and the Zoning Officer.

B. Review and Recommendation of the Zoning Officer.

1. The Zoning Officer shall review the application and file a Staff report including all consultant recommendations no later than five (5) working days before the scheduled public hearing on the application.
2. The Staff report shall recommend any changes in the application, as submitted, and the conditions for approval, if any, necessary to bring the application into compliance with this Ordinance.
3. The Zoning Officer shall provide a copy of the Staff report to the applicant no later than five (5) working days prior to the public hearing on the application.

C. Examination and Copying of Application and Other Documents. In accordance with the provisions of the Kansas Open Records Act, any person may examine any application and related materials in City Hall. A copy of such material may be obtained by any person upon applying to the Zoning Officer and paying the City's actual expenses in duplicating such material.

D. Request for Mailing of Notification of Public Hearing. Notification of public hearings shall be provided by the Zoning Officer to any person who requests notification, in accordance with the provisions of the Kansas Open Meetings law.

SECTION 21.153 CONDUCT OF PUBLIC HEARING

The public hearing shall be conducted in the following manner:

A. Rights of All Persons. Any person may appear at a public hearing and submit evidence.

1. If the person represents an organization, the Chairman may request written evidence of that person's authority to speak on behalf of the organization in regard to the matter under consideration.
2. Each person who appears at a public hearing shall be identified, state an address, and, if appearing on behalf of an organization, state the organization's name and mailing address.

B. Due Order of Proceedings. The body conducting the public hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial, or unduly repetitious. The order of the proceedings shall be as follows:

1. The Zoning Officer, or designated representative, shall present a written Staff report which includes a narrative and/or graphic description of the application and a recommendation that addresses each factor required by this Ordinance to be considered prior to application approval.
2. The applicant shall present any information the applicant deems appropriate.

3. Public testimony shall be heard.
 4. The applicant may respond to any testimony or evidence presented by the public.
 5. The Zoning Officer, Staff, and City Attorney may respond to any statement made by the applicant or any public comment.
- C. **Testimony.** In the event any testimony or evidence is excluded as irrelevant, immaterial, or unduly repetitious, the person offering such testimony or evidence shall have an opportunity to make a proffer in regard to such testimony or evidence for the record. Such proffer shall be made at the public hearing.
- D. **Continuance of Public Hearing.** The body conducting the public hearing may, on its own motion, continue the public hearing to a fixed date, time, and place. An applicant shall have the right to request and be granted one (1) continuance. Any subsequent continuances requested by any party shall be granted at the discretion of the body conducting the public hearing only upon demonstrating good cause.
- E. **Close of Public Hearing.** Upon the completion of all testimony, the hearing shall be closed. No further direct or informal testimony shall be taken following close of the hearing. The applicant may be asked questions by members of the body, or allowed to comment on proposed conditions being considered by the body.
- F. **Withdrawal of Application.** An applicant shall have the right to withdraw an application at any time prior to the decision-making body's action on the application. All application fees shall be forfeited.
- G. **Record.**
1. The body conducting the public hearing shall record the public hearing. The written or taped record of oral proceedings, including testimony and statements of personal opinions; the minutes of the Secretary; all applications, exhibits and papers submitted in any proceeding before the decision-making body; the Staff report; and the decision of the decision-making body shall constitute the record.
 2. All decision-making bodies' records shall be public records, open for inspection at the offices of the Zoning Officer during normal business hours upon reasonable notice.
 3. A copy of the public hearing record may be obtained by any person upon applying to the Zoning Officer and paying the duplication cost of the record.

SECTION 21.154 ACTIONS BY DECISION-MAKING BODIES

After the close of the public hearing, the body conducting the hearing shall consider the application, relevant support materials, staff report, and testimony given at the public hearing. The body conducting the hearing shall render a decision or recommendations, as appropriate, either to approve, approve with conditions, or disapprove the application based on this Ordinance.

- A. All decision-making bodies and persons shall act within the time limits established in this Ordinance. Action shall be taken as promptly as possible in consideration of the interests of Paola's citizens.

- B. All decisions or recommendations shall be in writing and include the following:
1. A clear statement of specific findings of fact and a statement of the basis upon which such facts were determined, with specific reference to this Ordinance's relevant standards.
 2. A clear statement of approval, approval with conditions, or disapproval. Conditions may only be required by the City on conditional uses, variances, beneficial uses, plat, or site plan approvals.
 7. Any other information deemed necessary by the body.

SECTION 21.160 GENERAL CONSIDERATIONS IN RENDERING DECISIONS

This Ordinance is intended to protect the interests of both present and future residents, landowners, neighbors, and the general public. In rendering a decision, the Planning Commission and City Council shall apply these regulations and other applicable regulations. The following rules shall govern decisions:

- A. Except as provided in B. and C., all decisions shall be based solely on this Ordinance and other relevant City codes or laws.
- B. In discretionary reviews, this Ordinance's minimum standards shall be met, but discretion is permitted to impose or rely on higher standards-necessary to protect public health, safety, and welfare.
- C. Where interpretation is required in rendering a decision, the legislative intent (Division 22.300) shall be used to guide decisions.

SECTION 21.161 ACTION BY CITY COUNCIL

Upon receiving the recommendation from the Planning Commission, the Council shall take action as follows:

- A. On zoning map amendments, text amendments, or conditional uses the Council may:
 1. Adopt such recommendation by ordinance;
 2. Override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the Council; or
 3. Return such recommendation to the Planning Commission with a statement specifying the basis of the Council's failure to approve or disapprove the proposed amendment.

If the Council returns the Planning Commission's recommendations, the Planning Commission, after considering the same, may resubmit its original recommendation giving the reasons therefore, or submit a new and amended recommendation and findings of fact. Upon the receipt of such recommendation, the Council, by a simple majority vote, may adopt, revise, or may amend and adopt such recommendation and findings of fact by ordinance, or it need take no further action thereon.

