

*ZONING  
REGULATIONS  
and  
SHALZ FIELD  
HEIGHT/HAZARD  
REGULATIONS*

for the

CITY OF COLBY, KANSAS

Adopted by Ordinance No. 1527, dated October 1, 2013

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## CHAPTER 21. ZONING AND PLANNING

### Article 1. Zoning Ordinance

### Article 2. Administration and Enforcement

### Article 3. Planning Commission

## ARTICLE 1. ZONING ORDINANCE

### 21-101. District Classifications:

1. District: For the purpose of regulating and redistricting the location of trades, industries and commercial enterprises, and the location, erection, alteration, and repair of buildings designed for specified uses, and uses of land within each district, Colby, Kansas, is hereby divided into the following districts:

R-1	SINGLE FAMILY DWELLING DISTRICT
R-2	TWO FAMILY DWELLING DISTRICT
R-3	MULTIPLE FAMILY DWELLING DISTRICT
R-2 MH	MOBILE HOME DISTRICT
P.U.D.	PLANNED UNIT DEVELOPMENT DISTRICT
C-1	DOWNTOWN BUSINESS DISTRICT
C-1	COMMERCIAL DISTRICT
C-2	NEIGHBORHOOD COMMERCIAL DISTRICT
C-M	COMMERCIAL/MIXED USE DISTRICT
C-3	HEAVY COMMERCIAL DISTRICT
I-1	LIGHT INDUSTRIAL DISTRICT

2. The boundaries of these districts with all designations and notations are shown on the Zoning District Map located in the office of the City Clerk of Colby, Kansas and made a part of this Ordinance.
3. Except as hereinafter provided, no building shall hereafter be erected or structurally altered, nor shall any building or premise be used for any purpose not conforming with the regulations herein prescribed by the Zoning Districts in which such building or premise are located.
4. All petitions for annexation of territory to the City of Colby, Kansas, shall be accompanied by a request to establish the zoning for the land to be annexed. The public hearing on the annexation and zoning requests will be held concurrently.

### **21-102. Definitions:**

For the purpose of this Ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future, any singular number shall include the plural, any plural number shall include the singular, the word "building" shall include the word "structure," the word "lot" shall include the word "plot," and the word "shall" is mandatory and not directory. Any terms not herein defined shall be construed as defined in the City Building Codes.

1. **Accessory Building:** A subordinate building or a portion of the main building, the use of which is incidental to that of the dominant use of the building or premise.
2. **Alley:** A public thoroughfare which affords only a secondary means of access to abutting property.
3. **Apartment Unit:** A room or suite of two or more rooms suitable for occupancy as a residence for one family in a dwelling.
4. **Basement:** A story (or portion of a story) with at least one-half of its height (measured floor to ceiling) below grade level.
5. **Bed & Breakfast:** A private residence where, for compensation and by pre-arrangement for definite periods, meals or lodging and meals are provided for temporary transient guests.
6. **Boarding House:** A building other than a hotel where, for compensation and by prearrangement for definite periods, meals or lodging and meals are provided for three (3) or more persons.
7. **Building:** A structure having a roof supported by columns or walls, creating an enclosure and providing shelter or protection for persons, animals, or property. No building will be constructed from materials or equipment originally designed for another use such as, but not limited to, trailers, semi-trailers, shipping (cargo) containers, motor vehicles, packing crates, parts of motor vehicles or trailers, van bodies, vehicle bodies, regardless if wheels, axles, etc., have been removed. Mobile

homes, campers, and similar structures will not be considered as buildings for such purposes as an accessory building or uses other than the uses they were originally designed for. "Building" shall also mean an addition to an existing structure provided the addition shares a common wall, footings, and roofline, or common footings and roofline, with no portion of the addition open to the sky.

8. **Building, Height of:** The vertical distance from grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the average height of the highest gable of a pitch or hip roof.
9. **Building Official:** The city official designated by the City Manager as being responsible for the administration and enforcement of this Ordinance.
10. **Communication Tower:** A structure measuring 60 feet or more in height from the ground, or 30 feet in height as measured to the highest point of the tower/antenna if mounted on a structure or building, erected or maintained for the primary purpose of supporting antennae or apparatus for transmitting and/or receiving radio frequency waves. For the purposes of these regulations the term "Communication Tower" shall include, but not be limited to, commercial radio or television broadcasting towers; microwave transmitting and/or receiving towers; and wireless telephone towers, but shall not include amateur radio transmitting or receiving towers, satellite dish antennae or television antennae. Amateur Radio towers are specifically exempt from regulations applying to communication towers.
11. **District:** Any section of the City of Colby for which the regulations governing the use of buildings and premises or the height and area of buildings are uniform.
12. **Dwelling:** Any building, or portion thereof, which is designated or used exclusively for residential purposes.
13. **Dwelling, Single Family:** A detached building designed for or occupied exclusively by one family.
14. **Dwelling, Two Family:** A detached building designed for or occupied by two families.
15. **Dwelling, Multiple Family:** A building or portion thereof containing three or more dwelling units. The term includes lodging, boarding, and rooming houses, but does not include hotels, motels, and tourist courts.
16. **Family:** One or more persons related by blood, marriage, or adoption, or pursuant to legal guardianship, living together as a single housekeeping unit, or a group of not more than four unrelated persons living together as a single housekeeping unit, who jointly occupy and have equal access to all common areas of a dwelling unit.

17. **Frontage:** All of the property on one side of the street between two intersecting streets; or if the street is dead-ended, then all of the property abutting on one side between intersecting street and the dead-end of the street.
18. **Garage, Private:** An accessory building designed or used for the storage of motor driven vehicles owned and used by the occupants of the building to which it is accessory.
19. **Garage, Public:** A building or portion thereof, other than a private or storage garage, designed or used for servicing, repairing, equipping, hiring, selling, or storing motor- driven vehicles.
20. **Garage, Storage:** A building or portion thereof, designed or used exclusively for housing motor-driven vehicles, not used by occupants of the lot on which said building or portion thereof is situated.
21. **Governing Body:** The elected City Council of the City of Colby, Kansas.
22. **Home Occupation:** Any occupation or profession which:
  - a. Is customarily carried on in a dwelling unit or accessory structure. When carried on in an accessory structure, such accessory structure shall not be larger than six hundred (600) square feet of gross floor area, nor more than twenty (20) feet in height.
  - b. Is carried on by a member of the family residing in the dwelling unit and may not regularly employ more than one (1) person outside the family, except that beauty shops may employ not more than two (2) persons outside the family.
  - c. Is clearly incidental and secondary to the uses of the dwelling unit for residential purposes and shall be carried on wholly within the principal dwelling unit or an accessory structure.
  - d. There shall be no exterior display, no exterior sign larger than 6 square feet in area, no exterior storage of materials, and no other exterior indication of the home occupation or variation from the residential character of the principal building.
  - e. There shall be no exterior parking of more than one automobile or truck that is associated with the home occupation.
  - f. No offensive noise, vibration, smoke, dust, odor, heat, or glare shall be produced.
  - g. The owner or operator must file with the City Clerk a certificate of mailing acknowledging notification of application for such home occupation of all of the owners of all the frontage within three hundred (300) feet of the premises wherein such facility is to be operated.

- h. Every owner or operator of a home occupation must secure a home occupation permit from the City Clerk, which permit shall be issued on a yearly basis, with each permit expiring on July 1 of each year. Every person desiring a home occupation permit shall file an application with the City Clerk on forms to be supplied by the City Clerk, and the Governing Body of the said City will act upon said application after receiving recommendations from the Planning Commission. The Governing Body may withhold or refuse to grant or withdraw a home occupation permit when, in their opinion, the home occupation business or activity is or may be detrimental to the residential character of the area.
23. **Hotel or Motel:** Any building or portion thereof having a common entrance, lobby, halls, and stairs, which is designed or used to offer for hire by the general public, rooms for temporary lodging of transient guests and in which no provisions are made for cooking in the individual rooms or apartments.
24. **Institutions:** A building occupied by a non-profit corporation or non-profit establishment for public use.
25. **Lot:** A parcel of land occupied or intended for occupancy by one (1) main building together with its accessory buildings, if any, including the open spaces required by this Ordinance and having its principal frontage upon a street, alley, or a private easement for purposes of access from a street.
26. **Lot, Corner:** A lot abutting upon two (2) or more streets at their intersection.
27. **Lot, Depth of:** The mean horizontal distance between the front and rear lot lines.
28. **Lot, Interior:** A lot other than a corner lot.
29. **Lot Lines:** The lines bounding a lot.
30. **Lot of Record:** A lot which is a part of a subdivision, the map of which has been recorded in the office of the Register of Deeds of Thomas County, or a lot described by metes and bounds, the description of which has been recorded in the office of the Register of Deeds of Thomas County.
31. **Manufactured Home:** A structure built on a permanent chassis and transportable in one or more sections, which contains all necessary plumbing, heating, air-conditioning and electrical systems, and is designed to be used as a dwelling, with or without a permanent foundation, when connected to all required utilities. Such structures have not and cannot be determined to have been built in accordance with adopted City Building Codes, but have been constructed in conformance with the Federal Manufactured Home Construction and Safety Standards Act, generally known as the H.U.D. Code, established pursuant to 42 U.S.C. Sec. 5403. For flood plain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for longer than one hundred eighty (180) consecutive days. For insurance purposes, the term

"manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

32. **Manufactured Home Residential Design:** A manufactured home on a permanent foundation which has minimum dimensions of twenty-two (22) body feet in width, a pitched roof, and siding and roofing materials which are customarily used on site-built homes, and which comply with the architectural standards specified in Section 21-103 l. of these regulations. A residential-design manufactured home shall be considered a single-family dwelling.
33. **Mini-Warehouse:** A Mini-Warehouse, also referred to as mini-storage or self-service storage facilities, is a building or group of buildings in a compound that contains varying sizes of individual, compartmentalized and controlled-access storage units rented or leased to individuals exclusively for the dead storage of merchandise, commodities, household goods or other personal property. A group of parked semi-trailers or shipping (cargo) containers will not be considered mini-warehouse units for the purposes of this Ordinance.
34. **Mobile Home:** A structure built on a permanent chassis and transportable in one or more sections, which contains all necessary plumbing, heating, air-conditioning, and electrical systems, and which is designed to be used as a dwelling, with or without a permanent foundation, when connected to all required utilities. Any structure manufactured prior to June 15, 1976, which was not manufactured in conformance with the H.U.D. Code established pursuant to 42 U.S.C. Sec 5403, or which cannot be determined to have been built in accordance with adopted City Building Codes, shall be deemed to be a mobile home, not a manufactured home. The term "mobile home" does not include a recreational vehicle.
35. **Modular Home:** A structure which the manufacturer certifies is constructed in accordance with adopted City Building Codes, which is transportable in one or more sections but is not constructed on a permanent chassis, and which is designed to be used as a dwelling on a permanent foundation when connected to required utilities including plumbing, heating, air-conditioning, and electrical systems contained therein.
36. **Manufactured/Mobile Home Park:** Any area, tract, site, or plot of land whereupon provisions have been made for a minimum of fifteen (15) manufactured or mobile home spaces as herein defined.
37. **Manufactured/Mobile Home Space:** A plot of ground within a manufactured/mobile home park designed for the accommodation of one (1) manufactured home or one (1) mobile home.
38. **Nonconforming Use:** The use of any premise contrary to the provisions of this Ordinance for the district in which the premise is located.
39. **Parking Lot:** A parcel of land devoted to unenclosed parking spaces. This land is separate from the street but access to and from the street is provided.

40. **Parking Space:** A permanent surfaced area, enclosed or unenclosed sufficient in size to store one (1) automobile, together with a permanent surfaced driveway connecting the parking space with a street or alley and permitting ingress and egress of an automobile.
41. **Planning Commission:** The Colby/Thomas County Metropolitan Area Planning Commission.
42. **Planned Unit Development (P.U.D.):** A development which allows diversity in the relationships of the various buildings, structures, uses, and open spaces in planned groupings, while insuring substantial compliance to the district regulations and other provisions of this Ordinance. A detailed site plan for a Planned Unit Development must be prepared and presented to the Planning Commission and Governing Body. Such site plans must be approved by the Governing Body of Colby, Kansas, before a building permit will be issued. Such site plans shall show building, parking area, recreation area, and all other facility locations. The site plan shall also show road and utility locations and sizes and other data as may be required by the Building Official.
43. **Recreational Vehicle:** A vehicular portable dwelling unit designed for short-term occupancy such as travel trailers, campers, house boats, converted buses, and other similar units whether self-propelled, pulled, or hauled. The storage of any unoccupied recreational vehicle is permitted in a residential area, provided such storage does not conflict with any other ordinance in the City of Colby and the owner stores it on his own property. Such vehicles may be parked or stored anywhere on the owner's lot except that when parked or stored in the front or side yard area, it shall not be parked or stored within ten (10) feet of any street right-of-way or sidewalk; however, the ten (10) foot limitation shall not apply to alleys.
44. **Restaurant:** A public eating establishment in which the primary function is the preparation and serving of food on the premise.
45. **Service Station:** Any building or premise used solely or principally for the storing, dispensing, sale, or offering for retail of any automobile fuel or oils.
46. **Sexually Oriented Businesses:** Shall include adult arcades; adult bookstores, adult novelty stores or adult video stores; adult cabarets; adult motels; adult motion picture theaters; adult theaters; escort agencies; semi-nude model studios; and sexual encounter centers which offer their patrons services or entertainment wherein greater than ten percent (10%) of the receipts, signage, or floor area of the business is in printed or written materials, pictures, drawings, photographs, motion pictures, or other pictorial representation, or statues or other figures, or any recordings, transcriptions, or mechanical, chemical or electronic reproductions, or any other articles, equipment, machines, or materials depicting sexual activity and all other business of the same general character as described herein.
  - a. *Adult Arcade* means any place to which the public is permitted or invited, wherein

coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machine, projectors, or other image-producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matters exhibiting “specified sexual activities” or “specified anatomical areas.”

b. *Adult Bookstore, Adult Novelty Store or Adult Video Store* means a commercial establishment which has a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following:

- 1) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations, which are characterized by their emphasis upon the exhibition or display of “specified sexual activities” or “specified anatomical areas”;
- 2) instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others.

c. *Adult Cabaret* means a nightclub, bar, restaurant, or similar commercial establishment which regularly feature:

- 1) persons who appear semi-nude; or
- 2) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
- 3) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of “specified sexual activities” or “specified anatomical areas”.

d. *Adult Motel* means a hotel, motel, or similar commercial establishment, which:

- 1) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the exhibition or display of “specified sexual activities” or “specified anatomical areas”; and has a

sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; and either

- 2) offers a sleeping room for rent for a period of time that is less than ten (10) hours, or
  - 3) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- e. *Adult Motion Picture Theater* means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.
- f. *Adult Theater* means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear nude or semi-nude, or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”.
- g. *Distinguished or Characterized by an Emphasis Upon* means the dominant or principal theme of the object referenced. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas”, the films so described are those whose dominant or principal character and theme are the exhibition or display of “specified anatomical areas” or “specified sexual activities”.
- h. *Employee, Employ, and Employment* describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time part-time, or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. *Employee* does not include a person exclusively on the premises, for the delivery of goods to the premises.
- i. *Enforcement Officer* shall mean the City Building Official or such person as may be designated by the City Manager.
- j. *Escort* means a person who, for consideration, and for another person, agrees or offers:
- 1) to act as a companion, guide, or date, or
  - 2) to privately model lingerie, or

- 3) to privately perform a striptease.
- k. *Escort Agency* means a person or business association that for a fee, tip, or other consideration, furnishes, offers to furnish, or advertises to furnish, escorts as one of its primary business purposes.
- l. *Establish or Establishment* means and includes any of the following:
- 1) the opening or commencement of any sexually oriented business as a new business;
  - 2) the conversion of an existing business, whether or not a sexually oriented business;
  - 3) the addition of any sexually oriented business to any other existing sexually oriented business; or
  - 4) the relocation of any sexually oriented business.
- m. *Licensee* means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.
- n. *Nude, Nudity or a State of Nudity* means the showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.
- o. *Operate or Cause to be Operated* means to cause to function or to put or keep in a state of doing business. *Operator* means any person on the premises of a sexually oriented business who is authorized to exercise operational control of the business, or who causes to function or who puts or keeps in operation, the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.
- p. *Person* means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- q. *Regularly Features or Regularly Shown* means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or

performances offered as a part of the ongoing business of the sexually oriented business.

- r. *Semi-nude or in a Semi-nude Condition* means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part.
- s. *Semi-nude Model Studio* means a commercial establishment which regularly features a person (or persons) who appears semi-nude and is provided to be observed, sketched, drawn, painted, sculptured, or photographed by other persons who pay money or any form of consideration, but shall not include a proprietary school licensed by the State of Kansas or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.
- t. *Sexual Encounter Center* means a business or commercial establishment, that as one of its principal business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of “specified sexual activities”. The definition of sexual encounter center or any sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.
- u. *Sexually Oriented Business* means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, semi-nude model studio, or sexual encounter center.
- v. *Specified Anatomical Areas* means:
  - 1) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
  - 2) less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.
- w. *Specified Criminal Activity* means any of the following offenses:
  - 1) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession

or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries.

- 2) for which:
  - a) less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
  - b) less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
  - c) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or a combination of misdemeanor offenses occurring within any twenty-four (24) month period.
- 3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

x. *Specified Sexual Activities* means any of the following:

- 1) the fondling of another person's genitals, pubic region, anus, or female breasts;
- 2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
- 3) excretory functions as part of, or in connection with, any of the activities set forth in (1) through (2) above.

y. *Substantial Enlargement* of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25) percent, as the floor areas exist on the date this Ordinance takes effect.

z. *Transfer of Ownership or Control* of a sexually oriented business means and includes any of the following:

- 1) the sale, lease, or sublease of the business;
  - 2) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
  - 3) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person processing the ownership or control.
47. **Shipping (Cargo) Containers:** Shipping (cargo) containers are mobile units typically transported by rail or by semi-trailers and having no load-bearing walls.
48. **Street:** A county road, state highway, public road, street, or private thoroughfare which affords primary access to abutting property.
49. **Story:** That part of a building between the surface of a floor and the ceiling immediately above.
50. **Story, Half:** A story under a gable, hip, or gambrel roof, the wall plates of which, on at least two (2) opposite exterior walls, are not more than two (2) feet above the floor of such story.
51. **Street Line:** A dividing line between a lot, tract or parcel of land and a continuous street.
52. **Structure:** Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground.
53. **Structural Alterations:** Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any substantial change in the roof or in the exterior walls.
54. **Tourist or Trailer Camp:** An area with or without buildings used for providing housing for recreational vehicles or tents on a temporary basis.
55. **Unenclosed Porch or Balcony:** A projection to the main structure with a minimum of fifty (50) percent open area.
56. **Yard:** That portion of a lot extending open and unobstructed from the lowest level to the sky along the entire length of a lot line, and from the lot line for a depth or width set forth in the applicable district regulations.

