

ARTICLE XXVI

ADDITIONAL HEIGHT, AREA, AND USE REGULATIONS

SECTION 1. QUALIFICATIONS AND SUPPLEMENTATIONS TO DISTRICT REGULATIONS: The regulations hereinafter set forth in this section qualify or supplement, as the case may be, the district regulations appearing elsewhere in this Ordinance.

1. In districts where public buildings, semi-public buildings, public service buildings, hospitals, institutional buildings, schools, and churches and similar places of worship are permitted, one (1) foot of additional height will be permitted for each one (1) foot of additional building setback provided.
2. Chimneys, cooling towers, elevator headhouses, fire towers, grain elevators, monuments, stacks, stage towers or scenery lofts, tanks, water towers, ornamental towers and spires, church steeples, radio and television towers, or necessary mechanical appurtenances, which do not conflict with airport approach zones, may be erected to a height not to exceed one hundred fifty (150) feet.
3. Accessory buildings may be built in a side or rear yard but such accessory buildings shall not be nearer than the principal building to any side or front lot line. When any accessory building is constructed in a rear yard, it shall not encroach on any required utility easements and shall not be located any closer to the rear lot line of the property than six (6) feet, except that where vehicular access to a garage is perpendicular to the alley line, a setback of at least ten (10) feet from the alley line shall be required. No accessory building shall cover more than 30 percent of the required rear yard.
4. No accessory building shall be constructed upon a lot until the construction of the main building has been actually commenced, and no accessory building shall be used for dwelling purposes.
5. The setback line for yard requirements shall be determined by measuring the horizontal distance from the property line to the nearest architectural projection of the building.
6. Open or lattice-enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers, and the ordinary projections of chimneys and flues into the rear yard may be permitted by the City Building Inspector for a distance of not more than three-and-one-half (3-1/2) feet provided the same are so placed as not to obstruct light and ventilation.
7. For the purpose of the side yard regulations, a two-family dwelling or a multiple-family dwelling shall be considered as one building occupying one lot.
8. Temporary buildings and temporary construction signs that are used in conjunction with construction work may be permitted in any district during the period that the building is being constructed, but such temporary building and/or sign shall be removed upon completion of the construction work.

9. No side yards are required where dwelling units are erected above commercial structures, and front, side, and rear yard requirements shall not apply to the interior walls of dwelling units established under the Kansas Apartment Ownership Act or under the Kansas Townhouse Ownership Act.
10. Whenever the number of employees is restricted in connection with any use in the commercial districts, such maximum number applies only to employees principally engaged in processing, selling, or treating materials or products on the premises and not to employees engaged in delivery or off-site similar activities.
11. Electronic communications antennas, other than wireless communications towers, shall be permitted in any commercial, industrial, or agricultural district providing the height of said towers do not conflict with any airport approach or landing zone or with any other ordinance, and providing that antennas within one hundred fifty (150) feet of a residential district shall not exceed eighty (80) feet in height. (Also see Section 13 – Wireless Communications Towers.)
12. On a corner lot in any residential district, nothing shall be erected, placed, planted, or allowed to grow in such a manner as materially to impede vision between a height of two-and-one-half (2-1/2) and ten (10) feet above the centerline grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said street lines ninety (90) feet from the point of the centerline intersection.
13. In any district, more than one structure housing a permitted or permissible principal use may be erected on a zoning lot, provided that yard and other requirements of this Ordinance shall be met for each structure as though it were on an individual lot.
14. Every building hereafter erected or moved shall be on a lot adjacent to a public street, or with access to an approved private street, and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection and required off-street parking.
15. Privately owned swimming pools shall be enclosed as appropriate to assure privacy and safety.
16. Major recreational equipment such as boats, boat trailers, travel trailers, pick-up campers or coaches, camping buses or converted trucks, and tent trailers shall not be stored in a residential district except within an enclosed building, or behind the front yard setback line.
 - a. On a corner lot such equipment shall be kept back of the front yard setback lines on both street sides.
 - b. No such recreational equipment shall be utilized for living, sleeping or housekeeping purposes when parked on a residential lot or in any location not approved for such use.