If the Planning Commission fails to deliver its recommendation to the Council following the Planning Commission's next regular meeting after receipt of the Commission's report, the Council

shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.

- B. On final plats and final site plans, the Council may:
 - 1. Accept or refuse the dedication of land for public purposes.
 - 2. Defer action for an additional 30 days for the purpose of allowing for modifications to comply with requirements established by the Council.
- C. On all other matters that come before the Council, the Council shall consider the recommendations of the Planning Commission and take action by majority vote of the members present.

SECTION 21.170 EFFECT OF APPROVAL

Approving any application shall be deemed to authorize only the particular use, plan, or other specific activity for which the application was issued. Approvals shall run with the land.

- A. **Time Limitations.** Permitted time frames for an approval do not change with changes in ownership and shall expire as indicated in Table 21.170 if any of the following occur:
 - 1. No building permit has been issued to establish the use authorized in the approval.
 - 8. The use does not require a building permit and the use is not established, ongoing, and in operation.
 - 3. The approval is a step in a multi-stage approval process, and the next stage application has not been accepted as complete.
 - 4. Any approval not listed in Table 21.170 shall have no time limit. Such approvals shall continue in force until superseded by an Ordinance change or specific action to alter it.
- B. **Extensions.** Upon written request, one (1) time extension may be granted by the decision-making body for a period not to exceed that shown in Table 21.170, for good cause shown. No request for an extension shall be considered unless a written application requesting the extension is submitted to the Zoning Officer no later than one (1) month prior to expiration. Failure to submit an application for an extension within the time limits established by this Section may result in the approval's expiration as provided above.

Table 21.170 TIME LIMITS AND EXTENSIONS		
Use	Time Limitation (months)	Extension (months)
Conditional Use	12 ¹	6
Variance	12	6
Appeal	18	6
Limited Use	12	6
Sign Permit	6 ²	3
Zoning Permit	12	6
Concept Plan	18	12
Preliminary Plat	12	6
Site Plan	12	6
NOTES ¹ Unless specified otherwise in the Conditional Use Approval. ² If part of a zoning permit or site plan, 12 months.		

DIVISION 21.200 DISCRETIONARY REVIEWS

Discretionary reviews are reviews in which the applicant must meet all applicable standards, but in which the body retains some degree of discretion. In the exercise of that discretion, meeting additional conditions to protect an important public interest, to mitigate possible damage, or to ensure actions by the applicant may be imposed as part of the approval process.

SECTION 21.210 AMENDMENTS TO THE ZONING MAP OR TEXT

This Section provides a means for changing the Zoning Map boundaries or this Ordinance’s text. Such changes are not intended to relieve particular hardships or confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the City shall consider the factors set forth in this Section.

A. Initiation.

1. **Zoning Map Amendment.** An application for a Zoning Map amendment may be proposed by a landowner, the City Council, or Planning Commission.

2. **Ordinance Text Amendment.** An application for an Ordinance text amendment may be proposed by the City Council, Planning Commission, or Zoning Officer.
- B. **General standards.** The applicant shall demonstrate findings that an amendment to the Zoning Map or an amendment to this Ordinance's text meets the standards in Section 21.211 or Section 21.212.

SECTION 21.211 STANDARDS FOR ZONING MAP AMENDMENT

In evaluating a request for a Zoning Map Amendment the following standards shall be considered:

- A. The proposed change is consistent with the City's Comprehensive Plan and the purposes of this Ordinance. In areas of new development, consistency with the Comprehensive Plan shall be considered to meet the standards in B., C., and D. below, unless the proposed amendment would threaten public health, safety, and welfare if so designated as planned in the Comprehensive Plan.
- B. The proposed change is consistent with the character of the neighborhood.
- C. The extent to which the property is consistent with the zoning and use of nearby properties.
- D. The suitability of the property for the uses to which it has been proposed or restricted.
- E. The extent to which the proposed use would substantially harm the value of nearby property.
- F. The length of time a property has remained vacant as zoned, where the zoning is different from nearby developed properties.
- G. The gain, if any, to the public health, safety and welfare due to denial of the proposed amendment as compared to the hardship imposed upon the landowner, if any, as a result of denial of the proposed amendment.
- H. Recommendations of permanent or professional Staff.
- I. In approving a Zoning Map Amendment which is inconsistent with the Comprehensive Plan-a finding should be made that one (1) or more of the following applies:
 1. **Mistake.** The Comprehensive Plan contains a mistake. More specifically, the assumptions about the property, surrounding uses, population forecasts, the rate of land consumption, or other factors were in error. Therefore, the amendment is justified to correct the mistake.
 2. **Changes.** The assumptions on capital investments, road locations, population trends, land committed to development, density, use, or other Comprehensive Plan elements have changed and justify the amendment.
 3. **Plan Amendment.** A Comprehensive Plan amendment has occurred. Therefore, the amendment renders the Zoning Map consistent with the Comprehensive Plan.

SECTION 21.212 STANDARDS FOR ORDINANCE TEXT AMENDMENT

In acting upon a text amendment the Planning Commission and Council shall consider whether the proposed amendment:

- A. Would implement a new portion of the Comprehensive Plan or amendment.
- B. Would implement and better achieve the Comprehensive Plan's goals and objectives that have proved difficult to achieve under the Ordinance's existing provisions.
- C. This Ordinance's provisions were inconsistent or unreasonable in light of standards for similar uses.
- D. Is necessary to respond to State and/or federal legislation.
- E. Provides additional flexibility in meeting this Ordinance's objectives without lowering the Ordinance's general standards.
- F. Addresses a new use(s), changing conditions, and/or clarifies existing language.
- G. Clarifies the Ordinance or makes adjustments to account for interpretations.