57. **Yard, Front:** A yard extending across the full width of the lot, the depth of which is the least distance between the lot line or road easement or right-of-way line and the front building line of the main building or any projection thereof other than steps, unenclosed balconies, and eaves. An open unenclosed porch or paved terrace may project into a front yard for a distance not exceeding ten (10) feet.
58. **Yard, Rear:** A yard extending across the full width of the lot between the rear building line of the main building or any projections other than steps, unenclosed balconies, eaves or unenclosed porches, and the rear lot line, the depth of which is the least distance between the rear lot line and the rear building line. On both corner lots and interior lots, the rear yard shall in all cases be at the opposite end of the lot from the front yard.
59. **Yard, Side:** A yard between the side building line, excluding two (2) foot eaves, chimneys, and fireplace structures, and the side line of the lot and extending from the front yard to the rear yard and being the least distance between the side lot line and the side building line.

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**21-103. R-1 -- Single Family Dwelling District:**

1. Use Regulations:

A building or premise shall be used only for the following purposes:

- a. Single family dwellings.
- b. Municipally owned or operated parks, playgrounds, swimming pools, community buildings, and similar municipal recreational facilities.
- c. Churches.
- d. Public schools and educational institutions having a curriculum the same as ordinarily given in public schools and nonprofit preschool institutions.
- e. Golf courses, except miniature courses, and driving tees operated for commercial purposes.
- f. Noncommercial nurseries and gardening, but not the raising of poultry, pets or livestock for commercial purposes or on a scale that would be objectionable because of noise or odor to surrounding residences.
- g. Home occupations as defined herein.
- h. Accessory buildings and uses customarily incident to the above uses, not involving the conduct of a business, including a private garage.
- i. Temporary buildings and vehicles for uses incidental to construction work and which shall be removed upon completion or abandonment of the construction work.
- j. Electric utility substations, sewage pumping stations, water well houses, and similar utility facilities.
- k. Accessory swimming pools for the use of residents and/or guests provided that said pools are located in the rear or side yard, are not less than five (5) feet from all property lines, and are completely surrounded by a fence or wall having a height of at least six (6) feet with any gate equipped with self-closing and self-latching devices.
- l. The following restrictions will apply to the construction or addition to a single family dwelling in the R-1 District:
  - 1) Conventional built single family dwelling units shall be constructed in accordance

with the adopted City Building Codes.

- 2) Modular home construction shall be certified by the manufacturer that it is constructed to meet the City Building Codes or HUD Standards as adopted by the City of Colby.
- 3) Residential design manufactured home - On and after January 1, 1992, residential design manufactured homes, as defined in this chapter, shall be permitted in any residential district when in compliance with the following architectural and aesthetic standards:
  - a) The home shall have a minimum of 888 square feet of heated floor area and the longest exterior dimension of the body shall be not more than two and one-half (2½) times the shortest exterior dimension.
  - b) The roof shall be double-pitched and have a minimum vertical rise of two and one-half (2½) inches for each twelve (12) inches of horizontal run, and shall be covered with material that is residential in appearance including, but not limited to, wood, asphalt, composition or fiberglass, or metal roofing material. The roof shall have a minimum eave projection and overhang of ten (10) inches, which may include a four (4) inch gutter.
  - c) The exterior siding shall be made of nonreflective material customarily used on site-built dwellings, such as wood, composition, or simulated wood, clapboards, conventional vinyl or metal siding, brick, stucco, or similar materials, but excluding smooth, ribbed or corrugated metal or plastic panels. Siding material shall extend below the top of the exterior foundation wall and the joint shall be flashed in accordance with the adopted City Building Codes.
  - d) The home shall be installed in accordance with the recommended installation procedures of the manufacturer and the adopted City Building Codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry foundation or wall, as required by the Council of American Building Officials One and Two Family Dwelling Code, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.
  - e) The home shall have a garage and covered porch at the main entrance facing the street, if fifty (50) percent or more of existing homes on the same and/or adjacent block face have garages and/or covered porches. Where required or

installed, the roofing and siding material must be the same as that of the home itself.

- f) Any addition to the home shall comply with the adopted City Building Codes.

2. Area Regulations:

a. Front Yard:

There shall be a front yard having a depth of not less than thirty (30) feet. Provided, however, where forty (40) percent or more of the frontage on one side of the street between two intersecting streets is improved with buildings that have observed a front yard line having a variation in depth of not more than six (6) feet, no building shall project beyond the average front yard so established. Where platted lots have a double frontage or are located at the intersection of two streets, the required front yard shall be provided on both streets; provided, however, in existing residential subdivisions, platted before April 15, 1997, where forty (40) percent or more of the side yard lines do not exceed fifteen (15) feet on a double frontage lot, pursuant to the Zoning Ordinance of 1973, new construction shall be grandfathered in and allowed to adhere to a depth of not less than fifteen (15) feet for the side yard.

b. Side Yard:

There shall be a side yard on each side of a building having a width of not less than eight (8) feet or ten (10) percent of the average width of the lot, whichever amount is larger, but need not exceed fifteen (15) feet.

c. Rear Yard:

- 1) There shall be a rear yard having a depth of not less than thirty (30) feet or twenty (20) percent of the depth of the lot, whichever amount is larger, but need not exceed fifty (50) feet. On a lot having a double frontage or located at the intersection of two streets, there shall be a rear yard having a depth of not less than thirty (30) feet or twenty (20) percent of the depth of the lot, whichever amount is smaller.
- 2) In computing the depth of a rear yard, where such yard opens onto an alley, one-half (½) of the alley width may be included as a portion of the rear yard.
- 3) Accessory buildings may be built in a required rear yard, but such accessory buildings shall not be nearer than three (3) feet to any side or rear lot line, nor nearer than five (5) feet to any alley. Nor shall any such accessory building occupy more than thirty (30) percent of the required rear yard or exceed the size of the outside dimensions of

the main building. Any accessory and unattached building to be built upon corner lots must be set back fifteen (15) feet from the property line of the adjacent side street and in no case nearer the side property line than the main structure to which it is accessory.

- 4) No accessory building shall be constructed upon a lot until construction of the main building has been actually commenced, and no accessory building shall be used for dwelling purposes.
- 5) Every part of a required yard shall be open to the sky, unobstructed, except for accessory buildings in a rear yard.

d. Intensity of Use:

Every lot shall have an area of not less than six thousand two hundred and fifty (6,250) square feet.

- e. Area regulations between Range and Cleveland Avenue shall be excepted from R-1 regulation area requirements. Minimum lot width in these blocks is to be fifty (50) feet. Building site locations are to conform with majority of existing buildings within the block where located except no building is to be constructed within fifteen (15) feet of the street line on Cleveland and thirty (30) feet from the street line on Range.

3. Height Regulations:

- a. No building shall exceed two and one-half (2½) stories or thirty-five (35) feet in height.
- b. Churches and educational institutions when permitted in this district, may be erected to a height not exceeding sixty (60) feet, and churches and temples may be erected to a height not exceeding seventy-five (75) feet if the building is set back from each line at least one (1) foot for each foot of additional building height above the height limit otherwise provided in this district.
- c. Fences in front yards shall not exceed four (4) feet and fences in side and rear yards shall not exceed eight (8) feet in height. No barbed wire or electrically- charged fences are allowed in a residential zone except for low voltage pet fences which must be located at least twelve (12) inches inside an exterior fence.

4. Sign Regulations:

- a. Church or public building bulletin boards, not exceeding thirty (30) square feet in area

including the frame at its widest and longest dimension, are allowed.

- b. Temporary signs not exceeding six (6) square feet in area are allowed, appertaining to the lease, hire or sale of a building or premises.
- c. No flashing sign shall be permitted in an R-1 District.
- d. Any signs permissible under this section must be wholly upon or over the property to which they apply and may not bear upon or project into any street right-of-way, alley, or adjacent property.

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**21-104. R-2 -- Two Family Dwelling District:**

1. Use regulations:

A building or premise shall be used only for the following purposes:

- a. Any use permitted in the R-1-- Single Family Dwelling District.
- b. Two Family Dwellings, as defined herein.
- c. Accessory buildings and uses customarily incident to any of the above uses.

2. Area Regulations:

a. Front Yard:

There shall be a front yard having a depth of not less than thirty (30) feet. Provided, however, where forty (40) percent or more of the frontage on one side of the street between two (2) intersecting streets is improved with buildings that have observed a front yard line having a variation in depth of not more than six (6) feet, no building shall project beyond the average front yard so established. Where platted lots have a double frontage or are located at the intersection of two streets, the required front yard shall be provided on both streets.

b. Side Yard:

- 1) There shall be a side yard on each side of a building having a width of not less than eight (8) feet or ten (10) percent of the average width of the lot, whichever amount is larger, but need not exceed fifteen (15) feet.
- 2) For the purpose of the side yard regulations, a two family dwelling shall be considered as one (1) building occupying one (1) lot.

c. Rear Yard:

- 1) There shall be a rear yard having a depth of not less than thirty (30) feet or twenty (20) percent of the depth of the lot, whichever amount is larger, but need not exceed fifty (50) feet. On a lot having a double frontage or located at the intersection of two streets, there shall be a rear yard having a depth of not less than thirty (30) feet or twenty (20) percent of the depth of the lot, whichever amount is smaller.

- 2) In computing the depth of a rear yard, where such yard opens onto an alley, one-half (½) of the alley width may be included as a portion of the rear yard.
- 3) Accessory buildings may be built in a required rear yard, but such accessory buildings shall not be nearer than three (3) feet to any side or rear lot line, nor nearer than five (5) feet to any alley. Nor shall any such accessory building occupy more than thirty (30) percent of the required rear yard or exceed the size of the outside dimensions of the main building. Any accessory and unattached building to be built upon corner lots must be set back fifteen (15) feet from the property line of the adjacent side street and in no case nearer the side property line than the main structure to which it is accessory.
- 4) No accessory building shall be constructed upon a lot until construction of the main building has been actually commenced, and no accessory building shall be used for dwelling purposes.
- 5) Every part of a required yard shall be open to the sky, unobstructed, except for accessory buildings in a rear yard.

d. Intensity of Use:

- 1) The lot area regulations for single family dwellings in R-2 Districts shall be an area not less than five thousand (5,000) square feet.
- 2) Duplex units: Every lot shall have an area of not less than nine thousand (9,000) square feet or forty-five hundred (4,500) square feet per dwelling unit.

3. Height Regulations:

- a. No building shall exceed two and one-half (2½) stories or thirty-five (35) feet in height.
- b. Fences in front yards shall not exceed four (4) feet and fences in side and rear yards shall not exceed eight (8) feet in height. No barbed wire or electrically charged fences are allowed in a residential zone except for low voltage pet fences which must be located at least twelve (12) inches inside an exterior fence.

4. Sign Regulations:

- a. Church or public building bulletin boards, not exceeding thirty (30) square feet in area, including the frame at its longest and widest dimension, are allowed.
- b. Temporary signs not exceeding thirty (30) square feet in area appertaining to the lease, rental, hire, and sale of a building or premise are allowed.
- c. No flashing signs are allowed in the R-2 District.

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**21-105. R-3 -- Multiple Dwelling District:**

1. Use regulations:

A building or premise shall be used only for the following purposes:

- a. Any use permitted in the R-1 -- Single Family Dwelling District or R-2 -- Two Family Dwelling District.
- b. Multiple dwelling, as defined herein.
- c. Boarding and lodging houses.
- d. Nonprofit religious, educational and philanthropic institutions, but not penal or mental treatment institutions.
- e. Nonprofit hospitals and clinics, but not animal hospitals, animal clinics or mental hospitals.
- f. Private clubs, fraternities, sororities, and lodges excepting those the chief activity of which is a service, customarily carried on as a business.
- g. Accessory buildings and uses customarily incident to any of the above uses.

2. Area Regulations:

a. Front Yard:

There shall be a front yard having a depth of not less than thirty (30) feet. Provided however, where forty (40) percent or more of the frontage on one side of the street between two intersecting streets is improved with buildings that have observed a front yard line having a variation in depth of not more than six (6) feet, no building shall project beyond the average front yard so established. Where platted lots have a double frontage or are located at the intersection of two (2) streets, the required front yard shall be provided on both streets.

b. Side Yard:

1) There shall be a side yard on each side of a building having a width of not less than eight (8) feet or ten (10) percent of the average width of the lot, whichever amount is larger, but need not exceed fifteen (15) feet.

2) For the purpose of the side yard regulations, a multiple dwelling shall be considered as one (1) building occupying one (1) lot.

c. Rear Yard:

1) There shall be a rear yard having a depth of not less than thirty (30) feet or twenty (20) percent of the depth of the lot, whichever amount is larger, but need not exceed fifty (50) feet. On a lot having a double frontage or that is located at the intersection of two streets, there shall be a rear yard having a depth of not less than thirty (30) feet or twenty (20) percent of the depth of the lot, whichever amount is smaller.

2) In computing the depth of a rear yard, where such rear yard opens onto an alley, one-half (½) of the alley width may be included as a portion of the rear yard.

3) Accessory buildings may be built in a required rear yard, but such accessory buildings shall not be nearer than three (3) feet to any side or rear lot line, nor nearer than five (5) feet to any alley. Nor shall any such accessory building occupy more than thirty (30) percent of the required rear yard or exceed the size of the outside dimensions of the main building. Any accessory and unattached building to be built upon corner lots must be set back fifteen (15) feet from the property line of the adjacent side street and in no case nearer the side property line than the main structure to which it is accessory.

4) No accessory building shall be constructed upon a lot until construction of the main building has been actually commenced, and no accessory building shall be used for dwelling purposes.

5) Every part of a required yard shall be open to the sky, unobstructed, except for accessory buildings in a rear yard.

d. Intensity of Use:

1) The lot area regulations for single family dwellings in R-3 Districts shall be an area not less than five thousand (5,000) square feet.

- 2) Two-Family units in R-3: Every lot shall have an area of not less than nine thousand (9,000) square feet or forty-five hundred (4,500) square feet per dwelling unit.
- 3) The lot area regulations for multiple dwellings shall be forty-five hundred (4,500) square feet per dwelling unit for each of the first two (2) dwelling units and one thousand five hundred (1,500) square feet for each additional dwelling unit over two (2).
- 4) More than one multiple dwelling or institutional building may be erected upon a single lot or tract, but the yards and open spaces required around the boundaries of the lot or tract shall not be encroached upon by any such building, nor shall there be any change in the intensity of use requirement. The exact location of buildings on the lot must meet the standards of a Planned Unit Development and be approved by the Planning Commission before issuance of a building permit.

3. Height Regulations:

- a. No building shall exceed three and one-half (3½) stories or forty-five (45) feet in height.
- b. Public, semi-public or public service buildings, hospitals, institutions, or schools, when permitted in a district, may be erected to a height not exceeding sixty (60) feet, and churches and temples may be erected to a height not exceeding seventy-five (75) feet if the building is set back from each line at least one (1) foot for each foot of additional building height above the height limit otherwise provided in this district.
- c. Fences in front yards shall not exceed four (4) feet and fences in side and rear yards shall not exceed eight (8) feet in height. No barbed wire or electrically charged fences are allowed in a residential zone except for low voltage pet fences which must be located at least twelve (12) inches inside an exterior fence.

4. Sign Regulations:

- a. Church or public building bulletin boards, not exceeding thirty (30) square feet in area including the frame at its longest and widest dimension, are allowed.
- b. Temporary signs not exceeding thirty (30) square feet in area appertaining to the lease, rental, hire and sale of a building or premise are allowed.
- c. No flashing signs are allowed in the R-3 District.

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**21-106. R-2 MH -- Mobile Home District:**

(Manufactured/Mobile Home Communities only are permitted in this district.)

1. Where permitted:

No mobile home, as herein defined, shall be located in any area within the corporate limits of the City of Colby, Kansas, excepting in such areas as may be acted on by the Colby-Thomas County Metropolitan Area Planning Commission as mobile home communities and zoned R-2 MH by the Governing Body of the City of Colby. Any such mobile home community may be established and operated only in compliance with the procedures and requirements set forth in the following regulations. Mobile home community requirements apply to new mobile home communities and to expansions of existing mobile home communities. Where an existing mobile home community is expanded, existing facilities therein not presently meeting the requirements of this Ordinance, which are to be used or shared by occupants of mobile home spaces in the expanded area, shall be upgraded to the standards of this Ordinance.

Parking in Certain Zones Unlawful:

It shall be unlawful for any person, association or corporation to park or place for the purposes of habitation any trailer home or mobile home within any zoning district designated other than R-2 MH.

Emergency Parking:

Emergency or temporary stopping or parking for twenty-four (24) hours and subject to any other limitations that may be imposed by other ordinances of the City of Colby relative to parking, is permissible for trailer houses or mobile homes.

Storage:

The storage of any unoccupied or uninhabited mobile home or trailer house shall be permitted on the owner's lot providing that such storage is not in conflict with other zoning ordinances or other pertinent ordinances of the City of Colby, Kansas.

2. Application:

- a. The applicant for a permit for a new or expanded mobile home community shall prepare or cause to be prepared three (3) copies of a plan showing location, size and topography of the proposed site for review by the Planning Commission and for submission to the Governing Body of the City of Colby. This plan must be accurately drawn to scale not less than one (1) inch equals twenty (20) feet.
  - b. This site plan shall also include each individual mobile home space, proposed roadways and sidewalks within the area, off-street parking areas, electrical outlets, sewer outlets, water outlets, water lines, and sewer lines, service buildings, any proposed recreational areas or landscaped areas, walls or fences and similar facilities.
  - c. The applicant for a permit for a mobile home community must satisfy the Governing Body 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 one (1) year following granting of a permit and shall be completed within a period of two (2) years.
  - d. In any decision by the Governing Body as to granting a permit for a mobile home community or park, consideration will be given to the following factors:
    - 1) That no permit will be issued for a mobile home community or park in any area zoned other than R-2 MH.
    - 2) That the values of buildings and the character of the property adjoining the area included in such plan will not be adversely affected.
    - 3) That such plan is consistent with the intent and purpose of the regulations to promote public health, safety, morals and general welfare.
3. Permit and Permit Fee:
- a. It shall be unlawful for any person to maintain or operate a mobile home community unless such person shall first obtain a permit, which shall be renewed annually.
  - b. No charge shall be made for said permit.
  - c. A mobile home community permit is not transferable.
  - d. Expiration date of the mobile home permit shall be December 31 of each year.