17. Conversion of a two-family or multiple-family structure to individually owned single-family dwelling units may be permitted subject to the requirements of the Subdivision Regulations, and to the following:
- a. An application for such unit conversion shall be filed for review and comment by City staff and the Planning Commission and approval by the Governing Body. Such application shall be accompanied by the following information as a minimum:
 - 1) A plot plan showing site and structure arrangements and proposed re-platting.
 - 2) A full legal description of the subject property, including legal descriptions of proposed individual properties after re-platting.
 - 3) A description of proposed structural and utility alterations to provide for individual services and maintenance.
 - 4) A description of proposed public access patterns, both vehicular and pedestrian.
 - 5) A copy of protective covenants which shall be written to run with the land in which shall be specified methods for providing for maintenance of shared property and/or easements, responsibilities for shared expenses, and continued use of the property for specified purposes. Such covenants shall be written to provide for the long-term maintenance and use of the premises for residential purposes only, within the overall context of neighborhood development.
 - 6) Any other supplementary information as may be required to assess short- and long-term neighborhood impacts associated with the proposed conversion.
 - b. The applicant for unit conversion shall submit with his application a consent agreement signed by seventy-five (75) percent of all owners of property within two hundred (200) feet of the premises whereon the unit conversion is proposed.
 - c. Where a two-family or multiple-family structure is converted to individually owned, single-family dwelling units, a separation of utility service lines is required from each individually owned, single-family dwelling unit to a public utility line or to a utility line, private well, septic system, or lagoon which is located in an area of a lot or building that is owned by or accessible to a party legally responsible for maintenance of utility lines or systems on behalf of the owners of each converted single-family dwelling unit.
 - d. The Planning Commission and Governing Body shall not approve an application for conversion from a two-family or multiple-family structure to individually-owned, single-family dwelling units where it is determined that an existing or proposed utility service line, private well, septic system, or lagoon exists or is proposed to exist in an area where the maintenance of said utility line would require entry into an individually-owned dwelling unit.

- e. All conversions of two-family or multiple-family structures to individually-owned, single-family dwelling units are subject to all applicable City codes, including building permit application and inspection procedures.
- f. The above procedures and regulations are applicable even where the conversion does not require new construction.
- g. After reviewing a conversion application for compliance with all applicable City codes, the Building Official/Code Enforcement Officer shall report to the Planning Commission and Governing Body all details of non-compliance with City codes.

SECTION 2. FENCES: Except as otherwise specifically provided in other codes, ordinances, or resolutions, the following regulations shall apply to the construction of fences:

1. No fence shall be constructed closer to the street than the front setback line established for the district in which such fence is to be erected, except that fences installed upon public or parochial school grounds or in public parks and public playgrounds may be permitted by special use permit approved by the Board of Zoning Appeals without any front yard setback limitation, providing the fence does not encroach on any required utility easements or cause any vision impairment for vehicles.
2. No fence shall be constructed which will constitute a traffic hazard and no permit shall be granted for the construction of a fence unless the City Building Inspector has certified that the proposed fence will not constitute a traffic hazard.
3. No fence shall be constructed in such a manner or be of such design as to be hazardous or dangerous to persons or animals.
4. No person shall erect or maintain any fence which will materially damage the adjacent property by obstructing the view, shutting out the sunlight, or hindering ventilation, or any fence which shall adversely affect the public health, safety, and welfare.
5. No fence, except fences erected upon public or parochial school grounds or in public parks and in public playgrounds, shall be constructed of a height greater than six (6) feet; provided, however, that the Board of Zoning Appeals may, by exception, authorize the construction of a fence higher than six (6) feet if the Board finds the public welfare is preserved.
6. All fences shall conform to the construction standards of the building code and other applicable ordinances and resolutions.
7. Fences shall be exempt from the provisions of SECTION 3 of this Article; however, the City retains the right to remove any fence for right-of-way purposes.

SECTION 3. BUILDING SETBACK LINES: Building setback lines are hereby established for all arterial and collector streets, as shown on the adopted Major Street Plan in the Downs Comprehensive Plan. The setback lines, as established in this section, shall be held to the minimum for the purpose of promoting the public health, safety, morals, order, convenience and economy in the process of development and shall conform with the following requirements.