SECTION 21.213 REZONING FOR LESSER CHANGE

The City may approve the rezoning in whole or in part. Rezoning for a lesser change is accomplished by approving a rezoning of less than the requested land area or a zoning district in the same class but with a lower intensity of use. Table 21.213 provides the necessary hierarchy of districts. Within a column, the first district (row) is the most intense; each successive district below has a lower intensity. The City may approve any lower intensity district (one in a lower row in Table 21.213) without re-advertising the public hearing. The City shall not approve any zoning of another class (a different column in Table 21.213) without proper notification and public hearing on the proposed change.

Table 21.213 ZONING HIERARCHY		
General Districts	Neighborhood Conservation Districts	Industrial/Business Districts
Downtown (D)	NC-R3	Industrial (I)
Thoroughfare Access (TA)	NC-R2	Business Park (BP)
Suburban (S)	NC-R1	
Estate (E)		
NOTES A property may be rezoned to a district in a lower row in the same column as the one for which the rezoning was advertised.		

SECTION 21.214 STAFF REVIEW FOLLOWING REZONING

It is the intent of these regulations that an approved rezoning will generally result in a change in use of the subject property. As a means of ongoing monitoring of the results of an approved rezoning, staff will review the use of property on the second anniversary of an approved rezoning and report on the status of the use or development to the Planning Commission.

SECTION 21.220 CONDITIONAL USES

Certain land uses and developments present unique problems with respect to their property location. Such land uses and developments are identified as conditional uses in each particular zoning district (see Table 03.110). Analysis and judgment of the consequences of each use and development is necessary to preserve and promote the public health, safety, and welfare.

Approval of a conditional use application shall be dependent upon findings that the proposed use fully complies with this Ordinance. The applications shall be filed and duly advertised. A public hearing shall be held per this Article's requirements. In addition, conditional uses shall require a site plan or plat approval, as appropriate, which may be approved separately or concurrently. Also, the following additional standards shall be met:

- A. The proposed use shall be consistent with the Comprehensive Plan's purposes, goals, objectives, and policies, including standards for building and structural intensities and densities, and intensities of use.
- B. The proposed use shall be compatible with the character of land in the immediate vicinity.
- C. The proposed use's design shall minimize adverse effects, including visual impact of the proposed use on adjacent lands.
- D. The proposed use shall minimize adverse impacts on the environment, traffic and congestion, infrastructure, or governmental services.

SECTION 21.221 ACTION

After the close of the public hearing, unless the matter is continued to a future meeting of the Planning Commission, the Planning Commission shall make a written set of findings and recommendations to the City Council.

SECTION 21.222 CONDITIONS AND RESTRICTIONS

The City Council may impose restrictions and conditions on the approval of a conditional use, the proposed use, under the conditional use, and the premises to be developed or used pursuant to such approval of the conditional use. This action may be performed to accomplish any of the following:

- A. Ensure the conditional use is developed exactly as presented in drawings, exhibits, and assertions made at the hearings.
- B. Limit uses, reduce density, increase open space, landscaped surfaces, or environmental protection to ensure it meets the standards by which it is approved (Section 21.220).

- C. Limit the length of time a use may exist, or to provide for periodic review of the appropriateness of the use, or provide for elimination of the use.
- D. Impose conditions that ensure the general purposes, goals, and objectives of the Comprehensive Plan and this Ordinance are met.
- E. Prevent or minimize adverse effects from the proposed use and development on other properties in the neighborhood and on the public health, safety, and welfare.
- F. All conditions and restrictions shall be written and given to the developer within 14 days of approval. The developer shall submit a written statement agreeing to the approval and all conditions within 14 days. If no agreement is offered, the applications shall be considered denied.

SECTION 21.223 MINOR DEVIATIONS

The Zoning Officer may authorize minor deviations from conditional approvals that appear necessary in light of technical or engineering considerations first discovered during actual development and not reasonably anticipated during the initial approval process, as long as they comply with this Ordinance.

SECTION 21.224 AMENDMENT TO A CONDITIONAL USE PERMIT

A conditional use permit for a use may be amended, extended, varied, or altered only pursuant to the standards and procedures for the approval of the original use set forth in this Article.

SECTION 21.225 REVOCATION OF CONDITIONAL USE PERMIT

The City may institute revocation of a conditional use for violation of the conditions of approval, or because the permit has expired. The City shall provide notice to the landowner and public in the same manner as was provided for the establishment of the conditional use.

SECTION 21.226 DISCONTINUANCE OF CONDITIONAL USE PERMITS

- 1. Except where expressly provided otherwise in these regulations, all Conditional Use Permits shall have a date established at which time the permit shall expire.
- 2. A Conditional Use Permit may expire prior to the established expiration date upon any of the following:
 - (1) Revocation of the permit due to non-compliance with conditions established;
 - (2) Voluntary relinquishment of the permit by the permittee; or
 - (3) A finding of discontinuance by the Planning Commission, such finding requiring evidence of:
 - (1) discontinuance of the use permitted under the Conditional Use Permit for at least six consecutive months.
 - (2) intent to discontinue the use permitted.

SECTION 21.230 ENVIRONMENTAL IMPACT ASSESSMENT REPORT

Where required by this Ordinance (see Table 05.220), an environmental impact assessment (EIA) report shall be conducted and submitted as part of the application. The following shall be part of the report:

- A. Justify the proposed use or deviation from this Ordinance's strict standards. The report shall identify a need for the use, or a set of conflicting community goals that require the deviation.
- B. If the use requires an EIA report, alternative sites shall be considered to demonstrate the proposed site is indeed the best available site. A minimum of three (3) alternatives shall be provided. As part of this alternatives development process, developing the site for other uses shall be evaluated as part of the alternative process.
- C. Alternative designs or locations on the site shall be considered to determine that the proposed use minimizes the potential for adverse impacts.
- D. Identify any impacts on adjoining land uses and population, or users of public or private roads.
- E. Identify any increased risks of flooding, ground water depletion, water or air pollution, soil instability, or safety risks to site users.
- F. Inventory of federal and State threatened and endangered plant and animal species (as well as candidates for such designation) on-site and within five hundred (500) feet of the sites, and determine the proposed development's impacts and identify any mitigation.
- G. Inventory of federal, State, or local identified irreplaceable historical, archaeological, paleontological, or scenic resources on site and within five hundred (500) feet of the proposed sites; determine the proposed development's impacts on the resources and identify any mitigation.