4. Minimum Standards for Mobile Home Parks or Communities:

- a. No permit will be granted for a mobile home community with less than fifteen (15) mobile home spaces.
- b. The mobile home community shall be located on a well-drained site, properly graded to insure rapid drainage and freedom from stagnant pools of water.
- c. Mobile home spaces shall be provided consisting of a minimum of three thousand five hundred (3,500) square feet for each space, and each space shall be clearly defined and marked by a fence, hedge, concrete curb or similar means. No part of any designated roadway shall be included in computing the square footage requirement.
- d. Mobile homes shall be so harbored on each such space that there shall be a minimum of fifteen (15) feet clearance between each mobile home and any adjoining mobile home, or any other building within the mobile home community, or from any property line bounding the mobile home community and at least five (5) feet from any easement for publicly owned utilities or from any landscaped buffer zone or screen fence.
- e. In addition to the required setback required in Section 4.d., a ten (10) foot landscaped buffer zone or screen fence, at least five (5) feet high and of an approved design, must be provided around the entire outside boundaries of the mobile home community. No landscaped buffer zone or screen fence shall be placed in a public utility easement.
- f. Each mobile home space shall be provided with a paved patio of at least one hundred fifty (150) square feet and shall be provided with a storage locker of at least one hundred (100) cubic feet capacity.
- g. All mobile home spaces shall abut upon a paved driveway not less than twenty-four (24) feet in width which shall have unobstructed access to a public street or highway. The sole vehicular access shall not be by an alley, and any dead-end driveways shall include adequate vehicular turning space or cul-de-sac.
- h. Each mobile home shall be placed on a permanent foundation or placed upon piers and anchored as required by K.S.A. 75-1226 et seq.
- i. The required paved driveway shall have a minimum depth of four (4) inches of asphalt or an equivalent surface as approved by the Governing Body. A concrete gutter, to specifications satisfactory to the Governing Body, will be run at each edge of each paved

driveway. The width of this gutter may be included in computing the width of the paved street.

- j. All sidewalks shall be a minimum of four inches thick, poured concrete, installed in a workmanlike manner, with a minimum width of thirty (30) inches.
- k. All driveways and walkways within the area shall be lighted at night to at least the equivalent of one hundred (100) foot intervals.
- l. All electrical distribution systems and telephone service systems to each mobile home space, except outlets and risers, shall be underground. Each mobile home space shall be provided with a 110 volt and 220 volt service with a minimum 100 ampere individual service outlet.
- m. One outside water faucet to which a hose may be attached shall be provided at each mobile home space.
- n. Structural Quality of Mobile Homes: Any mobile home permitted to be located in any mobile home park in the City of Colby or brought in for purpose of sale by any licensed dealer shall comply with any standards or codes in relation to safety or quality of construction that may be imposed by the State of Kansas.

5. Supervision:

The permittee, or a duly authorized caretaker, shall be responsible at all times to keep the mobile home community or park and its facilities and equipment, in a clean, orderly, and sanitary condition. The permittee shall be answerable for the violation of any provision of the regulations governing mobile home communities or parks.

6. Register of Occupants:

- a. It shall be the duty of each permittee to keep a register containing a record of all mobile home owners and occupants located within the mobile home community. The register shall contain the following information:
  - 1) The name and address of each mobile homeowner or tenant occupying a mobile home.
  - 2) The make, model, year, and license number of each mobile home and motor vehicle, and the state or county issuing such licenses.

- 3) The date of arrival and departure of each mobile home.
- b. The mobile home community or park owner or caretaker 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.
- c. 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. Inspection Required:

Upon the issuance of the permit for a mobile home community, the City shall have the authority to have said mobile home community 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 community 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 provisions of this Ordinance, the City Governing Body shall have the power to order such violation be eliminated or to revoke said permit.

8. Health and Sanitation:

If the City shall determine, upon proper inspection by the inspecting officer of the City, that the sanitary condition of the mobile home community shall have become such as to endanger health or welfare of occupants of said mobile home community or of the surrounding community, or that provided sanitary facilities have become inadequate to properly protect the occupants of said mobile community or park, the City Governing Body or their designated representative shall have the power to require the holder of said mobile home community permit, within ten (10) days, to set said mobile home in proper sanitary condition. If upon notice from the City to the holder of the permit as aforesaid, the owner or caretaker of said mobile home community shall fail or refuse to place said community in sanitary condition, the City Governing Body shall have the right to revoke said permit.

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**21-107. P.U.D. -- Planned Unit Development District:**

1. Statement and Designation:

It is the intent of the City that planned residential and commercial development and renewal be encouraged for all areas of the City where appropriate, in particular those areas of the City now undeveloped or that are from time to time annexed. The City therefore adopts the following goals as its "Statement of Objectives for Planned Unit Development" to be considered in reviewing any application for Planned Unit Development Districts:

- a. To promote and permit flexibility that will encourage a more creative and imaginative approach in residential and commercial development and will result in a more efficient, aesthetic, desirable, and economic use of land while maintaining density and intensity of use consistent with the adopted Comprehensive Plan for the City.
- b. To promote development within the City that can be conveniently, efficiently, and economically served by existing municipal utilities and services or by their logical extension.
- c. To promote flexibility in design, placement of buildings, and use of open space, pedestrian and vehicular circulation facilities, and off-street parking areas in a manner that will best utilize the potential of sites characterized by special feature of geography, geology, topography, size, or shape.

2. The Planning Commission is hereby designated as the local administrative authority which shall exercise the powers of the City set forth in this article.

3. Application of Planned Unit Development:

- a. The provisions of this article as they pertain to Planned Unit Development Districts shall

apply only to contiguous tracts of land containing five (5) or more acres proposed to be developed or renewed primarily for residential purposes, and for which a landowner, or his certified agent, has made an application as hereinafter provided for in this article.

- b. Uses permitted in the Planned Unit Development Districts (P.U.D.) may include but shall be limited to:
  - 1) Primary residential uses: Single family, two family, and multiple family dwelling units as defined in the Zoning Ordinance of the City of Colby, Kansas.
  - 2) Nonresidential uses of a religious, cultural, educational, and recreational character to the extent that they are designed and intended to serve primarily the residents of the Planned Unit Development.
  - 3) Commercial uses to the extent they are designed and intended to serve primarily the residents and uses or activities of the Planned Unit Development. The burden shall be on the landowner to show beyond a reasonable doubt that the commercial uses are intended to serve primarily the residents of the Planned Unit Development.

4. Development Standards and Criteria:

A Plan is consistent with (1) the "Statement of Objectives for Planned Unit Development," (2) the adopted Comprehensive Plan of the City, (3) the development standards set out herein, and (4) any specific rules and regulations for Planned Unit Developments adopted from time to time by the Planning Commission and Governing Body and placed on public record in the office of the City Clerk shall be deemed to be qualified for tentative approval. No such rules and regulations shall be revised or added to so as to be applicable to a specific proposal for a Planned Unit Development after an application for tentative approval has been filed by the landowner or his agents.

A Plan shall be consistent with the following standards for the use, type, bulk, design, and location of the buildings, density or intensity of use, the common open space, the public facilities and the development by geographic division of the tract.

5. Development Standards - Planned Unit Developments, Generally:

- a. No individual residential building lot shall be created that contains less than five thousand (5,000) square feet, or that has an average width of less than fifty (50) feet or an average depth of less than one hundred (100) feet, unless otherwise approved by the Planning Commission.

- b. The proposed development shall have access to a major thoroughfare or collector street. No individual residential building lot shall be created that has direct access to an arterial or a collector street.
- c. Sidewalks built to City specifications shall be provided along all public and private streets unless otherwise approved by the Planning Commission.
- d. The recommended minimum separation distance between individual buildings and/or structures shall be ten (10) feet. Any buildings or structures with a separation distance of fifteen (15) feet or less shall have noncombustible siding and roofing material as specified by the Fire Chief.
- e. Each dwelling or commercial structure shall be located on either a public or private street, or other permanent open space, or common yard, or outer court not less than fifty (50) feet wide. Such areas shall be unoccupied by any buildings or other structures except parking facilities, necessary utility facilities or street improvements unless otherwise approved by the Planning Commission.
- f. The front of a dwelling structure shall not face upon the rear of another, unless approved by the Planning Commission as part of the Plan.
- g. The landowner shall provide for a minimum of ten (10) percent of the land area devoted to residential use to be set aside and developed for open air recreation uses and other common open space. Land devoted to residential use shall be deemed to include the total noncommercial ground area of the Planned Unit Development exclusive of that area set aside for nonresidential structures and public streets. Common open space shall be further defined as an open area designed and developed primarily for the use and benefit of the residents of the development for recreation (whether private or public), courts, gardens, or parking for open space uses; it shall not include space devoted to streets and parking for residential and nonresidential uses.

6. Development Standards - Planned Unit Developments:

The following development standards shall be applicable to Planned Unit Development:

- a. The recommended maximum dwelling unit density per net residential acre shall not exceed 8.7 dwelling units in the Single Family Dwelling District, 9.68 dwelling units in the Duplex Dwelling District, and 12.44 dwelling units in the Multiple Dwelling District, unless otherwise approved by the Planning Commission.

The net residential acreage shall be determined by subtracting from the gross development

acreage the areas set aside for commercial development, public streets, parks and school sites, major drainage courses, and any other areas not retained for the exclusive use and benefit of the residents in the Planned Unit Development.

- b. All buildings and structures shall be set back from public or private street or road right-of-way lines, from individual lot lines where established, and from the periphery of the project to comply with the following:

<u>Building Height</u>	<u>Recommended</u>			<u>Setbacks</u>
	<u>1/2 story</u>	<u>3 story</u>	<u>4 story</u>	
Front	20'	20'	20'	
Side	5'	10'	15'	
Rear	20'	20'	20'	

All buildings or structures shall be separated from the peripheral boundary of the P.U.D by a minimum of twenty-five (25) feet. The recommended maximum building height for all structures shall be four (4) stories (48').

- c. Public or private streets shall comply with the following recommended criteria for dimensions and utility:

<u>Traffic Pattern</u>	<u>Min. Width (bb)</u> <u>(ft)</u>
One-way, no on-street parking	16
One-way, parallel parking one side	22
One-way, parallel parking both sides	31
Two-way, no on-street parking	24
Two-way, parallel parking one side	31
Two-way, parallel parking both sides	36

- d. Off-Street Parking:

- 1) Two (2) off-street parking spaces shall be provided for each dwelling unit, located within reasonable proximity to the unit.
- 2) Commercial and office use areas shall provide one (1) parking space per two hundred (200) square feet up to the first one thousand (1,000) square feet, and one (1) parking space for each additional three hundred (300) square feet over one thousand (1,000) square feet.

7. Application for Tentative Approval:

- a. An application for tentative approval of a Planned Unit Development shall constitute the filing of an application for the establishment of the appropriate Planned Unit Development District by the landowner. The Planning Commission and the Governing Body shall follow the same procedures as required for adoption of the Zoning Ordinance, or an amendment thereto, in the establishment of the Planned Unit Development District. The requirements for notice and advertisement of public hearings and the procedures for protests to the establishment of such a Planned Unit Development District shall be the same as provided for in the City Building Codes.
- b. Before any building permit shall be issued or before any development of land shall take place, the landowner shall have received approval of the Preliminary and Final Development Plans as outlined in this article.
- c. The Preliminary Development Plan submitted by the landowner as part of his application for tentative approval shall be prepared at a scale no smaller than one (1) inch to two hundred (200) feet and shall include all of the area proposed to comprise the Planned Unit Development. The Plan and supporting documents shall include the following information:
  - 1) A legal description of the site.
  - 2) The dimensions of all property boundaries.
  - 3) The owners of record and any other parties having an interest in the proposed development.
  - 4) A topographical survey of the site at an interval of not more than two (2) feet unless a greater or shorter interval, or more detail is requested by the City.
  - 5) The location of all existing structures, easements, utilities, proposed utilities, and public dedication either through, adjacent to, or on the site.

- 6) The existing public and private street system, platted or unplatted ownership, type and location of structures, and topography extending one hundred (100) feet beyond the outside boundaries of the proposed development.
- 7) The width, grade, location, and ownership of all proposed public and private streets, easements, and sidewalks in the area to be developed.
- 8) The use, height, floor area, and location of all proposed buildings and other structures.
- 9) The number of dwelling units to be contained in each building proposed for residential use.
- 10) The location, dimension, and capacity of all proposed off-street parking areas in the area to be developed.
- 11) The location, dimension, acreage, and ownership of all proposed public and private recreation areas, open space, and nonencroachable areas.
- 12) The location of all historic and natural features and scenic areas with such features and areas that are to be preserved from development being so noted.
- 13) The location and type of landscaping proposed for the development.
- 14) Dimensions and notes as deemed necessary to show compliance with the development standards of this article.
- 15) A schedule showing the proposed time and sequences within which the applications for final approval of all portions of the Planned Unit Development are intended to be filed. The Planning Commission may either approve or modify the submitted development time schedule. The developmental phases as shown on the time schedule shall also be indicated on the Plan.

As part of the development time schedule, each phase shall have a summary of the number of units for each type of use, the number of dwelling units, the acreage devoted to residential, nonresidential, commercial, recreation, open space, non-encroachable area, streets (both public and private), off-street parking, and other major land uses, density, public lands (existing and proposed), and the total number of acres contained in each development phase.

- 16) A statement as to the feasibility of proposals for the disposition of sanitary waste and storm water, and how all utilities are to be provided including sewage, water, storm drainage, gas and electricity, and how completion of all improvements is to be guaranteed.
  - 17) A statement as to the form of ownership proposed to own and maintain the common open space, recreation facilities, non-encroachable area and any other area proposed to be developed that is to be retained primarily for the exclusive use and benefit of the residents, lessees and owners of the Planned Unit Development.
  - 18) A statement as to the substance of the covenants, grants of easements or other restrictions to be imposed upon the use of the land, buildings and structures, including proposed easements or grants for public utilities.
  - 19) The landowner shall also submit a tentative dedication clause including dedication of public utility and drainage easements, street rights-of-way and the following statement: "We hereby dedicate to the City of Colby the right to regulate any construction over the area designated as common open space, open air recreation area, and non-encroachable area and to prohibit any construction within said areas and spaces inconsistent with the approved use or enjoyment of residents, lessees, and owners of the Planned Unit Development."
  - 20) A statement by the landowner setting forth the reasons why, in his opinion, a Planned Unit Development would be in the public interest and would be consistent with the Statement of Objectives for Planned Unit Development.
  - 21) A statement specifying those variances, modifications, reductions, and waivers being requested as part of the Plan approval and setting forth reasons why, in the opinion of the landowner, such should be allowed.
- d. Approval of the Preliminary Planned Unit Development Plan shall constitute approval of a preliminary plat. A preliminary plat review fee shall not be required.

8. Findings of the Planning Commission:

The Planning Commission shall, within thirty (30) days following the conclusion of the public hearing, either recommend to the Governing Body (1) tentative approval of the Plan as submitted, (2) tentative approval subject to specified conditions not included in the Plan submitted, or (3) denial of the application for tentative approval. If tentative approval is recommended, either of the Plan as submitted or of the Plan with conditions, the Planning Commission shall set forth the drawings,

specifications, comments, performance bonds and conditions, if any, that shall accompany an application for final approval, and shall set forth that within twelve (12) months of said tentative approval, obey the Governing Body, or according to an approved development schedule, the landowner shall submit an application to the Planning Commission for final approval over all or a portion of the Planned Unit Development District.

The recommendation for the granting or denial of tentative approval shall include findings of fact and shall set forth reasons for the recommendation, specifying with particularity in what respects the Plan would or would not be in the public interest, including but not limited to findings of fact and conclusions on the following:

- a. In what respects the Plan is or is not in general conformity with the provisions of the Comprehensive Plan of the City.
  - b. In what respects the Plan is or is not consistent with the Statement of Objectives for Planned Unit Development.
  - c. The nature and extent of the common open space, and the adequacy or inadequacy of the amount and function of the common open space in terms of the densities and dwelling types proposed in the Plan.
  - d. Whether the Plan does or does not make adequate provisions for public services, provide adequate control over vehicular traffic, and further the amenities of light and air, recreation, and visual enjoyment.
  - e. Whether the Plan will or will not have a substantially adverse effect on adjacent property and the development or conservation of the neighborhood area.
  - f. In what respects the Plan is or is not in conformance with the development standards and criteria of this article.
  - g. In what respects the Plan is or is not in compliance with the requirements for application for tentative approval of the Planned Unit Development.
  - h. The sufficiency of the terms and conditions proposed to protect the interest of the public and the residents of the Planned Unit Development in the case of a Plan which proposes development over a period of years.
9. Status of Preliminary Plan after Tentative Approval:
- a. Tentative approval by the City Council of a preliminary plan, either as submitted or subject to

conditions, shall constitute an amendment to the Zoning Ordinance establishing the appropriate Planned Unit Development District, and that district shall be noted on the Official Zoning Map of the City.

- b. The landowner shall be given written notice of the actions of the Planning Commission and Governing Body.
- c. Tentative approval of the Plan shall not qualify as a plat of the Planned Unit Development for recording purposes. A Plan which has been given tentative approval as submitted, or which has been tentatively approved with conditions (and provided that the landowner has not defaulted nor violated any of the conditions of tentative approval), shall not be modified or revoked nor otherwise impaired by action of the City pending an application or applications for final approval, without the consent of the landowner, provided that an application for final approval is filed within the time or times specified in the granting of tentative approval.
- d. If a landowner chooses to abandon a Plan that has been given tentative approval, he may do so prior to final approval, provided that he notifies the Planning Commission in writing. If the landowner fails to file an application or applications for final approval within the required time period, the tentative approval shall be deemed to be revoked and all that portion of the area included in the Plan for which final approval has not been given shall automatically revert to the zoning district classification that the area carried immediately prior to the granting of tentative approval, and this reverted zoning shall be noted on the Official Zoning Map and in the records of the City Clerk.