1. *Arterial Streets:* No building or structure which fronts or sides on an arterial street shall be located nearer to the centerline of the arterial street than the sum of the required front yard (in feet) plus fifty (50) feet, except as provided in SECTION 2 of this Article.
2. *Collector Streets:* No building or structure which fronts or sides on a collector street shall be located nearer to the centerline of the collector street than the sum of the required front yard (in feet) plus forty (40) feet, except as provided in SECTION 2 of this Article.

SECTION 4. LOTS OF RECORD: A lot or group of lots, which were platted and recorded in the office of the Register of Deeds prior to the effective date of this Ordinance, may be used for any purpose permitted in the district in which it is located; provided, however, that no residential building permit shall be issued for construction of a residential structure that does not conform with the minimum yard and height requirements unless specifically authorized by the Board of Zoning Appeals.

SECTION 5. CANOPY AND MARQUEE: A canopy, marquee, or balcony may be permitted to "overhang a public way" in Districts "C - 1" and "C - 2" providing:

1. The canopy, marquee, or balcony is constructed and maintained in accordance with the City Building Code and other applicable codes, ordinances, and resolutions.
2. No portion of the canopy, marquee, or balcony, including supports, shall be less than eight (8) feet above the level of the sidewalk or other public way except as required by SECTION 1, Item 12 above.
3. The canopy, marquee, or balcony shall not extend beyond a point two (2) feet inside the curb line of a public street.

SECTION 6. TEMPORARY USES PERMITTED:

1. Christmas Tree Sales: Christmas tree sales in any business or industrial district for a period not to exceed 60 days. Display of Christmas trees need not comply with the yard and setback requirements of these regulations provided that no trees shall be displayed which would obstruct intersection sight distance requirements.
2. Contractor's Office: Contractor's office and equipment sheds (containing no sleeping or cooking accommodations) accessory to a construction project and to continue only during the duration of such project.
3. Real Estate Offices: Real estate offices (containing no sleeping or cooking accommodations unless located in a model dwelling unit) incidental to a new housing

development to continue only until the sale or lease of all dwelling units in the development.

4. Carnivals and Circuses: A carnival or circus, but only in a C-1, C-2, I-1 or I-2 District, and then only for a period that does not exceed one (1) week. Such use need not comply with the front yard requirements, provided that structures or equipment which might block the view of operators of motor vehicles on the public streets shall conform to the requirements for the street intersection sight distance as defined by these regulations.
5. Seasonal sales events and festivals: Seasonal sales events and festivals in any district subject to any special requirements of the Governing Body.

SECTION 7. WIND ENERGY CONVERSION SYSTEMS (WECS): Wind energy conversion systems (WECS) may be permitted subject to the following requirements:

1. The minimum distance from any lot line to any tower, pole or other support structure of the wind energy conversion system shall be established by the following minimum standards:

Rotor Diameter (Feet)	Setback Distance (Feet)
5	100
10	165
15	220
20	270
25	310
30	340
35	365
40	385

Intermediate rotor size distances shall be interpolated from the above values.

2. The WECS shall not be located in any required yard.
3. The WECS shall not cause interference to microwave communications or radio and television reception in the area. Noise levels measured at the lot line shall not exceed sixty (60) DBA in a residential zone.
4. To limit climbing access to WECS tower, or other support structure, a six (6) foot high fence with locking portal shall be place around the WECS support or if a tower is utilized, the tower climbing apparatus shall be limited to no lower than twelve (12) feet from the ground or the WECS support may be mounted on a rooftop.
5. All blades of a WECS shall be constructed of non-metallic substances. If the applicant can prove, in writing form, that no electromagnetic interference will result, a metal content of up to twenty-five (25) percent will be acceptable.