SECTION 21.231 ENVIRONMENTAL IMPACT ASSESSMENT REPORT APPROVAL

The purpose of the report is to (1) determine if alternatives would avoid the adverse impacts, (2) determine that the plan selected minimizes the impact, and (3) identify mitigation measures that would off-set the impacts. The following standards shall determine the approval, denial, or recommended conditions:

- A. The developer must establish a need for the use that requires this review. The developer must also demonstrate that the site cannot be used for: (1) a permitted use that does not require an EIA report or (2) a permitted use which would have substantially less impact.
- B. The plans minimize-adverse impacts. The alternative plan with the least impact shall be a condition of approval.
- C. Mitigation shall be required that minimizes or off-sets adverse impacts.

SECTION 21.240 PLAT VACATION

The vacation of a plat, be it in its entirety or a lot, street, or other dedication associated with the plat shall follow this Section's standards.

- A. **Standards for All Vacations.** To authorize a plat vacation, the City Council shall find that:
 - 1. The vacation does not deny access to any land, lot, or public use area in the subdivision or to adjoining property.

2. The vacation does not create a nonconformity, or make any nonconformity greater.
 3. The vacation is for the public good and improves its health, safety, and welfare.
 4. No public utilities or drainage facilities are deprived of adequate access easements. New easements may be required as part of the vacation.
- B. **Whole Subdivisions.** To vacate an entire plat, all landowners of all lots in the plat shall be applicants for the vacation.
- C. **Lots or Dedicated Land.** Where a lot, lots, or dedicated land is to be vacated, the plat of vacation shall combine the vacated land with adjoining lots. Vacated land shall not become a separate parcel except where the vacated land would be a conforming lot. The plat of vacation shall show all such lot combinations.
- D. **The Vacated Land.** When dedicated land (roadway or other dedication) is vacated, it shall become part of the adjoining lots and be placed on the tax roles.
- E. **Recordation.** A Plat Vacation shall not become effective until recorded with the Register of Deeds.

SECTION 21.245 DEVIATIONS FROM SIGN REQUIREMENTS

The Planning Commission shall consider the following criteria in acting upon a request for deviation:

Purpose And Intent Of Code: Is granting of the deviation in compliance with the general purpose and intent of the City's signage regulations?

- A. **Impacts On Adjacent Properties:** Will granting of the deviation adversely affect neighboring property owners or residents? Is the image presented by the sign or attention-attracting device consistent or compatible with that in the area as a whole?
- B. **Safety:** Will granting of the deviation adversely affect safety? For free-standing signs, a safe sight-distance setback is required, and the sign location must not encroach upon potential future right-of-way needs. The use of signs or attention-attracting devices should not significantly distract traffic on adjacent streets.
- C. **Visual Clutter:** Will granting of the proposed deviation significantly clutter the visual landscape of the area? The proposed deviation, in addition to all existing or potential future signs on nearby tracts, should be reviewed for their impact on cluttering the visual landscape. Reductions in the total number of signs or their size may be needed, or setbacks increased, to compensate for other signs and attention-attracting devices in the area.
- D. **Site Constraints:** In some situations, topography, landscaping, existing buildings or unusual building design may substantially block visibility of the applicant's existing or proposed signs from multiple directions. While visibility of a sign or attention-attracting device is not to be guaranteed from all directions, deviations may be appropriate to provide reasonable visibility of a business's main sign.

- E. **Lighting:** Sign or attention-attracting device lighting should not disturb residents of nearby residential land uses or adversely affect traffic on adjacent streets.
- F. **Promotion Of High Quality - Unique Design:** The proposed sign(s) should be of high quality and must be compatible and integrate aesthetically with daytime/nighttime color, lighting and signs of the development and adjacent buildings. Facade signs may include unique copy design including painting of walls or integration into canopies/awnings, shapes, materials, lighting and other design features compatible with the architecture of the development of surrounding area. Attention-attracting devices should be of a unique, high quality design, which accentuates the architecture of the building(s) served, versus functioning solely to draw attention to it.

(Ordinance #2772, 03/13/01)

SECTION 21.247 HEIGHT EXCEPTIONS

Roof structures that are not designed or used for human occupancy, such as church steeples and chimneys, and other non-habitable roof constructions defined in the Building Code shall be exempt from building height requirements established in Table 04.110A "Use and Lot Standards", except where they are deemed to interfere with aerial navigation. Maximum height of such structures, except chimneys, shall not exceed 75'. Chimneys shall not extend more than 5' above the highest peak of a structure.

(Ordinance #2772, 03/13/01)

SECTION 21.250 VARIANCES

This Section establishes the procedures and conditions for a variance from this Ordinance's standards. This Section permits, under limited circumstances, a building or structure that does not comply with this Ordinance's standards when strict enforcement would represent a unique, undue, and unnecessary hardship.

SECTION 21.251 STANDARDS FOR VARIANCES

To approve a variance, the Board of Zoning Appeals shall apply the following standards:

- A. Under no conditions shall a variance permit a use that is not otherwise permitted in the district. The applicant shall be instructed to submit a zoning change request (Section 21.210) or a beneficial use appeal (Division 21.400), which are the only ways such a change of use may occur.
- B. Special circumstances or conditions exist peculiar to the land or building for which the variance is sought that do not apply generally to lots, land, or buildings in the neighborhood.
- C. The special circumstances and conditions have not resulted from any act of the applicant subsequent to this Ordinance's adoption.
- D. The special circumstances and conditions are such that strict application of this Ordinance's provisions would deprive the applicant of the reasonable use of the land or building.
- E. Granting the variance is necessary to relieve the applicant of an unnecessary hardship imposed by the regulations.