10. Filing of Statement:

- a. Within fifteen (15) days after approval of a Preliminary Development Plan by the Governing Body, the landowner shall file with the Thomas County Register of Deeds a statement that such a Plan has been filed with the Planning Commission and has been approved and that such Planned Unit Development is applicable to certain specified legally described land and that copies of said Plan are on file in the City Office. Such statement recorded with the Register of Deeds shall also specify the nature of the Plan, the proposed density or intensity of land use, and other pertinent information sufficient to notify any prospective purchasers or users of the 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 article. Substantial or significant changes in the Planned Unit Development shall be made only after re-hearing and re-approval of the Preliminary Plan or by change in the zoning district.

The landowner shall be responsible for all costs incurred in filing said statement.

- b. Prior to filing an application for final approval, the landowner shall provide the City Manager with a copy of such recorded statement. Such copy shall show the date of the filing and the signature of the Register of Deeds.

11. Application for Final Approval:

- a. An application for final approval of a Planned Unit Development shall be made to the Planning Commission and shall be prepared in accordance with this article. The application shall be filed within the time period specified in the granting of tentative approval. In accordance with the development time schedule approved as part of the Preliminary Development Plan, the landowner may request final approval of all the land for which tentative approval was granted or he may elect to request final approval of only a portion of the land included in the Preliminary Development Plan and may delay, within the time authorized in the granting of tentative approval, application for final approval of other portions.
- b. The Final Development Plan, drawn at a scale of not less than one (1) inch to two hundred (200) feet and supportive documents shall show or contain the following:
  - 1) All information required of the Preliminary Development Plan.
  - 2) The placement of all principal and accessory structures.
  - 3) The entrances to all structures.
  - 4) The location and dimensions of all existing and proposed curb cuts, driveways and aisles, public and private streets, off-street parking and loading space areas, sidewalks and pedestrian ways, sanitary sewers, storm sewers and drainage ways, power lines, gas lines, and fire hydrants.
  - 5) The location, height, and material of screening walls and fences.
  - 6) The type of surfacing and base course proposed for all private streets, driveways, off-street parking and loading space areas, and sidewalks and pedestrian ways.
  - 7) The location and landscape schedule of all perimeter and interior landscaping including trees and shrubs to be removed.
  - 8) The proposed topography or grading of the area at a contour interval of not more than

two (2) feet.

- 9) The location, height, direction, and amount of illumination of any interior lighting.
  - 10) The location of each outdoor trash storage facility.
  - 11) Proof of the establishment of an agency or entity to own, manage and maintain the common open space, open air recreation areas, recreation facilities, non-encroachable areas, private streets and any other area within the development that is to be retained for the exclusive use and benefit of the residents, lessees and owners.
  - 12) Copies of all restrictions or covenants that are to be applied to the development area.
  - 13) Proof that no lot, parcel, tract or other portion of the development area has been conveyed or leased prior to the recording of any restrictive covenants, Final Development Plan, or Final Plat.
  - 14) Such other drawings, specifications, covenants, easements, conditions, and performance bonds as set forth in the granting of tentative approval.
- c. A Plan submitted for final approval shall be in substantial compliance with the Plan previously given tentative approval. Modification by the landowner of the Plan as tentatively approved may not:
- 1) Vary the proposed gross residential density or intensity of use by more than five (5) percent or involve a reduction in the area set aside for common open space, open air recreation area or non-encroachable area, not the substantial relocation of such areas; nor,
  - 2) Increase by more than ten (10) percent the floor area proposed for non-residential or commercial uses; nor,
  - 3) Increase by more than five (5) percent the total ground area covered by buildings nor involve a substantial change in the height of buildings.
- d. A public hearing on the application for final approval of the Plan or part thereof shall not be required provided that the Plan or part thereof submitted for final approval is in substantial compliance with the Plan given tentative approval. A public hearing need not be held to consider modifications on location and design of streets or facilities for water or disposal of storm water or sanitary sewer or other public facilities required as a tentative condition of approval of a Preliminary Development Plan. The burden shall, nevertheless, be upon the landowner to whom the Planning Commission must show good cause for any variation

between the Plan as tentatively approved and the Plan as submitted for final approval.

In the event a public hearing is not required for final approval and the application for final approval has been filed, together with all required drawings, specifications and other documents in support thereof, the Planning Commission shall, within forty-five (45) days of such filing, grant such Plan final approval; provided, however, that in the event the Plan as submitted contains variations from the Plan as given tentative approval, the Planning Commission may refuse, after meeting with the landowner, to grant final approval and shall within forty-five (45) days from the filing of the application for final approval advise the landowner in writing of said refusal, setting forth the reasons why one or more of the variations are not in the public interest.

The landowner may either treat the refusal as a denial of final approval and resubmit the Final Development Plan in accordance with the request of the Planning Commission, or he may, within forty-five (45) days of the date of notice of refusal, request to appeal the decision of the Planning Commission. In the event such an appeal is filed, a public hearing before the Planning Commission shall be scheduled with such notice as is required for preliminary approval being given.

If the landowner, after a public hearing by the Planning Commission, is not in agreement with the decision of the Planning Commission, he may request within thirty (30) days that the application for Final Development Plan approval be submitted to the Governing Body for final decision.

Any reason for disapproval of the Final Development Plan by either the Planning Commission or the Governing Body shall be given to the landowner in writing.

- e. A Plan or any part thereof which has been given final approval by the Planning Commission and by the Governing Body shall be so certified by the Chairman and Secretary of the Planning Commission, the Mayor and City Clerk, and shall be filed on record with the Thomas County Register of Deeds immediately following the satisfying of all conditions of approval. If the landowner chooses to abandon a Plan or portion thereof after it has been given final approval, he shall so notify the Planning Commission in writing.

In the event the landowner shall fail to commence the Planned Unit Development within twelve (12) months after final approval has been granted, then such final approval shall terminate and shall be deemed null and void unless the time period is extended by the Planning Commission upon written application by the landowner.

12. Enforcement, Modification of Provisions of the Final Plan:

To further the mutual interest of the residents and owners of the Planned Unit Development and of the public in the preservation of the integrity of the Plan, as finally approved, and to insure that modifications, if any, in the Plan shall not impair the reasonable reliance of the said residents and owners upon the provisions of the Plan, nor result in changes that would adversely affect the public interest, the enforcement and modification of the provisions of the Plan as finally approved, whether recorded by plat, covenant, easement or otherwise, shall be subject to the following provisions:

- a. Enforcement by the City. The provisions of the Plan relating to:
  - 1) The use of land and the use, height, bulk, area, and location of buildings and structures;
  - 2) The quality and location of Common Open Space; and
  - 3) The intensity of use or the density of residential units shall run in favor of the City and shall be enforceable in law or in equity by the City, without limitation on any powers or regulations otherwise granted by the City by law.
- b. Enforcement by the residents and owners. All provisions of the Plan shall run in favor of the residents and owners of the Planned Unit Development, but only to the extent expressly provided in the Plan in accordance with the terms of the Plan, and to that extent said provisions, whether recorded by plat, covenant, easement or otherwise, may be enforced in law or in equity by said residents and owners, acting individually, jointly, or through an agency designated in the Plan to act on their behalf; provided, however, that no provisions of the Plan shall be implied to exist in favor of residents and owners of the Planned Unit Development except as to those portions of the Plan which have been finally approved and have been recorded.
- c. Modification of the Plan by the City. All those provisions of the Plan authorized to be enforced by the City may be modified, removed, or released by the City (except grants or easements relating to the service or equipment of a public utility unless expressly consented to by the public utility), subject to the following conditions:
  - 1) No such modification, removal, or release of the provisions of the Plan by the City shall affect the rights of the residents and owners of the Planned Unit Development to maintain and enforce those provisions, in law or in equity.
  - 2) No modification, removal, or release of the provisions of the Plan by the City shall be permitted except upon a finding by the Planning Commission, following a public hearing and that the same is consistent with the efficient development and preservation of the entire Planned Unit Development, does not adversely affect either

the land abutting upon or across a street from the Planned Unit Development or the public interest, and is not granted solely to confer a special benefit upon any person.

- d. Modification by the Residents. Residents and owners of the Planned Unit Development may, to the extent and in the manner expressly authorized by the provisions of the Plan, initiate modification provided that no such action shall affect the right of the City to enforce the provisions of the Plan.
- e. Mechanics and modifications. Modifications of approved planned unit development plans may be initiated as follows:
  - 1) By the owners or residents of property within the Planned Unit Development provided, that the right to initiate modification has been expressly granted to or expressly retained by the owners or residents under the provisions of the plan.
  - 2) By the Governing Body in either of the following two (2) circumstances:
    - a) The Governing Body shall initiate modification by docketing a proposal for modification with the Planning Commission when presented with a petition presented to the City seeking modification signed by the owners or owner of thirty (30) percent more of the land lying within the Planned Unit Development; or
    - b) The Governing Body shall initiate modification upon its own motion duly made and carried by a three-fourths (3/4) vote of the Governing Body, when modification appears strictly necessary to forward the purpose of this article and such modification would not impair the reasonable reliance interest of the owners and residents of the Planned Unit Development.

Any modification initiated by the Governing Body upon owner petition is subject to the conditions set forth in K.S.A. 12-757. All proposed modifications shall be reviewed through the same procedures as are used for amending this article, except that the right of protest forcing approval of the modification to be made by three-fourths (3/4) vote of the Governing Body shall not extend to:

- 1) The owners of twenty (20) percent of the land, excepting public streets and ways, in the Planned Unit Development; or
- 2) Forty (40) percent of the owners having title to lands in the Planned Unit Development; or

- 3) Ten (10) or more owners of twenty (20) percent of the land, excepting public streets and ways, within three hundred (300) feet of the boundaries of the Planned Unit Development for which modification is sought. To constitute a valid protest for any particular property where there is joint tenancy, signatures of all owners of such property are required. Initiation of modifications by the Governing Body upon owner petition shall in no way bind the Governing Body to final approval of the modification following recommendation by the Planning Commission.

### **21-108. C-1 – Downtown Business District**

Design:C-1 Downtown Business District is designed to provide for a limited range of retail and service businesses dealing directly with consumers. Businesses located in this district shall share the same ideology of maintaining the integrity of a downtown shopping and service area.

#### 1. Use Regulations:

A building or premise shall be for the following purposes:

- a. Single family dwellings, two family dwellings, and multiple dwellings. Provided, however, that residential uses are not the principal use of the structure in which they are located; and provided further, that the street facade of the structure is commercial in nature. Freestanding residential uses shall not be permitted in the C-1 Downtown District.
- b. Bakeries, retail.
- c. Banks.
- d. Barber or beauty shops.
- e. Commercial schools of business or arts.<sup>1</sup>
- f. Drugstores.
- g. Repair shops dealing with household appliances and smaller.
- h. Florist shops.
- i. Hardware stores.
- j. Office space/office complexes.<sup>2</sup>
- k. Decorating or furniture stores.
- l. Parking lots.
- m. Photography or artist studios.

- n. Restaurants and/or bars.<sup>1</sup>
- o. Theaters.<sup>1</sup>
- p. Lodges or fraternal halls.<sup>1</sup>
- q. Variety stores.
- r. Small animal pet shops, grooming, and veterinary practices limited to small animals, where all services are contained within the confines of the building.
- s. Other retail or commercial uses deemed to be compatible with existing businesses in both use and intensity, if it complies with conditions and restrictions contained in this section but not including those types of businesses provided for in less-restricted districts.

<sup>1</sup>Off-street parking requirements (See Section 21-114 - Parking and Loading Space Regulations)

<sup>2</sup>Non-retail offices permitted in complexes

### **21-109. C-1 -- Commercial District:**

Design:C-1 Commercial District is designed to provide for a broad range of commercial or service businesses dealing directly with consumers. Buildings will all have the frontal facade of a commercial business.

#### 1. Use Regulations:

A building or premise shall be for the following purposes:

- a. All items included in C-1 Downtown Business District.
- b. Grocery stores/meat markets.<sup>1</sup>
- c. Frozen food lockers.
- d. Telemarketing centers.
- e. Plumbing, heating/cooling, and electrical supply shops.
- f. Service stations and automotive repair shops.
- g. Automobile dealerships.<sup>3</sup>
- h. Contract construction with restrictions.<sup>3</sup>
- i. Other commercial uses compatible with existing businesses in use and intensity, if it complies with conditions with restrictions contained in this section but not including those types of businesses provided for in less restricted districts.

<sup>1</sup>Off-street parking requirements (See Section 21-114 - Parking and Loading Space Regulations)

<sup>3</sup>All parking of equipment and vehicles on premises and all storage of materials must be inside buildings

Temporary Use Permit: A temporary use permit may be issued for the temporary placement of

semi-trailers and shipping (cargo) containers outside of a retail store subject to the Special Permit Process contained in Section 21-202.

2. Area Regulations:

a. Front yard:

No front yard is required for any building in the C-1 -- Commercial District.

b. Side yard:

A side yard is not required except on the side of a lot abutting on a dwelling district in which case there shall be a side yard of not less than five (5) feet. In addition, on the side of a lot abutting on a dwelling district, a screen fence, approved by the Building Official, and not less than five feet high, shall be erected.

c. Rear yard:

A rear yard is not required.

3. Height Regulations:

a. No building shall exceed a height at the street line of six (6) stories or seventy-five (75) feet.

b. Fences in side and rear yards shall not exceed a height of ten (10) feet and fences in front yards shall not exceed a height of four (4) feet; fences shall be constructed of a material approved by the Building Official. Barbed wire may be used only when installed at a height of at least six (6) feet; electrically charged fences are prohibited.

4. Sign Regulations:

Business signs (single or double faced) shall be allowed in C-1 Districts subject to sign regulations set forth in the City Building Codes.

a. The gross surface area, in square feet, on one side of any business sign on a lot shall not exceed three hundred (300) square feet or three (3) times the linear feet of frontage of the lot, whichever is larger. Each side of a lot which abuts upon a street shall be considered as a

separate frontage, and the gross surface area of all signs located on each side of a structure shall not exceed three hundred (300) square feet or three (3) times the linear feet in the separate frontage, whichever is larger. Individual letters with no background shall be measured by the minimum rectangular area necessary to encompass such letter or by a combination of rectangles as are necessary to encompass letters of irregular dimension.

- b. Signs may project into the street right-of-way in C-1 Districts, but in no case closer than two (2) feet from the street curb, and the lower edge of the sign must be a minimum of eight (8) feet above the sidewalk.

5. Sidewalk Regulations:

All new construction in the C-1, Commercial District, shall provide public sidewalks on the property on any side abutting an arterial street, collector street, or residential area. Sidewalks shall conform to specifications on file in the City office and all requirements contained in the most recent regulations on ADA. An exception may be granted to this regulation if the construction has been determined to be technically infeasible or cost prohibitive by the Board of Building Appeals of the City of Colby.

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## 21-110. C-2 -- Neighborhood Commercial District:

Design:C-2 Neighborhood Commercial is designed to provide locations for larger and more complex businesses. The setback requirements in this district provide for businesses of a higher intensity than those located in C-1 districts.

1. Use Regulations:
  - a. All uses permitted in the C-1 Downtown and C-1 Commercial Districts and freestanding multiple family dwellings.
  - b. Implement sales and repair.
  - c. Truck sales and repair.
  - d. Retail sales of lumber and other building materials, farm equipment, motor vehicles, marine craft, mobile homes, trailers, farm and garden supplies, fuel, and ice.
  - e. Bus garaging and equipment maintenance.
  - f. Contract construction services.
  - g. Drive-in eating establishments.
  - h. Funeral homes and crematory services.
  - i. General warehouse and storage operations, excluding mini-storage (self-storage) complexes.
  - j. Commercial entertainment and recreation facilities, i.e. miniature golf, bowling, and swimming pools.
  - k. Motor freight operations including garaging and equipment maintenance.
  - l. Wholesale sales of motor vehicles, drugs, chemicals, dry goods and apparel, groceries, and

- related products.
- m. Hotels or motels.
- n. Small animal pet shops, grooming, and veterinary practices limited to small animals, with the option of outside pens for boarding.
- o. Upholstering and furniture repair stores.

Temporary Use Permit: A temporary use permit may be issued for the temporary placement of semi-trailers and shipping (cargo) containers outside of a retail store subject to the Special Permit Process contained in Section 21-202.

2. Area Regulations:

- a. Front yard: There shall be a front yard having a depth of not less than thirty (30) feet.
- b. Side yard: There shall be a side yard of not less than ten (10) feet or ten (10) percent of the width of the lot, whichever is greater, except that such side yard need not exceed thirty-five (35) feet. Where the side of a lot abuts on a dwelling district, there shall be a side yard of not less than twenty-five (25) feet or ten (10) percent of the width of the lot, whichever is larger, with a maximum of thirty-five (35) feet. In addition, there shall be a fifteen (15) foot wide buffer strip between the side yard and the adjacent residential area. The buffer strip must be planted to provide a park-like setting and must be approved by the City and must be maintained. In lieu of the buffer strip, a screen fence approved by the Building Official, and not less than five (5) feet high, may be erected.
- c. Rear yard:
  - 1) There shall be a rear yard having a depth of not less than twenty-five (25) feet, unless the lot is less than one hundred and twenty-five (125) feet in depth and the plat thereof has been duly recorded in the office of the Register of Deeds of Thomas County, Kansas, at the time of the passage of this Ordinance, in which case the rear yard need not exceed twenty (20) percent of the depth of such lot. In computing the depth of the rear yard, where such yard opens onto an alley, one-half ( $\frac{1}{2}$ ) of the alley width may be included as a portion of the rear yard. Where the rear yard abuts a dwelling district, a planted buffer strip or screen fence, not less than five (5) feet high shall also be provided. This shall be approved by the Building Official and shall be maintained.

- 2) Accessory buildings may be built in a required rear yard, but such accessory buildings shall not be nearer than three (3) feet to any side or rear lot line, nor nearer than five (5) feet to any alley abutting the rear of the lot, nor shall any such accessory building occupy more than thirty (30) percent of the required rear yard.
- 3) Any accessory and unattached building to be built upon corner lots must be set back fifteen (15) feet from the property line of the adjacent side street and in no case nearer the side property line than the main structure to which it is accessory.
- 4) No accessory building shall be constructed upon a lot until construction of the main building has been actually commenced, and no accessory building shall be used for dwelling purposes.
- 5) Every part of a required yard shall be open to the sky, unobstructed, except for accessory buildings in a rear yard.

d. Intensity of Use:

The intensity of use regulations for free standing multiple family dwellings shall be the same as in the R-3 District.

More than one commercial, multiple dwelling, or institutional building may be erected upon a single lot or tract, but the yards and open spaces required around the boundaries of the lot or tract shall not be encroached upon by any such building, nor shall there be any change in the intensity of use requirements. The exact location of the buildings on the lot must meet the standards of a Planned Unit Development and be approved by the Planning Commission before issuance of a building permit.