- F. The variance granted is the minimum necessary to relieve the unnecessary hardship and permit a reasonable use of the land.
- G. Granting the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare.
- H. Granting the variance is in harmony with this Ordinance's purposes and intent.
- I. Granting the variance is not inconsistent with the Comprehensive Plan.
- J. Variances on natural resources shall not be permitted; standards for mitigation are contained in Division 05.200. If relief is requested, the applicant shall be required to submit an application for beneficial use determination (Division 21.400).
- K. No variance shall be granted for development in the floodplain or floodway. In the event a landowner in Paola or Paola's Community Growth Area is of the opinion beneficial use of the landowner's property has been denied by applying this Ordinance, a remedy can be sought by following the procedures listed in DIVISION 21.400 BENEFICIAL USE APPEAL AND DETERMINATION.

SECTION 21.252 CONDITIONS AND RESTRICTIONS ON VARIATIONS

In approving the application for any variance, the Board of Zoning Appeals may impose additional restrictions and conditions on such approval. Restrictions and conditions may be limits on the use of the property, the standards for locating the use, standards for mitigating the impact on adjoining property owners who would lose protection as a result of permitting the variance, or standards to protect the general health, safety, and welfare. All conditions imposed upon any variance shall be expressly set forth in writing with the granting of such variance.

SECTION 21.253 SUBSEQUENT DEVELOPMENT APPROVALS

Development approved by the variance shall not be carried out until the applicant has secured all other development approvals required by this Ordinance. Approval of a variance shall apply only to that Section of the regulations for which it is approved and does not ensure the development shall receive subsequent approval unless the relevant and applicable portions of this or other ordinances are met.

SECTION 21.254 AMENDMENT TO A VARIANCE

A variance may be amended, extended, varied, or altered only pursuant to the standards and procedures for the original approval of a variance (see Sections 21.250-253).

SECTION 21.255 FLOODPLAIN DEVELOPMENT PERMIT

A floodplain development permit shall be required for all proposed construction or other development in all flood hazard areas. No person, firm, corporation, or unit of government shall initiate any development or substantial-improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.

To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:

1. Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
2. Identify and describe the work to be covered by the floodplain development permit;
3. Indicate the use or occupancy for which the proposed work is intended;
4. Indicate the assessed value of the structure and the fair market value of the improvement;
5. Specify whether development is located in designated flood fringe or floodway;
6. Identify the existing base flood elevation and the elevation of the proposed development;
7. Give such other information as reasonably may be required by the City Manager or his or her designee;
8. Be accompanied by plans and specifications for proposed construction; and
9. Be signed by the permittee or his or her authorized agent who may be required to submit evidence to indicate such authority.

DIVISION 21.300 APPEALS AND INTERPRETATIONS

This Division contains rules and standards for appeals from actions taken under authority of this Ordinance and decisions made by various bodies. It contains the route of appeal to the courts, and procedures and standards for interpretations.

SECTION 21.310 APPEALS

The two types of appeals are administrative appeals (an appeal from one decision-maker to another body as specified in Table 21.010), and appeals from the decision-maker or specified appeal body to the court.

SECTION 21.311 ADMINISTRATIVE APPEALS

Administrative appeals shall be heard by the Board of Zoning Appeals based on the materials (plans, documents, reports, studies, drawings, and testimony) available to the official or body rendering the initial decision and advisory bodies prior to the decision.

SECTION 21.312 ADMINISTRATIVE APPEAL STANDARDS

The body hearing the appeal shall make the following determinations:

- A. The decision-maker made an error in reviewing whether a standard was met. The record must indicate that an error in judgment occurred, or facts, plans, or regulations were misread in determining whether the particular standard was met.
- B. Where conflicting evidence exists, the body shall determine what evidence or testimony bears the greatest credibility in terms of documentation and qualifications of those making the study.
- C. The decision-maker made the decision on standards not contained in this or other City ordinances, regulations, or State law, or a standard more strict or broad was applied.
- D. An error in applying a standard or measuring a standard was made.
- E. An appeal shall not hear any evidence or make any decision based on hardships or special conditions. If such argument is made, it shall be heard either as a variance or conditional use (Sections 21.250 and 21.220, respectively).

SECTION 21.313 APPEALS TO THE COURTS

The final decision on any application may be appealed to the courts, provided all administrative remedies have been exhausted. Specifically, denials that could be approved via a variance or beneficial use appeal shall be submitted to the courts only upon completing that respective procedure.

SECTION 21.320 INTERPRETATIONS

An interpretation is required when this Ordinance is not clear or when a proposed use is not listed in Table 03.110. Sections 21.321-25 shall guide the Zoning Officer in rendering an official interpretation.

SECTION 21.321 UNLISTED USES

Uses not listed in Article 03 or Article 23 shall be placed into the most similar category. For nonresidential use, the SIC code shall be the first guide. Where an SIC code is found in several categories, the interpretation shall seek similar characteristics, including the use's intensity and its likely adverse impacts. Where a choice remains after reviewing for adverse impacts, the use should be classified with the similar use that has the most adverse impacts.

SECTION 21.322 MEANING OR APPLICATION

When evaluating an Ordinance provision as to its meaning or application, the provisions of Division 22.300 shall be applied. Interpretations shall not lessen protection, but may provide greater flexibility in meeting this Ordinance's objectives.

SECTION 21.323 PROCEDURE

The Zoning Officer shall evaluate the request in light of the Comprehensive Plan, this Ordinance, and/or the Zoning Map, whichever is appropriate. The Zoning Officer may render a written interpretation. The interpretation shall be mailed to the applicant within twenty (20) days of receipt of a complete application.

SECTION 21.324 OFFICIAL RECORD

The Zoning Officer shall maintain a record of all interpretations rendered.

SECTION 21.325 ANNUAL REVIEW

The Zoning Officer shall annually report to the Planning Commission, Board of Zoning Appeals, and the City Council on interpretations made.

DIVISION 21.400 BENEFICIAL USE APPEAL AND DETERMINATION

In the event a landowner in Paola or Paola's Community Growth Area is of the opinion beneficial use of said landowner's property has been unlawfully denied application of this Ordinance, the procedures listed in this Division shall be used prior to seeking relief from the courts in order that any denial of beneficial use of property may be remedied through a non-judicial forum. This Ordinance's purpose and intent is that all landowners should enjoy a beneficial use of their property. A beneficial use determination is a process by which the City evaluates the allegation that these regulations unreasonably deprive the landowner of economic viability, and can provide relief from the regulations by granting additional development potential. However, this Division also intends that such relief not increase the potential for damages to health, safety, or welfare of future users of the property or neighbors that might reasonably be anticipated from the proposed action of the landowner.

SECTION 21.401 SPECIAL APPLICATION DATA

The nature of this appeal, that this Ordinance unlawfully denies the landowner economic viability, requires financial information on the property not typically required or desired in normal applications. The following data shall accompany all applications for a beneficial use appeal:

- A. Documentation of the purchase date and price of the property.
- B. A description of the property's physical features, total acreage, and present use, as well as the use of the property at the time of this Ordinance's adoption.
- C. A description of the specific portions of the regulations which allegedly eliminate beneficial use of the property, together with all appraisals, studies, any other supporting evidence, and any actions taken by the City related to the property.
- D. A description of the use which the landowner believes represents the property's minimum beneficial use and all documentation, studies, and other evidence supporting that position.

SECTION 21.402 DEPRIVATION STANDARDS

In determining if a landowner has been deprived of beneficial use of property, the Hearing Officer and the City Council shall take into account the following factors:

- A. **Diminution in Value.** The property value, prior to this Ordinance's adoption, shall be compared to the property value with the regulations as applied. A mere diminution in value does not deprive the landowner of a beneficial use.
- B. **Unique Treatment.** Is the property is being singled out for different treatment than similarly situated properties under this Ordinance?
- C. **Adverse Impacts.** The extent to which the Ordinance protects users or neighbors from threats to health or safety shall be fully considered. A use that seriously threatens the health of future residents or neighbors is not a beneficial use.
- D. **Expectations.** Expectations backed by investments made prior to the adoption date of the regulations in question shall be considered.
- E. **Nuisances.** In no case shall a use that is a nuisance per se, be granted relief. Such uses are not legal uses of the land.

SECTION 21.403 GRANTING RELIEF

If the finding is that a landowner has been effectively denied beneficial use of property the Hearing Officer shall recommend relief be granted. The Hearing Officer may recommend relief when there is strong evidence to support an allegation of denial of beneficial use. In that case, the Hearing Officer shall recommend the level of relief appropriate to eliminate doubt.

- A. **Minimum Increase.** In granting relief, the landowner shall be given at least the minimum increase in use intensity or other possible concessions from this Ordinance to permit a beneficial

use of the land. The following guidelines shall be used for determining the amount of relief granted a landowner in order to reach that minimum:

1. The standards of Section 21.402 shall be used to indicate the need for additional density or uses.
2. The reality of limited development potential, given the property's natural condition, shall not be attributed to the regulations applied to the property. If the property is such that it cannot accommodate development with normal grading and clearing practices, this fact shall be taken into account in identifying the best site for development that minimizes development costs.
3. Conditions shall be placed on sites where damage from building on hazardous conditions is likely. The conditions may include location restrictions, size limitations, and construction practices.

B. **Granting Relief.** City Council may grant the recommended relief by adopting a development order ordinance.

DIVISION 21.500 ADMINISTRATIVE PROCEDURES

The standards for granting or denying administrative approvals shall be based on the standards of this Ordinance. No discretion is permitted. The following sections also guide the approval of such permits or approvals.

SECTION 21.510 LIMITED USE REVIEW

The Zoning Officer shall make limited use reviews. Such reviews shall be limited solely to determining whether the conditions in Table 03.110 and Division 03.300 for limited uses have been met. If the conditions have been satisfied, that criteria for approval shall be deemed met. A report noting all conditions have been met shall be attached to the file on that use's approval.

SECTION 21.520 SIGN PERMIT

Before any sign is erected, the Zoning Officer shall review the plans and within ten (10) days make a determination whether the sign meets this Ordinance's requirements. If it does, a sign permit shall be issued. If it does not, the person requesting the sign permit shall be notified in writing as to the deficiencies.

SECTION 21.530 ZONING PERMIT

A Zoning Permit shall be required prior to receiving a building permit for all uses permitted by right.

SECTION 21.540 OCCUPANCY PERMIT

No new or existing building or structure shall be occupied or used, and no change in the character or use of land or of a building shall occur, until a certificate of occupancy has been issued by the City certifying that such building or use complies with all regulations of this Ordinance.

DIVISION 21.600 DESIGN REVIEWS

Design reviews cover complying with zoning standards as well as land development practices. The land plan for the use, and its relationship to natural resources, internal and external uses, the circulation system, and utilities shall be reviewed. Design reviews include concept plat or plan reviews, subdivision (plat) reviews, and site plan reviews (land developments).

SECTION 21.610 CONCEPT PLAT OR PLAN REVIEW

In addition to the general design standards of Articles 03, 04, and 10, concept plan reviews shall consider the phasing and organization of large-scale developments. The concept plan is a very general plan; it is a sketch-type plan that need not have all the design details but should permit the entire development to be assessed. The review shall assess the following elements:

- A. **Development Phasing.** Elements such as required land uses or land use mixes shall be addressed to ensure such requirements are developed. A phasing plan may be required as part of the concept plan approval.
- B. **Flexibility.** Building flexibility into long-term development is essential, since market conditions can change dramatically. In permitting flexibility, rules must govern the types of changes that will be considered consistent. Flexibility will not permit an increase in density, or decrease in open space or landscaped surface below this Ordinance's standards. Flexibility may be permitted in these areas where a safety margin is built into the original plan. It may also provide substitution provisions. The developer shall specify the types of flexibility desired or other requirements to ensure important requirements are not dropped.
- C. **Design.** This Ordinance's design review standards shall be covered at the concept plan approval stage.