3. Height Regulations:

- a. No building shall exceed three and one-half (3½) stories or forty-five (45) feet in height.
- b. Public, semi-public or public service buildings, hospitals, institutions, or schools, when permitted in a district, may be erected to a height not exceeding sixty (60) feet. Churches and temples may be erected to a height not exceeding seventy-five (75) feet if the building is set back from each line at least one (1) foot for each foot of additional building height above the height limit otherwise provided in the district in which the building is built.

- c. Fences in side and rear yards shall not exceed a height of ten (10) feet and fences in front yards shall not exceed a height of four (4) feet; fences shall be constructed of a material approved by the Building Official. Barbed wire may be used only when installed at a height of at least six (6) feet; electrically charged fences are prohibited.
4. Sign and Billboard Regulations:
- a. Business signs, single or double-faced, shall be allowed in the C-2 District subject to sign regulations set forth in the City Building Codes and the following regulations.
  - b. Flashing signs shall be allowed only upon the approval of the Building Official, provided it is first determined by the Police Chief that the sign will in no way create a traffic hazard or confusion with traffic lights or with lights on emergency vehicles.
  - c. No sign or billboard shall be located in or project over any front, side, or rear property line or into any street or alley right-of-way.
  - d. The gross surface area, in square feet, on one side of any advertising or business sign shall not exceed five hundred (500) square feet or three (3) times the linear feet of separate frontage of the lot occupied by the building, whichever is larger. Each side of the lot which abuts upon a street shall be considered as separate frontage, whichever is larger. Individual letters with background shall be measured by the minimum rectangular area necessary to encompass such letters or by a combination of rectangles as are necessary to encompass letters of irregular dimension.
  - e. Billboards are permitted in the C-2 Neighborhood Commercial District if they conform to the following provisions:
    - (1) No sign structure shall emit sound.
    - (2) No billboard shall be erected, altered, constructed, re-constructed, or moved until an application and plans have been filed with the Building Inspector and shall have been approved by the Building Inspector as to size, location, and construction.
    - (3) Billboards shall not exceed thirty (30) feet in height above the ground.

(4) No billboard shall exceed one thousand (1,000) square feet in single face area.

5. Sidewalk Regulations:

All new construction in the C-2, Neighborhood Commercial District, shall provide public sidewalks on the property on any side abutting an arterial street, collector street, or residential area. Sidewalks shall conform to specifications on file in the City office and all requirements contained in the most recent regulations on ADA. An exception may be granted to this regulation if the construction has been determined to be technically infeasible or cost prohibitive by the Board of Building Appeals of the City of Colby.

**21-111. C-M -- Commercial/Mixed Use District:**

1. Use Regulations:

A building or premise shall be used only for the following purposes:

Multiple Dwellings as defined herein; any use permitted in the C-1 -- Commercial District, C-2 -- Neighborhood Commercial District, and the I-1 -- Light Industrial District; subject, however, to the following requirements:

- a. Sites within Commercial/Mixed Use Districts shall be developed in accordance with the "Commercial Development Guidelines" set forth in the Comprehensive Plan for the City of Colby.
- b. Off-street parking and aisleways shall be set back a minimum of ten (10) feet from the street right-of-way line. The setback shall be landscaped with an appropriate mix of plant materials which provide a screen of not less than eighteen (18) inches in height. Earth berms or walls may be used in lieu of or in combination with plant materials to accomplish the minimum height of the screen.
- c. Access driveways shall be set back a minimum of one hundred twenty-five (125) feet from the intersection of major thoroughfares. The setback distance shall be measured from curb to curb.
- d. A landscape buffer of not less than fifteen (15) feet in width shall separate retail and light industrial uses from residential uses within the district.

Temporary Use Permit: A temporary use permit may be issued for the temporary placement of semi-trailers and shipping (cargo) containers outside of a retail store subject to the Special Permit Process contained in Section 21-202.

2. Area Regulations:

Area regulations for commercial uses shall be the same as area regulations in the C-2 District. Area regulations for light industrial uses shall be the same as area regulations in the I-1 District. Area regulations for multiple family dwellings shall be the same as area regulations in the R-3 District, except that whenever a C-M District lies adjacent to an R-1 or R-2 District, a minimum setback of twenty-five (25) feet from that district shall be observed for structures and parking lots.

3. Height Regulations:

- a. No building shall exceed three and one-half (3½) stories or forty-five (45) feet in height.
- b. Public, semi-public or public service buildings, hospitals, institutions, or schools, when permitted in the district, may be erected to a height not to exceed sixty (60) feet. Churches and temples may be erected to a height not exceeding seventy-five (75) feet if the building is set back from each property line at least one (1) foot for each foot of additional building height above the height limit otherwise provided in the district.
- c. Structures adjacent to an R-1 or R-2 District shall not exceed two (2) stories or twenty-five (25) feet in height.

4. Sign and Billboard Regulations:

Signs and billboards shall be allowed subject to the same regulations that apply in the C-2 District.

5. Sidewalk Regulations:

All new construction in the C-M, Commercial/Mixed Use District, shall provide public sidewalks on the property on any side abutting an arterial street, collector street, or residential area. Sidewalks shall conform to specifications on file in the City office and all requirements contained in the most recent regulations on ADA. An exception may be granted to this regulation if the construction has been determined to be technically infeasible or cost prohibitive by the Board of Building Appeals of the City of Colby.

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### **21-111.5. C-3 - Heavy Commercial District:**

Design: Heavy Commercial District is designed to provide for businesses that depend on retail sales and customer traffic. These types of businesses have minimal amounts of manufacturing and finishing all completed in the interior space of the business or in an accessory building.

1. Use Regulations:

Permitted Uses:

- a. All uses permitted in C-1 – Commercial District, and C-2 – Neighborhood Commercial District.
- b. Vehicle repair and refurbishing for retail sales so long as all work is completed within the interior space of the business or in an accessory building. Outside displays of finished products are permitted, if appropriate.
- c. Bottling works.
- d. Bookbindery.
- e. Clothing manufacture.
- f. Pharmaceutical manufacturing.
- g. Light manufacturing operations.
- h. Woodworking, cabinet making.
- i. Moving company, storage and terminal.
- j. Other uses which, in the judgment of the Governing Body, are compatible with existing businesses in use and intensity, if it complies with conditions with restrictions contained in this section but not including those types of businesses provided for in less restricted districts.

Temporary Use Permit: A temporary use permit may be issued for the temporary placement of

semi-trailers and shipping (cargo) containers outside of a retail store subject to the Special Permit Process contained in Section 21-202.

2. Area Regulations:

- a. Front yard: There shall be a front yard having a depth of not less than thirty (30) feet.
- b. Side yard: There shall be a side yard of not less than ten (10) feet or ten (10) percent of the width of the lot, whichever is greater, except that such side yard need not exceed thirty-five (35) feet. Where the side of a lot abuts on a dwelling district, there shall be a side yard of not less than twenty-five (25) feet or ten (10) percent of the width of the lot, whichever is larger, with a maximum of thirty-five (35) feet. In addition, there shall be a fifteen (15) foot wide buffer strip between the side yard and the adjacent residential area. The buffer strip must be planted to provide a park-like setting and must be approved by the City and must be maintained. In lieu of the buffer strip, a screen fence approved by the Building Official, and not less than five (5) feet high, may be erected.
- c. Rear yard:
  - 1) There shall be a rear yard having a depth of not less than twenty-five (25) feet, unless the lot is less than one hundred and twenty-five (125) feet in depth and the plat thereof has been duly recorded in the office of the Register of Deeds of Thomas County, Kansas, at the time of the passage of this Ordinance, in which case the rear yard need not exceed twenty (20) percent of the depth of such lot. In computing the depth of the rear yard, where such yard opens onto an alley, one-half ( $\frac{1}{2}$ ) of the alley width may be included as a portion of the rear yard. Where the rear yard abuts a dwelling district, a planted buffer strip or screen fence, not less than five (5) feet high shall also be provided. This shall be approved by the Building Official and shall be maintained.
  - 2) Accessory buildings may be built in a required rear yard, but such accessory buildings shall not be nearer than three (3) feet to any side or rear lot line, nor nearer than five (5) feet to any alley abutting the rear of the lot, nor shall any such accessory building occupy more than thirty (30) percent of the required rear yard.
  - 3) Any accessory and unattached building to be built upon corner lots must be set back fifteen (15) feet from the property line of the adjacent side street and in no case nearer the side property line than the main structure to which it is accessory.
  - 4) No accessory building shall be constructed upon a lot until construction of the main building has been actually commenced, and no accessory building shall be used for

dwelling purposes.

- 5) Every part of a required yard shall be open to the sky, unobstructed, except for accessory buildings in a rear yard.

d. Intensity of Use:

The intensity of use regulations for free standing multiple family dwellings shall be the same as in the C-2 District.

More than one commercial, multiple dwelling, or institutional building may be erected upon a single lot or tract, but the yards and open spaces required around the boundaries of the lot or tract shall not be encroached upon by any such building, nor shall there be any change in the intensity of use requirements. The exact location of the buildings on the lot must meet the standards of a Planned Unit Development and be approved by the Planning Commission before issuance of a building permit.

3. Height Regulations:

- a. No building shall exceed three and one-half (3½) stories or forty-five (45) feet in height.
- b. Public, semi-public or public service buildings, hospitals, institutions, or schools, when permitted in a district, may be erected to a height not exceeding sixty (60) feet. Churches and temples may be erected to a height not exceeding seventy-five (75) feet if the building is set back from each line at least one (1) foot for each foot of additional building height above the height limit otherwise provided in the district in which the building is built.
- c. Fences in side and rear yards shall not exceed a height of ten (10) feet and fences in front yards shall not exceed a height of four (4) feet; fences shall be constructed of a material approved by the Building Official. Barbed wire may be used only when installed at a height of at least six (6) feet; electrically charged fences are prohibited.

4. Sign and Billboard Regulations:

- a. Business signs, single or double-faced, shall be allowed in the C-3 District subject to sign regulations set forth in the City Building Codes and the following regulations.
- b. Flashing signs shall be allowed only upon the approval of the Building Official, provided it is first determined by the Police Chief that the sign will in no way create a traffic hazard or confusion with traffic lights or with lights on emergency vehicles.

- c. No sign or billboard shall be located in or project over any front, side, or rear property line or into any street or alley right-of-way.
- d. The gross surface area, in square feet, on one side of any advertising or business sign shall not exceed five hundred (500) square feet or three (3) times the linear feet of separate frontage of the lot occupied by the building, whichever is larger. Each side of the lot which abuts upon a street shall be considered as separate frontage, whichever is larger. Individual letters with background shall be measured by the minimum rectangular area necessary to encompass such letters or by a combination of rectangles as are necessary to encompass letters of irregular dimensions.
- e. Billboards are permitted in the C-3 Neighborhood Commercial District if they conform to the following provisions:
  - 1) No sign structure shall emit sound.
  - 2) No billboard shall be erected, altered, constructed, re-constructed, or moved until an application and plans have been filed with the Building Official and shall have been approved by the Building Official as to size, location, and construction.
  - 3) Billboards shall not exceed thirty (30) feet in height above the ground.
  - 4) No billboard shall exceed one thousand (1,000) square feet in single face area.

5. Sidewalk Regulations:

All new construction in the C-3, Heavy Commercial District, shall provide public sidewalks on the property on any side abutting an arterial street, collector street, or residential area. Sidewalks shall conform to specifications on file in the City office and all requirements contained in the most recent regulations on ADA. An exception may be granted to this regulation if the construction has been determined to be technically infeasible or cost prohibitive by the Board of Building Appeals of the City of Colby.

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**21-112. I-1 -- Light Industrial District:**

Design: Light Industrial permits assembly and manufacturing businesses of a more intense nature. These types of businesses may require more outside storage of materials and have heavy truck traffic not desired in other districts. Some limits are imposed as to emissions and noise.

1. Use Regulations:

Permitted Uses:

- a. All uses permitted in C-2 and C-3 Districts except residential land uses.
- b. Agricultural feed and grain storage and sales.
- c. Aircraft maintenance and repair.
- d. Large animal clinics and veterinary services.
- e. Assembly or manufacturing of agricultural equipment and related sales.
- f. Automobile body finishing, repair, and related services.
- g. Building material manufacturing or production.
- h. Sign manufacturing shops and related services.
- i. Large scale distribution and storage centers.
- j. Transportation storage and trucking facilities.
- k. Mini-storage (self-storage) complexes.
- l. Semi-trailers and shipping (cargo) containers for storage of goods and materials subject to required setbacks for an I-1, Light Industrial area, must be placed on a permanent foundation or meet required anchoring systems, and cannot be used as a building for public access; semi-trailers and shipping (cargo) containers in place prior to July 15, 2003, will be considered a permitted use under I-1, Light Industrial District, subject to being placed on a permanent foundation or meeting required anchoring systems.

- m. Sexually Oriented Businesses provided a license is obtained through Zoning Regulation **21-202. Special Permit Process.**
- n. Other uses which, in the judgment of the Governing Body, are of the same general character as those uses listed in this section, and have been reviewed by the Planning Commission and approved by action of the Governing Body.

Uses Prohibited:

- a. Those uses which may be obnoxious or offensive by reason of emission of odor, dust, smoke, gas, or noise, or those uses that create a nuisance as defined by the Code of the City of Colby, Kansas, Chapter VIII, Article 3, Junked Motor Vehicles on Private Property or Chapter VIII, Article 4, Weeds.
- b. Automobile graveyards or junkyards as defined by Kansas Statute 68-2203.

Exceptions:

The Governing Body may permit an exception in the I-1 -- Light Industrial District to allow the introduction of a use which is of a heavy industrial nature. Any such allowed exception must meet all other requirements of the I-1 District and will be closely monitored to insure adherence to standards.

2. Area Regulations:

a. Front yard:

- 1) Where all the frontage on one side of the street between two intersecting streets is located in the I-1 -- Light Industrial District, no front yard is required.
- 2) Where the frontage on one side of the street between two intersecting streets is located in the I-1 -- Light Industrial District and a dwelling district, the front yard requirement is not less than forty (40) feet.

b. Side Yard:

- 1) The side yard requirement is twenty (20) feet or ten (10) percent of the width of the lot, whichever is greater, with the maximum being thirty-five (35) feet.
- 2) The side of a lot abutting on a residential district requires thirty-five (35) feet minimum including a buffer zone fifteen (15) feet wide, which shall be landscaped to

create a park-like setting.

c. Rear Yard:

- 1) The rear yard requirement is twenty-five (25) feet or ten percent (10%) of the depth of the lot, whichever is greater, with the maximum required being thirty-five (35) feet.
- 2) A lot abutting on a residential district shall have a rear yard of not less than thirty-five (35) feet including a fifteen (15) foot wide buffer zone which shall be landscaped to provide a park-like setting.
- 3) In computing the depth of a rear yard, where such yard opens onto an alley, one-half ( $\frac{1}{2}$ ) of the alley width may be included as a portion of the rear yard.

d. Intensity of Use:

More than one building may be erected upon a single lot or tract, but the yards and open spaces required around the boundaries of the lot or tract shall not be encroached upon by any such building.

3. Height Regulations:

- a. No building shall exceed ten (10) stories or one hundred and thirty (130) feet in height.
- b. Fences shall not exceed ten (10) feet and shall be of a material approved by the Building Official. Barbed wire may be used only when installed at a height of at least six (6) feet; electrically charged fences are prohibited.

4. Sign Regulations:

- a. Advertising and business signs (single- or double-faced) shall be allowed in I-1 Districts subject to C-2 District regulations, the following regulations, and subject to the construction standards set forth in the City Building Codes or other regulations.
- b. The gross surface area, in square feet, on one side of any business sign on a lot shall not exceed one thousand (1,000) square feet or three (3) times the linear feet of frontage of the lot, whichever is larger. Each side of a lot which abuts upon a street shall be considered as a separate frontage, and the gross surface area of all signs located on each side of a lot shall not exceed one thousand (1,000) square feet or three (3) times the linear feet in the separate frontage, whichever is larger.

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**21-113. WHPP - Wellhead Protection Restricted Zoning for 5-Year and 10-Year Zones of Capture on City Wells:**

1. Use Regulations:

Permitted Uses. The underlying zoning classification shall be applicable unless in conflict with Uses Prohibited.

Uses Prohibited. The underlying zoning classifications on prohibited uses and additional prohibited uses of:

- a. Landfills;
- b. Abandoned and Active Hazardous Waste Site and Management Facilities;
- c. Solid Waste Management Facilities, including Surface Impoundments and Waste Lagoons;
- d. Land Application Disposal Systems;
- e. Storage or Application of Restricted Use Pesticides;
- f. Septic Tanks unless used only for domestic waste and provided tank is pumped out at least once every five years, and the system shall comply with the Thomas County Environmental Sanitary Code;
- g. Underground Storage Tanks;
- h. Animal Feed Lots;
- i. Use or Production of Regulated Substances in Industrial, Processing or Manufacturing, or Commercial Operations;
- j. Vehicle Service and Repair Shops;
- k. General Service and Repair Shops;
- l. Metalworking Shops;
- m. Manufacturing Facilities;

- n. Underground and Above Ground Facilities for Oil and Hazardous Substances;
- o. Waste and Scrap Processing and Storage;
- p. Transportation Corridors;
- q. Laboratories and Professional Building;
- r. Salt Storage and Use for Winter Road and Parking Lot Maintenance;
- s. Snow dumps;
- t. Stormwater Infiltration Ponds or Leaching Catch Basins;
- u. Cleaning Services;
- v. Food Processing Plants;
- w. Fueling and Maintenance of Excavation and Earth Moving Equipment;
- x. Concrete, Asphalt and Tar Manufacture;
- y. Cemeteries; and
- z. Class V (5) Injection Wells.

2. Special Permit Process:

The Colby/Thomas County Planning Commission shall have the authority to issue a special permit for the uses listed above in Section 21-113(1) Uses Prohibited., if the Planning Commission determines that the requirements listed below in Section 21-113(3) have been met. In making such determinations, the Planning Commission shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree of threat to water quality which would result if the control measures failed. The special permit shall be in writing.