SECTION 21.611 CONDITIONS

The Planning Commission shall have the authority to impose such conditions on a concept plan approval that identify additional standards that will have to be met in subsequent plan submissions. Conditions as to the development's layout to meet the standards of Article 11, if any, shall be required at this stage.

SECTION 21.612 COMPLIANCE WITH THE CONCEPT PLAT OR PLAN

Compliance with a concept plan in terms of the design details shall be general in nature; subsequent plans will be reviewed for compliance with this Ordinance. Dimensions and measurements of the concept plan are assumed to be illustrative; even the conditions are likely to be in general terms (percentages, for example). Subsequent stages should be expected to follow broad outlines. Detailed site planning and engineering are anticipated to result in significant changes in detail but not overall concept. Where a concept plan is required, its standards and conditions should be reviewed at plat or site plan approvals.

SECTION 21.613 AMENDMENTS

A concept plan may be amended only pursuant to the standards and procedures established for the original approval of a concept plan pursuant to Sections 21.610-12.

SECTION 21.620 SUBDIVISION (PLAT) REVIEW

Every landowner who intends to subdivide land into two (2) or more parts for the purpose of laying out lots, shall cause a plat of subdivision to be prepared in accordance with this Article and Article 10. The

types of subdivision include minor, major, special subdivisions (rural and staged), and subdividing the residual land from a special subdivision. Each type may require a pre-application conference, concept plan, preliminary, or final review as indicated in Table 21.620. Except as otherwise provided in these regulations, all land shall be platted prior to the subdivision of land or the issuance of a building permit. Also, nonresidential lots in subdivisions may require site plan review (Section 21.630).

Table 21.620 REQUIRED PLAT SUBMISSIONS			
Subdivision	Concept (Section 21.610)	Preliminary	Final
Minor	Y		Y
Major	Y	Y	Y
Rural	Y		Y
Staged	Y	Y	Y
Residual	O	Y	Y
NOTES Y = required O = optional			

SECTION 21.621 EFFECT

The three types of plats are concept, preliminary, and final; each one has a different effect. The concept and preliminary plats set guidelines for subsequent plat submissions. The final plat indicates how a development must be built. The effect of each approval is as follows:

- A. **Concept Plat.** The concept plat gives general guidance to prepare a preliminary or final plat. It is a rough plan, expected to be modified as more detailed planning and engineering are completed. Subsequent plans are expected to contain design improvements. Minor concerns regarding concept plats are not to be corrected in the concept plat but shall be incorporated into subsequent plats. If major redesign is required, a revised concept plat may be required.
- B. **Preliminary Plat.** The preliminary plat contains accurate preliminary planning and engineering. While not a survey, the accuracy is such that only minor changes are to be expected in the final plat. The final plat is expected to be in substantial compliance with the preliminary plat with only minor deviations created by final engineering, surveying, or other minor design enhancements. Major changes at the final plat stage may, at the discretion of the Planning Commission, be required to be reviewed again as a preliminary plat if the Commission feels the changes result in significant implications that adversely affect this Ordinance or the ability to adequately or safely provide services.

- C. **Final Plat.** The final plat is to be recorded. It is also to be submitted in an electronic format as determined by Staff. All construction is to be in accordance with the final plat and engineering. Final engineering may be modified in the field, provided "as-built" drawings are submitted. As-built drawings must be acceptable to the Zoning Officer; if unacceptable, the work must be corrected at the developer's expense prior to accepting improvements and return of any surety. Should the lots not be laid out as specified, the lots shall be surveyed. Lots not meeting this Ordinance shall be considered illegal nonconforming lots and all development halted until revised plats meeting this Ordinance are submitted. Lots may have to be combined to correct the problem.

SECTION 21.622 RECORDATION

Upon approval and submission in electronic format, the final plat shall be signed and dated by the Zoning Officer, certifying the action approving has been taken by the appropriate agency. The plat shall be filed with the Register of Deeds within sixty (60) days after approval by the City Council.

SECTION 21.625 SITE PLAN REVIEW

Every land development of any tract or parcel, not in a lot in an approved residential subdivision, shall submit a site plan for approval. Lots meeting the standards in this Section in approved industrial or commercial subdivisions shall require individual site plan approvals. Site plans may require a pre-application conference, concept, preliminary, or final site plan as indicated in Table 21.620. No building permits shall be permitted until a final site plan is recorded for:

- A. Lots that take access to an existing arterial or collector road.
- B. Uses that have more than five thousand (5,000) square feet of floor area.
- C. Nonresidential parcels greater than three (3) acres.

Table 21.620 REQUIRED PLAN SUBMISSIONS			
Land Development	Concept (Section 21.610)	Preliminary	Final
Minor	Y		Y
Major	Y	Y	Y
NOTES Y = required			

SECTION 21.630 SITE PLAN REVIEW - EXISTING STRUCTURES

A site plan review is not required for expansion of an existing structure except when the expansion:

- 1. Increases the density of residential uses more than 5%.

2. Increases the total floor area of all nonresidential buildings more than 10%.
3. Increases the lot coverage of more than 5%.
4. Increases the height of any building more than 100%.
5. Changes the architectural style which will make project less compatible with surrounding uses.
6. Changes the ownership patterns or the construction will impose substantially greater loads on streets or other public facilities.
7. Decreases any setback more than 5%.
8. Decreases areas devoted to open space more than 5% or substantially relocates open space areas.

SECTION 21.631 EFFECT

The three types of site plans are concept, preliminary, and final; each one has a different effect. Concept and preliminary site plans set guidelines for subsequent plat submissions. The final site plan indicates how a development must be built. The effect of each approval is as follows:

- A. **Concept Site Plan.** The concept site plan gives general guidance to prepare a preliminary or final site plan. It is a rough plan, expected to be modified as more detailed planning and engineering are completed. Subsequent plans are expected to contain design improvements. The minor concerns regarding concept site plans are not to be corrected in the concept site plan but incorporated into subsequent plans. If major redesign is required, a revised concept site plan may be required.
- B. **Preliminary Site Plan.** The preliminary site plan contains dimensioned preliminary planning and engineering. While not a survey, the accuracy is such that only minor changes are to be expected in the final site plan. Where building tenants are not known, building envelopes may be used. Preliminary engineering should indicate that proper connections and improvements can be done. The final site plan is expected to be in substantial compliance with the preliminary site plan with only minor deviations created by final engineering, surveying, user desires, or other minor design enhancements. Major changes at final site plan may at the discretion of the Planning Commission be required to be reviewed again as a preliminary site plan should the Commission feel the changes result in significant implications adversely affecting this Ordinance or the ability to adequately or safely provide services.
- C. **Final Site Plan.** The final site plan is to be recorded. It is also to be submitted in an electronic format (.*dxf* file, compatible in Integraph Microstation and AutoCAD and containing State plane coordinates). All construction is to be in accordance with the final site plan and engineering. Final engineering may be modified in the field, provided "as-built" drawings are submitted and approved. Should the buildings not be laid out as specified, the Zoning Officer shall determine whether they still comply with this Ordinance. Where the buildings comply, as-builts shall be submitted.

SECTION 21.632 RECORDATION

Upon approval and submittal in electronic format, the final site plan shall be signed and dated by the Zoning Officer, certifying approval has been given by the appropriate agency. It shall be recorded in the Register of Deeds Office.

DIVISION 21.700 PERFORMANCE GUARANTEES

SECTION 21.710 COST ESTIMATES AND SURETY

All improvements required by this Division for roads, water, sewer, drainage, detention, as well as other improvements such as lighting, landscaping, and bufferyards, shall be subject to a performance guarantee. The developer's engineer shall submit a cost estimate for road, water, sewer, storm drainage, detention, lighting, and any off-site improvements. The designers of the landscapes, buffers, and/or other improvements shall submit cost estimates. Valid bids from contractors may be substituted for cost estimates. The Planning Commission shall review all bids, checking for consistency with similar bids or public bids to ensure they are reasonable. A surety shall be required in the amount of one hundred fifteen (115) percent of the cost estimates. surety shall be for a period established by the Planning Commission. (Ordinance #2772., 03/13/01)

SECTION 21.711 IMPROVEMENTS IN LIEU OF SURETY

In lieu of posting a one hundred fifteen (115) percent surety, the developer may obtain final engineering and plat approval, and construct all improvements by posting ten (10) percent surety. After inspection and acceptance by the City that all improvements are installed to City standards, Staff shall release the final plats for recording and return the surety amount to the developer. The developer may opt to install only some of the improvements. In this case, the developer shall post surety for the remaining improvements prior to Staffs plat release. (Ordinance 2893 08/23/05)

SECTION 21.720 RELEASE OF SURETY

Upon completing all or part of the improvement, the developer may request the Planning Commission order a reduction or closure of the surety. If all work is complete and a maintenance bond provided, the surety shall be closed. If twenty-five (25) percent of the work has been completed, or completed in stages as identified in the original cost estimates, the surety shall be reduced.

SECTION 21.721 CALLING SURETY

Under normal circumstances, the developer should complete improvements well before the surety expiration and will, on his or her own initiative, request reduction or closure of the surety. In the event construction has not been completed sixty (60) calendar days prior to the surety expiration, the Planning Commission shall inspect and send a report to the developer indicating items to be completed by thirty (30) calendar days prior to the expiration. Should the developer want additional time, a new surety covering the time (minimum six [6] months) shall be submitted to the Planning Commission. If all work is not completed or an extended surety has not been presented thirty (30) days prior to expiration, Staff shall notify the City Attorney to call the surety so the work can be completed.

SECTION 21.730 MAINTENANCE GUARANTEE

Upon completing the improvements, the surety will be reduced or eliminated. Prior to that event, a maintenance guarantee shall be taken out to cover one hundred (100) percent of the anticipated maintenance for a period of two (2) years after the completion of all improvements.

DIVISION 21.800 WARNING, NOTICE TO APPEAR, AND PENALTY FOR VIOLATION

A. **Notice and Warning.** Upon the City's attention of a Zoning Ordinance violation, the Zoning Officer shall investigate the violation and prepare a report concerning the same. If a violation exists, a warning notice shall be delivered to any person occupying the property, whether the person is the owner, renter, or lessee. If no one is present or refuses to accept the notice, the Zoning Officer shall post the warning notice on the residence or building entrance.

1. The warning notice shall contain:
 - a. The address and legal description of the property.
 - b. The Ordinance section being violated.
 - c. The nature and location of the violation, and the date by which such violation shall be removed or abated.
 - d. A notice of the penalty for failing to remove or abate the violation, stating that if the violation continues or reoccurs, the City may commence an action to enforce these regulations.
2. A written notice containing the same information as the warning notice shall be sent, by restricted mail, to the owner or any other person having control of the property at the last known address of the owner, or at the address of the person having control.

B. Penalty for Violation.

The violation of any provision of this Ordinance is hereby declared to be a public offense and pursuant to the authority of K.S.A. 12-761, a misdemeanor, and any person, firm, association, partnership or corporation convicted thereof shall be punished by a fine not to exceed \$500 or by imprisonment for not more than six months for each offense or by both such fine and imprisonment. Each day's violation of this Ordinance shall constitute a separate offense.

The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Ordinance and to abate nuisances maintained in violation thereof. In the event that any building or structure is or is proposed to be erected, constructed, altered, converted or maintained in violation of this Ordinance, or any building, structure or land is proposed to be used in violation of this Ordinance, the City may, in addition to any other remedies, institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation, or to prevent the occupancy of such building, structure or land.