3. Materials to be Submitted by Applicants:

To apply for a special permit, an applicant shall at a minimum provide the following materials to the Planning Commission in such quantities as the Planning Commission shall require:

- a. A site plan showing existing and proposed structures and the location of all facilities relevant to the other requirements specified in Paragraphs b, c, d, and e below;
- b. A complete list of all chemicals, pesticides, fuels, and other potentially toxic or hazardous materials to be used, generated, stored, or disposed of on the premises;
- c. A description of proposed measures to protect all storage containers or facilities associated with such materials from vandalism, accidental damage, corrosion, and leakage. Such measures might include secure storage areas, shelters for corrodible or water soluble materials, spill control provisions around transfer points, and schedule of future monitoring of waste streams or groundwater on the site to ensure that proper control has been maintained;

- d. Projections of concentrations of relevant solutes in the groundwater at the down gradient boundary of the property and at any other locations deemed pertinent by the Planning Commission, including down gradient drinking water wells identified by construction of flow lines from the proposed site. Such projections shall be based upon appropriate groundwater models and information supplied by a registered professional engineer, hydrogeologist, hydrologist, or geologist;
- e. Such information as is needed to show compliance with Section 21-113(4); and
- f. Such other information as the Planning Commission may require by regulations or otherwise to properly review the application.

4. Safeguards:

Provisions shall be made to protect against toxic or hazardous materials discharge or loss resulting from corrosion, accidental damage, spillage, or vandalism through measures such as: Prohibition of underground fuel storage tanks; spill control provisions in the vicinity of chemical or fuel delivery points; secured storage areas for toxic or hazardous materials; and indoor storage provisions for corrodible or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interiors of any structures, a closed vapor recovery system shall be provided for each such structure to prevent discharge or contaminated condensate into the groundwater.

5. Planning Commission Process:

Before acting on an application for a special permit the Planning Commission shall hold a public hearing on the application after written notice to all owners of record of lands located within at least two hundred (200) feet of the area of the permit and after publication in a local newspaper.

- a. The Planning Commission may grant a special permit if it finds by written decision that the proposed use:
  - 1) Meets the intent of this section as well as its specific criteria;
  - 2) Will not, during construction or thereafter, have an adverse impact on any aquifer or recharge area in the wellhead protection district;
  - 3) Will not adversely affect an existing or potential domestic or municipal water supply;

and is consistent with existing and probable future development of surrounding areas;

- 4) Groundwater quality in the district and at the down gradient boundary of the property will not violate State or Federal drinking water standards;
  - 5) Where a project also requires approval by State agencies, the special permit shall include a condition that no building permits shall be issued until evidence has been received by the Planning Commission that such approvals have been issued.
- b. The Special Permit shall be issued to the owner of record and shall not be transferrable to any subsequent owners of record unless specifically approved by the Planning Commission.
  - c. The Special Permit shall be subject to review and renewal or revocation on an annual basis in  
July of each  
subsequent  
year after  
issuance.

#### **21-114. Parking and Loading Space Regulations:**

Whenever a structure is erected, converted, structurally altered, and/or the use changed to any one of the following uses, there shall be provided garage space in the main building, or in an accessory building, or an accessible and available automobile off-street parking space on the lot or adjacent thereto. The following uses, when permitted in any district except the C-1 District, shall provide off-street parking and loading areas in accordance with the following:

1. Single Family Dwellings: One off-street parking space shall be provided for each single family dwelling unit.
2. Two Family and Multiple Family Dwellings: Two family and multiple family dwellings shall provide one and one-half (1½) off-street parking spaces for each dwelling unit.
3. Hospitals and Clinics: Hospitals and clinics shall provide ten (10) off-street parking spaces for the first three thousand (3,000) square feet or less of floor area and one (1) additional parking space for each four hundred (400) square feet of floor area over three thousand (3,000) square feet, or one (1) off-street parking space for each two (2) beds, whichever is greater. Gross floor area shall be used to determine the number of parking spaces required.
4. Churches, Synagogues, and Similar Places of Worship: Churches, synagogues, and other similar places of worship shall provide one (1) off-street parking space per four (4) seats in the main worship area, and one (1) space per seventeen (17) classroom seats.

5. Rooming and Boarding Houses: Rooming and boarding houses shall provide one and one-half (1½) off-street parking spaces for each dwelling unit or one (1) space for each three (3) seats in the dining area, whichever is larger.
6. Mobile Home Communities: At least one (1) paved off-driveway parking space shall be maintained at each mobile home space. Additional paved common parking area shall be provided equal to one-half (½) parking space for each mobile home space permitted. Paving in these mobile home community parking areas shall be equivalent in thickness and quality to that specified for roadways in mobile home communities.
7. Elementary, Junior High, and Senior High Schools: Elementary Schools shall provide five (5) off-street parking spaces plus one (1) off-street parking space per classroom. Junior High Schools shall provide two (2) spaces per classroom. Senior High Schools shall provide one (1) space for each ten (10) students and one (1) space for each teacher. Each school shall provide two (2) off-street supply loading spaces plus an approved off-street loading area for the public and for the unloading of children from cars. An approved off-street loading and unloading area for buses shall also be provided.
8. Lodges and Assembly Halls: Lodges and assembly halls shall provide one (1) off-street parking space for each three and one-half (3½) seats. One (1) off-street loading space shall also be provided.
9. Each business or other establishment, for which off-street parking requirements are not specifically set in paragraphs 1. through 8., preceding, or paragraph 10., following, shall provide off-street parking as follows:
 

Each use must provide off-street parking. The minimum requirement for each business or group of businesses is one (1) parking space per two hundred (200) square feet of commercial space, up to the first one thousand (1,000) square feet, and one (1) parking space for each additional three hundred (300) square feet over one thousand (1,000).
10. Uses permitted only in the I-1 Light Industrial District shall provide off-street parking and loading space as follows:
  - a. One (1) space for each one thousand (1,000) square feet of floor area or one (1) space per two (2) employees on largest shift, whichever is greater.
  - b. Minimum off-street loading requirements are two (2) spaces per establishment.
11. Unless shown by actual plan and count, three hundred (300) square feet of gross area shall be required for each parking space.
12. Such parking space as is required above shall be deemed to be required open space, or garage space,

associated with the permitted use, and shall not thereafter be reduced or encroached upon in any matter.

13. No off-street parking is required in the C-1 Commercial District.

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### **21-115. Site Plan Approval:**

The purpose and intent of requiring site plan approval is to encourage the compatible arrangement of buildings, off-street parking, lighting, landscaping, ingress, and drainage on the site and from the site, in a manner that will promote safety and convenience for the public and will preserve property values of surrounding properties.

1. When Required: A site plan shall be submitted and approved prior to the issuance of a building permit whenever the following conditions exist:
  - a. Whenever any area is designated R-3 – Multiple Family Dwelling District; R-2MH – Mobile Home District; C-2 – Neighborhood Commercial District; C-M – Commercial/Mixed Use District; and I-1 – Light Industrial District; and
  - b. Whenever a building or structure is erected or enlarged, or whenever a use of land is established or extended.
2. Site Plan Requirements: Three (3) copies of the site plan shall be submitted to the Building Official for review and approval prior to the issuance of any required City or County permits for the project proposed. The initial site plan review shall be completed within fourteen (14) days after receipt of complete information. Site plans shall be legible and drawn to a scale appropriate for the size of the development proposed. Site plans shall contain the following information:

- a. Boundaries and dimensions of the property, a legal description, a north arrow, and a written or graphic scale.
  - b. The location of existing utilities, easements, and street rights-of-way adjacent to the site.
  - c. By directional arrows, the proposed flow of storm drainage from the site.
  - d. The location of existing and proposed structures, number of stories, gross floor area, number of dwelling units, and entrances to all structures.
  - e. The location and dimensions of all existing and proposed curb cuts, access aisles, driveways, off-street parking, loading zones, and walkways. Off-street parking areas shall show the number and dimensions of parking spaces and the location and dimensions of spaces for disabled persons.
  - f. The surfacing and base course for all paved surfaces.
  - g. The location, species, and size of all existing and proposed landscape materials, including rock, wood chips, turf, plant materials, and similar materials.
  - h. The location, height, type, and direction of proposed lighting on the site.
  - i. The location and screening for trash storage.
3. Conditions for Approval: A site plan shall be approved by the Building Official if he/she finds that the following conditions have been met:
- a. The proposed use is permitted in the district in which it is located.
  - b. The proposed arrangement of buildings, off-street parking, lighting, landscaping, and drainage is compatible with adjacent land uses.
  - c. The vehicular ingress and egress to and from the site and circulation within the site provides for safe and convenient movement of traffic within the site and on adjacent roadways.
  - d. The plan provides for safe and convenient movement of pedestrians on the site.
  - e. There is a sufficient mixture of grass, trees, and shrubs to provide harmony with adjacent land uses.

- f. All outdoor trash storage areas and loading areas are screened from public view.
  - g. The site plan is in accordance with development standards set out elsewhere in the City Building Codes or adopted City or County policy.
4. **Occupancy:** No occupancy shall be permitted to any building or structure, nor shall any use of land be commenced on any parcel of ground subject to the provisions of this section without an approved site plan and the completion of the conditions of that plan, except that consideration shall be given to the seasons of the year and adverse weather conditions in requiring the implementation of landscaping plans. In the event that landscaping plans are not implemented prior to occupancy, they shall be implemented within six (6) months following occupancy.
5. **Appeal:** If a site plan is not approved for failure to comply with the "Conditions for Approval" set forth herein, the applicant or owner of the property under consideration may appeal the decision of City Staff to the Planning Commission which shall make the final determination of compliance or noncompliance.

**21-116. – Airport Zoning Regulations:**

Design: The purpose of the Airport Zoning Regulations is to establish standards of heights and land uses to prevent the creation of obstructions hazardous to aeronautical operations or which would impair utility and capacity of Shalz Field. These regulations create specific land use limitations and establish procedures for their orderly administration and enforcement.

**1. DEFINITIONS**

As used in this Ordinance, unless the context otherwise requires:

- A. **AIRPORT** - An area of land or water designed and set aside for the landing and taking off of aircraft, utilized or to be utilized in the interest of the public for such purpose and validly licensed by the State in the Public Airport category.
- B. **AIRPORT ELEVATION** - The highest point of the airport’s usable landing area measured in feet Above Mean Sea Level.
- C. **AIRPORT OBSTRUCTION** - Any object of natural growth or structure or use of land which

would exceed the federal obstructions standards as contained in 14 CFR S.S. 71.21, 77.23, 77.25, 77.28, 77.29 or which obstruct the airspace required for flight of aircraft in taking-off, maneuvering or landing, or otherwise be hazardous to the taking-off, maneuvering, or landing of aircraft.

- D. **AIRSPACE HEIGHT** - The height limits as established in all zones set forth in this Ordinance. Above Mean Sea Level (AMSL) elevation shall be the datum unless otherwise specified.
- E. **CLIMB GRADIENT** - Aircraft instrument departure procedure requiring adherence to a minimum climb slope or grade expressed in feet per nautical mile.
- F. **DECISION HEIGHT** - The height at which a pilot must decide, during an Instrument Landing System (ILS) approach, to either continue the approach or to execute a missed approach.
- G. **MINIMUM DESCENT ALTITUDE** - The lowest AMSL altitude to which descent is authorized on final approach or during circling - to - land maneuvering in execution of a Standard Instrument Approach Procedure (SIAP) where electronic glide slope is not provided.
- H. **MINIMUM ENROUTE ALTITUDE (MEA)** - The lowest published altitude between radio fixes that assures acceptable navigational signals coverage and meets obstruction clearance requirements between those fixes.
- I. **MINIMUM OBSTRUCTION CLEARANCE ALTITUDE (MOCA)** - The lowest published altitude between radio fixes on Federal VOR airways, off-airway routes, or route segments which meet obstacle clearance requirements for the entire route segment and assures acceptable navigational signal coverage only within 22 nautical miles of a VOR.
- J. **MINIMUM VECTORING ALTITUDE (MVA)** - The lowest AMSL altitude at which aircraft operating on Instrument Flight Rules (IFR) will be vectoring by a radar controller, except when otherwise authorized for radar approaches, departures, or missed approaches.
- K. **NONCONFORMING USE** - Any pre-existing structure, object or natural growth or use of land which is inconsistent with the provisions of this Ordinance, or amendments thereto.
- L. **NON-PRECISION INSTRUMENT RUNWAY** - A runway having an instrument approach procedure utilizing air navigational facilities with only horizontal guidance, or area type navigational equipment, for which a straight-in, non-precision instrument approach procedure has been approved or planned, and for which no precision instrument approach facilities are planned or indicated on an appropriate civil or military airport planning document.
- M. **NONSTANDARD TAKE-OFF MINIMUMS** - Conditions of existing weather required for

take-off at an airport which exceed the standards prescribed in Federal Aviation Regulations Part 91.

- N. **OTHER THAN UTILITY RUNWAY** - A runway designed for and intended to be used by all types of aircraft including those having gross weights greater than 12,500 pounds.
- O. **PRECISION INSTRUMENT RUNWAY** - A runway having an instrument approach procedure utilizing an Instrument Landing System (ILS), Microwave Landing System (MLS), or a Precision Approach Radar (PAR) including a runway for which such a system is planned and is so indicated on an approved civil or military airport layout plan; other FAA planning documents, or comparable military service planning documents.
- P. **RUNWAY** - A defined area on an airport prepared for landing and take-off of aircraft along its length.
- Q. **STRUCTURE** - Any object, constructed or installed by man, including but not limited to: buildings, towers, smokestacks, cranes, utility poles, and overhead transmission lines.
- R. **UTILITY RUNWAY** - A runway that is constructed for and intended to be used only by propeller-driven aircraft of 12,500 pounds maximum gross weight and less.
- S. **VISUAL RUNWAY** - A runway intended solely for the operation of aircraft using visual approach procedures with no instrument approach procedure planned or indicated on an approved civil or military airport layout plan, or by any other planning document submitted to the FAA by competent authority.
- T. **ZONING ADMINISTRATOR** - The administrative office or agency responsible for administering and enforcing the requirements of this Ordinance within Colby/Thomas County Metropolitan Area or within each political subdivision that adopts this Ordinance. The zoning administrator in Colby/Thomas County Metropolitan Area is the Building Official of Colby, Kansas.

## 2. **AIRPORT ZONES AND AIRSPACE HEIGHT LIMITATIONS**

There are hereby created and established certain zones which include all land lying beneath the approach, transitional, horizontal, and conical surfaces as they apply to a particular airport. Such zones are shown on the Colby Airport Layout Plan attached to this Ordinance and made a part thereof as Appendix (1). An area located in more than one of the described zones is considered to be only in the zone with the more restrictive height limitations. The various zones are hereby established and defined as follows:

- A. **PRIMARY ZONE** - An area longitudinally centered on each runway, extending 200 feet beyond each end of that runway with the width specified for the most precise approach existing or planned for either end of the runway. The width of each primary zone is as follows:

Shalz Field

- (a) Precision Instrument Runway 17/35; 1,000 feet.
- (b) Other than utility, non-precision Instrument Runway 12/30; 500 feet.

Zone Height

No structure or obstruction will be permitted within a primary zone that is not part of the landing and take-off facility and is of a greater elevation AMSL height than the nearest point of the runway centerline.

- B. **HORIZONTAL ZONE** - An area around each public-use airport with an outer boundary the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary zone of each airport's runways and connecting the adjacent arcs by lines tangent to those arcs. The radius of the arc specified for each end of the runway will have the arithmetic value, and the value will be the highest composite value determined for either end of that runway. When a smaller arc is encompassed by the tangent connecting two adjacent larger arcs, the smaller arc will be disregarded in the construction of the perimeter of the horizontal zone. The radius of each runway arc is:

Shalz Field

- (a) Precision Instrument and Other than Utility, Non-precision Runways 17/35 and 12/30; 10,000 feet.

Zone Height

No structure or obstruction will be permitted in the horizontal zone that has a height greater than 150 feet above the airport height.

- C. **CONICAL ZONE** - An area extending outward from the periphery of the airport's horizontal zone for a distance of 4,000 feet.

Zone Height

No structure or obstruction will be permitted in the conical zone that has a height greater than 150 feet above the airport height at its inner boundary with permitted height increasing one (1) foot vertically for every twenty (20) feet of horizontal distance measured outward from the inner boundary to a height 350 feet above airport elevation at the outer boundary.

- D. **APPROACH ZONE** - An area longitudinally centered on the extended runway centerline and extending outward from the end of the primary surface. The approach zone is designated for

each runway based upon the type of approach available or planned for that runway end.

#### Approach Zone Widths

The inner edge of the approach zone is the same width as the primary zone. The outer width of the approach zone is prescribed for the most precise approach existing or planned for that runway end expanding uniformly outward to a width of:

#### Shalz Field

- (a) Precision Instrument Runway 17/35; 16,000 feet.
- (b) Other than Utility, Non-precision Instrument Runway 12/30; 3,500 feet

#### Approach Zone Lengths

The approach zone extends for a horizontal distance of:

#### Shalz Field

- (1) Precision Instrument Runway 17/35; 50,000 feet.
- (2) Other than Utility, Non-precision Instrument Runway 12/30; 10,000 feet

#### Approach Zone Heights

No structure or obstruction will be permitted within approach zones having a height greater than the runway end elevation at its inner edge, increasing with horizontal distance from the inner edge as follows:

#### Shalz Field

- (1) Precision Instrument Runway 17/35, one (1) foot vertically for every fifty (50) feet horizontally for the first 10,000 feet increasing to one (1) foot vertically for every forty (40) feet horizontally for an additional 40,000 feet.
- (2) Other than Utility, Non-Precision Instrument runway 12/30; one (1) foot vertically for every 34 feet horizontally.

- E. **TRANSITIONAL ZONE** - An area extending outward from the sides of each primary zone and approach zone connecting them to the horizontal zone and an area outward 5,000 feet horizontally or until intersection with the conical zone from the side of that portion of the approach zone of a Precision Instrument Runway extending through and beyond the Conical Zone.

#### Zone Height

No structure or object will be permitted within the transitional zone greater in height than the primary or approach zone at their adjoining lines increasing at a rate of one (1) foot vertically for every seven (7) feet horizontally, with the horizontal distance measured at right angles to the runway centerline and extended centerline, until the height matches the height of the horizontal zone, or the height of the conical zone for a horizontal distance of 5,000 feet from each side of that part of the approach zone for

a Precision Instrument Runway extending beyond the conical zone.

- F. **OTHER AREAS** - In addition to the height limitations imposed in paragraphs A. through E. above, no structure or obstruction will be permitted within Colby/Thomas County Metropolitan Area that would cause a MDA., MOCA, MVA, or a decision height to be raised nor which would impose either the establishment or restrictive minimum climb gradients or nonstandard take-off minimums for any runway at Shalz Field.

### 3. AIRPORT LAND USE RESTRICTIONS

NOTWITHSTANDING any other provisions of this Ordinance, no use may be made of the land or water within any zones established by this Ordinance in such manner as to interfere with the operation of an airborne aircraft. The following special requirements shall apply to each permitted use:

- A. All lights or illumination used in conjunction with street, parking, signs or use of land and structures shall be arranged and operated in such manner that it is not misleading or dangerous to aircraft operating from a public airport or in vicinity thereof.
- B. No operations from any type shall produce smoke, glare or other visual hazards within three (3) statute miles of any usable runway of a public airport.
- C. No operations of any type shall produce electronic interference with navigational signals or radio communication between aircraft, the airport, or other air traffic control facility.
- D. Within any airport primary zone or within any runway approach zone area where the zone height is fifty (50) feet or less above the end of the runway, no operations of any type shall involve the storage, distribution or manufacture of flammable, explosive, toxic or other hazardous materials. This restriction shall apply to those materials in a quantity or of a type which if exposed to an aircraft accident, would further jeopardize the safety or health of the aircraft occupants, of facilities in the vicinity, bystanders and emergency personnel or would prevent, delay, limit or otherwise curtail appropriate response actions by emergency personnel.
- E. Within any airport primary zone or within any runway approach zone area where the zone height is fifty (50) feet or less above the end of the runway, no operations of any type shall involve the congregation of people for either short or long-term purposes. This restriction shall apply to any use involving individuals who by their numbers, condition, age or other factor, should they be exposed to an aircraft accident, escalate the resultant effect.
- F. Sanitary landfills shall be considered as an incompatible use if located within areas

established for the airport through the application of the following criteria:

- (1) Landfills located within 10,000 feet of any runway used or planned to be used by turbo jet or turbo prop aircraft.
- (2) Landfills located within 5,000 feet of any runway used only by piston aircraft.
- (3) Any landfill located so that it places the runways and/or approach departure patterns of an airport between bird feeding, water, or roosting areas.
- (4) Landfills outside the above perimeters but still within the lateral limits of the airport zones described in **3. Airport Land Use Restrictions**, Paragraphs A. through F., will be reviewed on a case-by-case basis.

#### **4. OBSTRUCTION MARKING AND LIGHTING**

Any variance or permit granted as a specific condition, requires the owner to mark and light the structure to indicate to aircraft pilots the presence of an obstruction. Such marking and lighting shall conform to the specific standards established by Chapter 14-60, Rules of the Department of Transportation and Federal Aviation Administration Advisory Circular 70/7460-1 as amended.

#### **5. VARIANCES**

Any person desiring to erect or increase the height of any structure or use his property not in accordance with the regulations prescribed by this Ordinance, may apply to the Board of Appeals for a variance from such regulations. Additionally, no application for a variance may be considered unless the applicant shows evidence the requirement for Notice of Construction or Alteration Under Title 14, Code of Federal Regulations, Part 77 has been complied with. No application for a variance to the requirements of this Ordinance may be considered by the Board of Appeals unless a copy of the application has been furnished to the Colby/Thomas County Metropolitan Area Planning Commission Zoning Administrator. The Board of Appeals may proceed with consideration of an application only upon receipt of Department of Transportation comments.

#### **6. NONCONFORMING USE**

The requirements prescribed by this Ordinance shall not be construed to necessitate the removal, lowering or other changes or alternations of any existing structure or tree not conforming to the requirements as of the effective date of this Ordinance. Nothing herein contained shall require any change in the construction or alteration which has begun prior to the effective date of this Ordinance, and is diligently pursued and completed within two (2) years thereof. The cost of removing or lowering any tree not conforming to the requirements of this Ordinance shall be borne by the proprietor of the airport affected by the non-conforming tree. Before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt or allowed to grow higher or replanted,

a permit must be secured from the Building Official of the City of Colby or his duly-appointed designee. No permit shall be granted that would allow the establishment or creation of an obstruction hazardous to aircraft operations or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was as of the effective date of this Ordinance. Whenever the Building Official of the City of Colby determines that a nonconforming use of nonconforming structure or tree has been abandoned or that the cost of repair, reconstruction or restoration exceeds the value of the structure or tree, no permit shall be granted that would allow said structure or tree to be repaired, reconstructed, or restored except by a conforming structure or tree.

## **7. ADMINISTRATION AND ENFORCEMENT**

It shall be the duty of the Building Official of the City of Colby to administer and enforce the requirements prescribed herein within the territorial limits over which the Colby/Thomas County Metropolitan Area Planning Commission has jurisdiction through the permitting process. Prior to the issuance or denial of a Permit by the Building Official of the City of Colby, the Federal Aviation Administration must have reviewed the proposed construction or alteration and issued a determination of the proposal's effect on navigable airspace where such prior notification under Title 14, Code of Federal Regulations, Part 77 is required. Temporary or conditional permits pending completion of the Federal Aviation Administration's review shall not be issued. In the event that the Building Official of the City of Colby finds any violation of the requirements contained herein, the Building Official of the City of Colby shall give notice to the person responsible for such violation in writing. Such notice shall indicate the nature of the violation and the necessary action to correct or abate the violation. A copy of said notice shall be sent to the Board of Appeals. The Building Official of the City of Colby shall order discontinuance of any work being done, or shall take any or all other action necessary to correct violations and obtain compliance with all the provisions of this Ordinance.

## **8. BOARD OF APPEALS**

A. The Colby/Thomas County Metropolitan Area Planning Commission Zoning Board of Appeals shall have and will exercise the following power on matters relating to areas within their territorial limit of authority:

- (1) to hear and decide appeals from any order, requirement, decision, or determination made by the Building Official of the City of Colby in the enforcement of this Ordinance;
- (2) to hear and decide special exceptions to the terms of this Ordinance upon which such Board of Appeals may be required to pass;
- (3) to hear and decide specific variances.

- B. The Board of Appeals shall be administered in accordance with Article 2, Section 21-201 of the adopted Zoning Ordinance.

**9. APPEALS**

- A. Any person aggrieved, or any taxpayer, by any decision of the Building Official of the City of Colby made in the administration of this Ordinance, may appeal to the Board of Appeals.
- B. All appeals hereunder must be made within a reasonable time as provided by the rules of the Board of Appeals and shall be submitted in accordance with Article 2, Section 21-201 of the adopted Zoning Ordinance.
- C. The Board of Appeals may, in conformity with the provisions of this Ordinance, reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination as may be appropriate under the circumstances.

**10. JUDICIAL REVIEW**

Any person aggrieved, or any taxpayer affected by any new decision of the Board of Appeals, may appeal to the Circuit Court as provided in the State Statutes of Kansas.

**11. PENALTIES**

Each violation of this Ordinance or of any regulation, order, or ruling promulgated herein shall constitute a misdemeanor of the second degree and be punishable by a fine of not more than 500 dollars or imprisonment for not more than 60 days or both; each day a violation continues to exist shall constitute a separate offense.

**12. CONFLICTING REGULATIONS**

Where there exists a conflict between any of the requirements or limitations prescribed in this Ordinance and any other requirements, regulations, or zoning applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail. The variance to or waiver of any such more stringent limitation or requirement shall not constitute automatic variance or waiver of the less stringent limitations or requirements of this Ordinance.

**13. SEVERABILITY**

If any of the provisions of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this

Ordinance are declared to be severable.

14. **EFFECTIVE DATE**

This Ordinance shall take effect on adoption by the Colby/Thomas County Metropolitan Area Planning Commission and acknowledgment from the Department of State of Kansas that it has been filed and does hereby repeal all ordinances or provisions thereof in conflict herewith.

**ARTICLE 2. ADMINISTRATION AND ENFORCEMENT**

**21-201. Board of Zoning Appeals:**

1. Method of Appointment -- Personnel:

There shall be created a Board of Zoning Appeals consisting of five (5) members, all of whom shall be residents of the City of Colby, to be appointed by the Mayor with the consent of the majority of the City Council. Members shall be appointed for a period of three (3) years; provided, however, in the event any member shall miss three (3) consecutive meetings of the Board of Zoning Appeals, said member's term may be declared expired, and a new member may be appointed by the appointing authority. In the event of a vacancy, a member shall be appointed for the unexpired term only. Members of the Board shall serve without compensation.

2. Meetings:

The members of the Board of Zoning Appeals shall meet as required upon the call of the Governing Body or Chairman of the Board of Zoning Appeals or the Vice-Chairman if the Chairman is absent. They shall select one (1) of their number as Chairman and one as Vice-Chairman, who shall serve one (1) year, or until their successors have been selected. A majority of the Board shall constitute a quorum for the transaction of business. The Board shall cause a proper record to be kept of its proceedings.

3. Budget:

The Board may submit its budget of expenditures for the ensuing fiscal year, itemizing the expenses and amounts and purposes. The City Council shall consider said budget and make such allowances

as it shall deem proper, and shall add the same to the general budget of the City.

4. Powers and Duties:

- a. To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision, or determination made by the Building Official in enforcement of this Ordinance.
- b. To permit the following exceptions to the district regulations set forth in this Ordinance by issuance of a permit maintaining conditions governing design, construction or operation of the exception so as to adequately safeguard the health, safety, and welfare of the occupants of adjoining and surrounding property:
  - 1) The erection or use of a building or the use of a premise for public utility purposes only, which the Board finds to be reasonably necessary for the public convenience or welfare.
  - 2) The reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God, or public enemy to the extent of more than fifty (50) percent of its assessed value, where the Board finds some compelling necessity requiring a continuance of the nonconforming use, and the primary purpose of continuing the nonconforming use is not to continue a monopoly.
- c. To grant variances and exceptions from the zoning regulations which will not be contrary to the public interest where, due to special conditions, a literal enforcement of the provisions of the regulations will result in unnecessary hardship. Such variance shall not permit any use not permitted by the zoning regulations in such district. Such variance may be granted by the Board upon a finding that all of the following conditions have been met:
  - 1) The variance arises from a condition that is unique to the property in question and is not ordinarily found in the same district, and is not created by an action of the property owner or applicant.
  - 2) The granting of the variance will not adversely affect the rights of adjacent property owners or residents.
  - 3) The strict application of the provisions of the regulations will constitute an unnecessary hardship upon the property owner.
  - 4) The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

- 5) The granting of the variance will not be opposed to the general spirit and intent of these regulations.
- d. To permit the use of land located not more than two hundred (200) feet from the boundary of any neighborhood shopping, commercial, or business district for off-street parking purposes in connection with any commercial development in such districts, but only when standards regarding the surfacing, screening, and entrances are imposed which will protect the character of the surrounding development and avoid excessive traffic congestion.
5. In exercising the above powers, the Board may reverse, affirm wholly or partly, or may modify the determination of the Building Official from whom the appeal is taken. Every variance granted or denied by the Board shall be accompanied by a written finding of fact, based on testimony and evidence and specifying the reason for granting or denying the variance.

**21-202. Special Permits:**

Any of the following uses may be located in any district by special permission of the Governing Body under such conditions as the Governing Body may impose after the public hearing; provided, that in their judgment such use will not seriously injure the appropriate use of neighboring property and will conform to the general intent and purpose of this Ordinance, and shall comply with the height and area regulations of the district in which they may be located:

1. Any public building erected and used by any department of the City, County, State, or Federal Government.
2. Hospitals, clinics and institutions, except institutions for criminals and for persons who are insane or have contagious diseases; provided, however, that such buildings may occupy not over twenty-five (25) percent of the total area of the lot and will not have any serious and depreciating effect upon the value of the surrounding property, and, provided further, that the buildings shall be set back from all yard lines a distance of not less than two (2) feet for each foot of building height.
3. Cemetery.
4. Community building or recreation field.
5. Airport or landing field.
6. Greenhouses.
7. Trailer camps and tourist camps, but such camps shall not be located in the R-1 and R-2 Districts.
8. Day Care Facilities, provided that:

- a. The owners, operators, and the facility have obtained and maintained in good standing all State of Kansas required licenses and certification and have complied with any and all similar State requirements.
  - b. The facility, at the time of application for the special use permit and at all times said operation is permitted under these provisions, shall be in compliance with all of the State of Kansas laws and regulations governing said facilities.
  - c. The facility care for no more than twelve (12) children.
  - d. The facility provide not less than two (2) off-street parking spaces for loading and unloading children.
  - e. The facility not erect or display any commercial signs identifying itself.
9. Bed and Breakfast Facilities provided that:
- a. The owners and operators live in the facility.
  - b. The owners, operators, and the facility have obtained and maintained in good standing all State of Kansas required licenses and certification and have complied with any and all similar State requirements.
  - c. The facility, at the time of application for the special use permit and at all times said operation is permitted under these provisions, shall be in compliance with all of the State of Kansas laws and regulations governing said facilities.
  - d. The facility provide not less than one (1) off-street parking space for each room provided for transient temporary guests.
  - e. The facility has no more than one sign not exceeding six (6) square feet in area.
10. Communication Towers located in Residential Zoning Districts, provided that the following procedures are complied with: (Communication Towers are permitted uses in Commercial and Industrial Zoning Districts).
- Amateur radio towers and towers less than 60 feet in height from the ground, or less than 30 feet in height as measured to the highest point of the tower/antenna if mounted on a structure or building, shall be considered permitted uses in the district in which they are located, and shall not be subject to the provisions of this Section.
- a. All communication towers should be located in areas zoned commercial, or industrial, except

that communication towers may be permitted in areas zoned residential if it can be demonstrated that all reasonable efforts were made to locate the proposed tower in non-residentially zoned areas.

- b. Communication towers not meeting the criteria set out in 10. a. shall be subject to the provisions of this Section and shall be considered special uses in residential zoning districts.
- c. At the time of application, the applicant shall submit a development plan in sufficient detail, as determined by staff, to evaluate its conformance with applicable standards and guidelines.
- d. The development plan shall include:
  - 1) Written authorization from the property owner of the proposed tower site.
  - 2) A site plan drawn to scale showing the property boundaries, tower, guy wire anchors and other apparatus, existing and proposed structures, proposed transmission buildings and/or other accessory uses, access road location, access road surface material, parking area, fences, location and content of warning signs, exterior lighting specifications, a landscaping plan, land elevation contours, and existing land uses surrounding the site. If any accessory building is proposed, details of the building, including elevations and proposed use of the building, shall be submitted with the application.
- e. A proposal for a new communication tower shall not be approved unless the applicant can provide documentation showing that the telecommunication equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or other structure due to one or more of the following reasons:
  - 1) The planned equipment would exceed the structural capacity of existing and approved towers, considering existing and planned use of those towers, and existing and approved towers cannot be reinforced to accommodate the planned or equivalent equipment at a reasonable cost.
  - 2) The planned equipment would cause frequency interference with other existing or planned equipment for these towers, and the interference cannot be prevented at a reasonable cost.
  - 3) Existing or approved towers do not have space on which planned equipment can be placed so it can function effectively and reasonably in parity with other similar equipment in place or approved.

- 4) Other reasons that make it impracticable to place the equipment planned by the applicant on existing and approved towers.
- f. All communication towers shall be designed to accommodate at least two antennas for every 100 feet of tower height. The above requirements may be modified to provide the maximum number of compatible users within the radio frequency emission levels.
- g. Any communication tower that has not been properly maintained shall be removed by the owner at the owner's expense. Failure to remove the tower pursuant to maintenance issues may result in removal and assessment of cost to the property pursuant to K.S.A. 12-6a17.
- h. The communication tower owner/operator shall submit a letter to the Building Inspector by July 1 of each year listing the current users and types of antenna located on the approved tower. A sign shall be posted on the tower or the exterior fence around the base of the tower noting the name and telephone number of the tower owner and operator.
- i. An application for communication tower approval shall include a report or written information which describes the tower height and design, including a cross-section of the structure, if applicable; engineering specifications detailing construction of tower, base and guy wire anchorage; the proposed painting and lighting schemes; and describes the tower's capacity, including the number and type of antennas that the tower can accommodate.
- j. The location of a ground-mounted communication tower must be such that it is set back at least equal to the height of the tower to the nearest property line measured from the center of the tower. A ground-mounted tower may be set back less than the tower height to the nearest property line if documentation from a registered engineer is submitted certifying that in the event of a tower failure or collapse, the fall zone of the tower will be contained within the proposed setback area. All guy wires, similar support devices and other apparatus shall be no closer than twenty (20) feet from any lot line.
- k. Communication towers may be placed on the roof of a building or on top of other structures using either of the following to determine tower height and setback:
  - 1) Tower height above the roof/structure may be as high as the setback distance to the nearest roof/structure edge.
  - 2) A roof-mounted tower may be set back less than the tower height to the nearest roof/structure edge if documentation from a registered engineer is submitted certifying that in the event of a tower failure or collapse, the fall zone of the tower will be contained within the proposed setback area.

- l. All communication towers and accessory facilities shall be sited to have the least practical adverse visual effect on the environment. Towers shall not be lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Towers shall be galvanized finish or painted gray or light blue unless other standards are required by the FAA. In all cases, monopole towers shall be preferable to guyed towers or other free standing structures. Towers shall be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.
    - m. All communication towers shall conform to the height limitations of an airport approach zone as established by the Federal Aviation Administration (FAA).
11. Sexually Oriented Businesses may be located in I-1, Light Industrial District, provided the following procedures are complied with:
  - a. No sexually oriented business may operate within three hundred feet (300') of any existing residential zone as measured from property line to property line.
  - b. No sexually oriented business may operate within three hundred feet (300') of any existing public, private, or parochial school; library; park; playground; church; or other place where minors tend to congregate; measured from property line to property line.
  - c. No sexually oriented business may operate within three hundred feet (300') of any other sexually oriented business as measured from property line to property line.
  - d. No sexually oriented business may operate on any premises licensed pursuant to the alcoholic beverage control regulations of the State of Kansas.
  - e. Hours of Operation. No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and noon (12:00) P.M. on Sundays.
  - f. No sexually oriented business shall allow entrance to any person under the age of eighteen (18); noncompliance with this provision may result in revocation of the sexually oriented business license.
  - g. License Requirements. It is unlawful for any person to operate a sexually oriented business without a valid sexually oriented business license issued by the City of Colby pursuant to this Ordinance. It is also unlawful for any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the City of Colby pursuant to this Ordinance.

- h. Any application for a sexually oriented business license or a sexually oriented business employee license must be made on a form provided by the City of Colby, which shall be notarized, and shall include the information called for in Subsections (1) through (6) as follows:
- 1) The full true name and any other names used in the preceding five (5) years. If the applicant is an individual, he or she shall sign the application for license as applicant. If the person that wishes to operate a sexually oriented business is other than an individual (such as a corporation), each officer, director, general partner or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as the applicant.
  - 2) The name, business location, legal description, business mailing address and phone number of the sexually oriented business.
  - 3) Either a set of fingerprints suitable for conducting necessary background checks pursuant to this Ordinance, or the applicant's Social Security Number, to be used for the same purpose.
  - 4) Written proof of age, in the form of either a copy of a birth certificate and current photo, a current driver's license with picture, or other picture identification document issued by a governmental agency.
  - 5) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, and whether any such license or permit has been denied, revoked or suspended, and if so, the reason or reasons therefore.
  - 6) The name and address of the statutory agent or other agent authorized to receive service of process for the sexually oriented business.
- i. For the purpose of insuring compliance with this Ordinance, an applicant, operator or licensee shall permit law enforcement officers and any other federal, state, county or city agency in the performance of any function connected with the enforcement of this Ordinance, normally and regularly conducted by such agencies, to inspect, at any time the business is occupied or open for business, the premises of the business.
- j. Each license for a sexually oriented business or a sexually oriented business employee shall expire one (1) year from the date of issuance and may be renewed only by making application for renewal at least thirty (30) days before the expiration date. If the City denies an

application or a renewal of a license, the applicant shall not be issued a license for one (1) year from the date of the denial.

- k. The City may refuse to issue, suspend, or revoke a license after providing due notice, for valid reasons including, but not limited to:
  - 1) Violation or noncompliance with any section of this Ordinance
  - 2) Refusal to allow an inspection of the sexually oriented business premises as authorized by this Ordinance
  - 3) Giving false or misleading information in the material submitted during the application process
  - 4) Knowingly allowing possession, use, or sale of controlled substances on the premises
  - 5) Knowingly allowing prostitution on the premises
  - 6) Knowingly operating the sexually oriented business during a period of time when the licensee's license was suspended
  - 7) Is delinquent in the payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business
  - 8) Has been convicted or entered a guilty plea to a criminal activity involving a sexual act or been placed on diversion for such acts under the laws of the State of Kansas, or a law of another state, or an ordinance of any city or resolution of any county which prohibits the acts this section prohibits.
- l. Fees shall be \$250.00 for an initial sexually oriented business license and \$125.00 for the renewal license; fees shall be \$100.00 for an initial sexually oriented business employee and \$50.00 for the renewal license.
- m. Advertisements, displays, or other promotional materials shall not be shown or exhibited so as to be visible or audible to the public from public rights-of-way other than permitted signs. Permitted signs shall be limited to those whose copy includes only the name of the business, place, organization, or building identified; sign, location and other requirements of such signs contained in Zoning Code **21-110. C-2 – Neighborhood Commercial District.**
- n. Failure to Comply; Penalty. Should any person, corporation, partnership or association fail

to comply with any provision of this Ordinance pertaining to sexually oriented businesses, the public officer may file a complaint in the municipal court of the City against such person, corporation, partnership or association and upon conviction of any violation of the same, be fined a minimum on the first conviction of \$200.00, upon a second conviction of \$400.00 and a maximum amount not to exceed \$1,000.00 on said first, second or any subsequent conviction or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

12. A temporary use permit may be issued for the temporary placement of semi-trailers and shipping (cargo) containers outside of a retail store subject to the following provisions:
  - a. Only one permit for a maximum of 90 days will be allowed per year; fee for said permit shall be \$100.00.
  - b. Semi-trailers and shipping (cargo) containers must be placed in the rear yard, must meet required setbacks for accessory buildings, cannot be adjacent to customer entrances or residential areas, cannot displace any required parking spaces, and cannot be placed in fire or circulation drives.
  - c. The number of containers to be allowed shall not exceed 5% of indoor square footage (floor area) of the business.
  - d. Semi-trailers and shipping (cargo) containers must be removed within five days of the expiration of the 90-day limit.
  - e. Any violation of the conditions of these provisions for a Temporary Use Permit will impact any future requests for a permit.
  
13. Small wind energy systems of not more than 100 kW shall be permitted in all zoning classifications where structures of any sort are allowed, provided that:
  - a. Definition: A small wind energy system shall be defined as a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended primarily to reduce on-site consumption of utility power.
  - b. Set Backs: The wind system structure shall be set back a minimum of 110% of the maximum height of the structure (including turbine blades) from any property boundary of the installation site; in addition, no guy wire anchor may extend closer than ten (10) feet to the

property boundaries of the installation site.

- c. Tower Height: For property sizes less than ½ acre, maximum tower height shall be subject to set-backs as provided in Article 2 and restrictions imposed by FAA regulations. For property sizes between ½ acre and one acre, the tower height shall be limited to 150 feet, subject to set-backs provided in Article 2 and FAA regulations. For property sizes of one acre or more, there is no limitation on tower height other than set-backs provided in Article 2 and restrictions imposed by FAA regulations.
- d. Noise: Small wind energy systems shall not exceed 60 decibels of sound measured at the property boundary of the installation site.
- e. Notification of Adjoining Property Owners: Applicants for a wind energy system shall notify all adjoining property owners within two hundred feet of the installation site of their intention to erect a wind energy system and shall file an affidavit of mailing said notice with the office of the City Clerk. The notice shall contain the time and date of the public hearing to be held before the Colby/Thomas County Metropolitan Area Planning Commission and a detailed description of the wind energy system to be installed.
- f. Approved Wind Turbines: Small wind turbines must have been approved by a small wind certification program recognized by the American Wind Energy Association. A copy of the certification must accompany the permit application.
- g. The wind energy systems shall not cause interference to microwave communications or radio and television transmission or reception in the area. All blades shall be constructed of non-metallic substances.
- h. Compliance with FAA Regulations: Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to an airport. A copy of the FAA Form 7460-1, Notice of Proposed Construction or Alteration, must accompany the permit application.
- i. Liability Insurance: Owners of small wind energy systems must carry liability insurance with a combined single limit of no less than \$2,000,000 as evidenced by a Certificate of Insurance attached to the permit application. Each insurance policy shall contain a clause to the effect that the policy shall not be canceled, reduced, restricted or limited at any time unless the city clerk is given ten (10) days written notice. Failure to provide insurance may result in disconnection of the wind energy system from the utility company's distribution system.
- j. Interconnection Agreement: No small wind energy system shall be installed until evidence has been given that the utility company has approved the customer's request to install an

interconnected customer-owned generator.

- k. **Removal of Wind Energy System:** Any wind energy system which is inoperable or unused for a period of one (1) year shall be removed at the owner's expense and shall be deemed a hazard and a dangerous and unfit structure within the meaning of the code of the City of Colby, Kansas, Chapter IV, Article 6, Dangerous and Unsafe Structures (K.S.A. 12-1751) (Code 2007). If the owner has not removed the structure as required herein, the City may exercise its remedies pursuant to those code sections and ordinances cited above, as amended from time to time.
14. Before issuance of any special permit for any of the above buildings or uses, the Governing Body shall refer the proposed application to the Planning Commission, which Commission shall be given thirty (30) days in which to make a report regarding the effect of such proposed building or use upon the character of the neighborhood, traffic conditions, public utility facilities, and other matters pertaining to the public health, public safety, and general welfare. No action shall be taken upon any application for a proposed building or use referred to above, until and unless the report of the Planning Commission has been filed; provided, however, if no report is received from the Commission within thirty (30) days, it shall be assumed that approval of the application has been given by said Commission.

***Communication Tower Definition:** A structure measuring 60 feet or more in height from the ground, or 30 feet in height as measured to the highest point of the tower/antenna if mounted on a structure or building, erected or maintained for the primary purpose of supporting antennae or apparatus for transmitting and/or receiving radio frequency waves. For the purposes of these regulations the term "Communication Tower" shall include, but not be limited to, commercial radio or television broadcasting towers; microwave transmitting and/or receiving towers; and wireless telephone towers, but shall not include amateur radio transmitting or receiving towers, satellite dish antennae or television antennae. Amateur Radio towers are specifically exempt from regulations applying to communication towers.*

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### 21-203. Occupancy Permits:

1. Subsequent to the effective date of this Ordinance, no change in the use or occupancy of land, nor any change of use or occupancy in an existing building, other than for single family dwelling purposes, shall be made, nor shall any new building be occupied for any purpose other than single family dwelling use until a Certificate of Occupancy has been issued by the Building Official and attested to by the City Clerk. Every Certificate of Occupancy shall be accompanied by sufficient data including plans and specifications to enable the Building Official to evaluate the proposed use.
2. Record to be kept by the City Clerk: A record of all Certificates of Occupancy shall be kept on file in the office of the City Clerk, and copies shall be furnished on request to any person having a proprietary or tenancy interest in land or a building affected by any such Certificates of Occupancy.
3. A Certificate of Occupancy shall be required for all nonconforming uses of land or buildings created at the time of passage of this Ordinance. Application for such Certificate of Occupancy for nonconforming uses shall be filed with the Building Official or proper authority by the owner or lessee of the building or land occupied by such nonconforming use within one (1) year from the effective date of this Ordinance. It shall be the duty of the City to issue a Certificate of Occupancy for a nonconforming use, but failure to apply for such Certificate of Occupancy for nonconforming use or failure of the City to issue such Certificate of Occupancy for nonconforming use shall be considered evidence that such nonconforming use did not exist at the effective date of this Ordinance.

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**21-204. Nonconforming Uses:**

1. The lawful use of a building existing at the time of the effective date of this Ordinance may be continued, although such use does not conform with the provisions hereof, provided no structural alterations, except those required by law or ordinance, are made therein. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or more restricted classification. If the nonconforming use of a building has been changed to a more restricted one or to a conforming use, such use shall not thereafter be changed to a less restricted use.
2. No building which has been damaged by fire, explosion, act of God, or the public enemy to the extent of more than fifty (50) percent of its assessed valuation shall be restored except in conformity with the regulations of this Ordinance.
3. In the event that a nonconforming use of any building or premise is discontinued for a period of one (1) year, the use of the same shall thereafter conform to the regulations of the district in which it is located.
4. No existing building or premise devoted to a use not permitted by this Ordinance in the district in which such building or premise is located, except when required to do so by law or ordinance, shall be enlarged, extended, reconstructed, or structurally altered unless such use is changed to one permitted in the district in which such building or premise is located.

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**21-205. Amendments and Changes:**

1. The Governing Body may from time to time amend this Ordinance to alter district boundaries and designations or change other requirements contained herein. Proposals for such amendments may be initiated by the Governing Body, the Planning Commission, or by the owner or owners of real property affected.
2. Property owners proposing a zoning amendment shall make application to the Planning Commission for its consideration and recommendation. Such application shall be accompanied by a fee of one hundred fifty dollars (\$150.00) which shall be paid to the City Clerk. Said fee is not refundable and shall be used by the Planning Commission to pay costs of notices, publications, and other requirements provided for by law.
3. Following review of an application for zoning amendment and upon development of a tentative recommendation, the Planning Commission shall publish notice of a public hearing on said application. Such notice shall fix the time and place for such hearing and shall contain a statement regarding the nature of the proposed amendment. In addition, the Planning Commission shall mail written notice of such proposed amendment to all owners of record of lands located within the City and within at least two hundred (200) feet of the area proposed to be altered, and in the case of properties adjacent to the City Limits, to all owners of record of lands located outside of the incorporated area within at least one thousand (1,000) feet of the area proposed to be altered, advising them of the time and place fixed for the public hearing and affording them an opportunity to be heard.

4. After the public hearing, the Planning Commission shall make its final recommendation to the Governing Body for formal action. The governing body may: (1) Adopt such recommendation by ordinance; (2) Override the Planning Commission's recommendation by a two-thirds (2/3) majority vote of the membership of the Governing Body; (3) Return such recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove. If the Governing Body returns the Planning Commission's recommendation, the Planning Commission, after considering same, may resubmit its original recommendation giving the reasons therefore or submit a new and amended recommendation. Upon the receipt of such recommendation, the Governing Body, by a simple majority thereof, may adopt or amend and adopt such recommendation by ordinance, or it need take no further action thereon. If the Planning Commission fails to deliver its recommendation to the Governing Body following the Planning Commission's next regular meeting after receipt of the Governing Body's report, the Governing Body shall consider such course of inaction as a re-submission of the Planning Commission's original recommendation.
  
5. If a protest against such amendment be filed with the City Clerk within fourteen (14) days after conclusions of the public hearing on such amendment, duly signed, and acknowledged by the owners of twenty (20) percent or more of any real property proposed to be rezoned or by the owners of twenty (20) percent or more of any real property required to be notified by this Ordinance, such amendment shall not be passed except by at least a three-fourths (3/4) vote of all the members of the Governing Body.

**21-206. Enforcement:**

It shall be the duty of the City Manager to see that this Ordinance is enforced through the proper legal channels.

**21-207. Violation and Penalty:**

Any person, firm or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

**21-208. Validity:**

Should any section, clause, or provision of this Ordinance be declared to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

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### **ARTICLE 3. PLANNING COMMISSION**

#### **21-301. Commission Established:**

There is hereby created the Colby/Thomas County Metropolitan Area Planning Commission as authorized by K.S.A. 12-744 and any amendments thereto.

#### **21-302. Members, Appointments, Term Qualifications:**

The Colby/Thomas County Metropolitan Area Planning Commission shall consist of nine (9) members, six (6) of whom shall be appointed by the Mayor of the City of Colby with the consent of the majority of the City Council, and three (3) of whom shall be appointed by the Chairman of the Board of County Commissioners of Thomas County, Kansas, by and with the consent of the Board of County Commissioners of Thomas County, Kansas. All terms shall commence on January 1 and expire on December 31. All terms of office shall be for three (3) years; provided, however, in the event any member shall miss three (3) consecutive meetings of the Planning Commission, said member's term may be declared expired, and a new member may be appointed by the appointing authority. In case of the death, incapacity, resignation, or disqualification of any member, the Board making the appointment of such member shall appoint another member to the unexpired term of such deceased, incapacitated, resigned, or disqualified member. Any person who is a qualified voter shall be eligible for appointment by either governing body if that person resides and owns real property within a belt

three (3) miles wide measured from the corporate limits of the City of Colby, or resides within the corporate limits of the City of Colby. No person shall be disqualified from continuing to serve on such Planning Commission by reason of changing his residence provided such person continues to reside within Thomas County, Kansas. Members of the Colby/Thomas County Metropolitan Area Planning Commission shall serve without compensation, but may be reimbursed for expenses actually incurred in the performance of their duties as members of the said Commission.

### **21-303. Meetings, Organizations:**

The Colby/Thomas County Metropolitan Area Planning Commission shall convene for its first meeting at such time and place as shall be fixed by the Chairman of the Board of County Commissioners and the Mayor of the City of Colby, and shall thereupon proceed to organize and elect officers and fix and determine times and places of future meetings, which said meetings shall be not less frequent than once every two (2) months.

Said Planning Commission shall elect one member as Chairman and one member as Vice-Chairman. The terms of the Chairman and Vice-Chairman shall be for one (1) year or until successors shall have been elected and qualified. Special meetings of the Planning Commission may be called by the Chairman, or in his absence, by the Vice-Chairman. A quorum for the Planning Commission shall consist of five (5) members. The Planning Commission shall designate a secretary and may also designate an assistant secretary, neither of whom need be members of the Planning Commission. The secretary shall cause a proper record to be kept of all the proceedings of the Planning Commission.

### **21-304. Power and Duties:**

The said Planning Commission shall have such powers and duties as may be prescribed by law from time to time. As a primary function, the Planning Commission shall have the responsibility for the preparation, adoption, and recommendation of a long-range comprehensive plan to guide the future physical development of the Colby Metropolitan Area. Such general plan shall consist of a land use element, a circulation element, and a public facilities element. The plan shall provide a statement of population distribution and density and proposed building intensities and other uses of land. The Commission shall recommend development plans for specific public works projects. Such development plans shall be related to the general plan and shall insure the integration of proposed land uses and for matters of access and relationship to the neighborhood within which such development plans provide for construction. Development plans shall also provide and contain analysis of methods of financing proposed public works. The Planning Commission shall cause to be prepared zoning studies and shall recommend the zoning of all land within their jurisdiction. The Planning Commission shall cause to be prepared recommendations governing the control of subdivisions within the area of their jurisdiction. The Planning Commission shall cause to be prepared annually for the jurisdictions that they represent a statement of the current and past growth and development trends and anticipated growth for the succeeding year and for the succeeding five years. Such annual statement of anticipated growth and development shall also contain an annual review of the status of the general plan and

recommended adjustment in such plan. Such annual review statement shall be transmitted to the administrative heads of the political jurisdictions involved on or before the first Monday in March of each year for the use by the respective jurisdictions in the preparation of their annual capital improvement budget. The Planning Commission shall cause to have reviewed annually the proposed capital improvement budgets of the respective jurisdictions and shall comment upon the proposed budget in terms of its conformity to the furtherance of the general plan. The Colby/Thomas County Metropolitan Area Planning Commission shall take over and perform all of the powers, duties, and functions heretofore vested in the Colby City Planning Commission, and the Thomas County Planning Commission.

**21-305. Budget:**

On or before the first Monday in June of each year, the Planning Commission may submit to the Board of County Commissioners and the City Manager of the City of Colby a budget of the income and expenditures for the ensuing fiscal year on forms provided by the respective jurisdictions. Thereupon, such budget shall be considered by the Board of County Commissioners and the Governing Body of the City of Colby, and such budget as submitted, or as the same may be amended, shall be approved and adopted by both of said governing bodies. The division of funds to be furnished to the Planning Commission in said budget shall be as may be agreed upon by the County Commissioners and the Governing Body of the City of Colby. The City Treasurer of the City of Colby is hereby designated as the custodian and disbursing agent for the total budget, and the Board of County Commissioners shall direct the County Treasurer to pay over direct to the City Treasurer the county's portion, if any, of such budget as well as the City's portion of such budget.

**21-306. Employment of Personnel:**

The Planning Commission may hire and provide such professional and clerical personnel as it shall deem necessary, and all employees of the Planning Commission shall serve at the pleasure of the said Commission.

**21-307. Savins Clause:**

If this Ordinance, or any part thereof, shall be held or determined to be unconstitutional, illegal, ultra vires or void, the same shall not be held or construed to change or annul any provision hereof which may be legal or lawful. In the event this Ordinance, or any part thereof, shall be held unconstitutional, illegal, ultra vires, or void, the same shall not affect any action heretofore taken by the Colby City Planning Commission as heretofore established and constituted.