6. The WECS shall be located in compliance with the guidelines of the Federal Aviation Regulations with regard to airport approach and clearance around VOR and DVOR stations.
7. Height of the WECS shall not exceed the maximum height restriction in the zone where it is located by more than twenty (20) feet. The height of the WECS shall be measured at the center of the blade diameter.
8. Data pertaining to the WECS' safety and structural integrity shall be certified by a licensed engineer and filed with the building permit application. The tower or support and top adapter shall meet the restrictions specified in the City's building code.
9. The WECS, if interconnected to a utility system, shall meet the requirements for interconnection and operation as set forth in the electric utility's current service regulations applicable to WECS .
10. A plot plan shall be submitted with the application for building permit showing the proposed location and height of the WECS, fencing and all existing buildings within two hundred (200) feet of the exterior lot lines.
11. The owner/operator shall provide covenants, easements or similar documentation to assure sufficient wind to operate the WECS unless adequate accessibility to the wind is provided by the site.
12. The owner/operator shall certify that the WECS does not violate any covenants of record.
13. The applicant shall provide a certificate of liability insurance. Annually the owner/operator shall present evidence to the zoning administrator that the liability insurance is still in effect.

SECTION 8. JOINT DRIVEWAYS AND GARAGES: Where joint driveways and joint garages were in existence prior to the passage of this ordinance, it shall be permissible to repair, reconstruct or enlarge joint garages and it is not necessary to conform to the provisions governing internal lot lines. ✓

SECTION 9. PROTECTION OF SEWER AND OTHER UTILITY LINES: No building or addition thereto shall be erected over or across any public sewer or utility line, nor upon any platted or recorded easement, unless permission is granted in writing by the respective party whose lines are involved.

SECTION 10. MINING AND EXTRACTION OF MINERALS: In districts where mineral extraction is a permitted use, the following shall apply:

1. In the case of open excavation, there will be required a substantial fence with suitable gates completely enclosing the portion of the property in which the excavation is located, and such fence shall be located forty (40) feet or more distance from the edge of such excavation.

2. The slope of the material in such sand, gravel or other pit shall not exceed the normal angle of repose of such materials, and the plane of such angle of repose shall not come nearer than forty (40) feet to any property lines.
3. In the case of a quarry or other excavation in rock, there will be required a substantial fence, with suitable gates at all points a distance of forty (40) feet or more from the face of any quarry walls.
4. Rock crushers, cement plants or other crushing, grinding, polishing, or cutting machinery or other physical or chemical process for treating the product of such quarry may be prohibited.
5. No such quarry shall be nearer than forty (40) feet to any property boundary line, street or highway right-of-way line.

SECTION 11 VACATED STREETS AND ALLEYS: Whenever any street, alley or other public right-of-way is vacated by official action of the Governing Body, any zoning districts adjoining each side of any such vacated street, alley or public-way shall be automatically extended to the center of such vacated street or alley and all area included in such adjusted boundary shall then and thenceforth be subject to all regulations of the extended districts.

SECTION 12 SANITARY SEWERAGE REQUIREMENTS: All new construction of residential units, relocation of residential units, manufactured housing and all other buildings which would generate sewage, shall be connected to a public sewer system as required by the Downs Municipal Code, where available, or provided with a private system meeting the following requirements.

1. All percolation rates shall be based on the standard test procedures and shall be the responsibility of the person applying for a permit.
2. Septic Tanks constructed of concrete, metal, concrete blocks or other material of similar nature, minimum size of which shall be:

Two bedroom home	1000 gallons
Three bedroom home	1250 gallons
Four bedroom home	1500 gallons
3. All waste water must run through septic tanks including laundry, kitchen, lavatory, etc.
4. Individual laterals shall not be less than 90 feet or more than 100 feet in length. There shall be a separation of six (6) feet between laterals.
5. Trench bottom and tile lines shall have a fall of 2 to 4 inches per 100 feet and shall be 10 inches in depth.
6. Lateral lines shall be constructed for continual flow, or if desired, use of absorption fields will be accepted.

7. Absorption field not less than 6 feet long, 4 feet wide, and not more than 6 feet deep, shall be available at the end of each lateral line. The last tile must lie in the absorption field with high rock below and above the tile with building or tar paper over the grade, and back fill of earth over paper, with an overfill of four to six inches for settlement.
8. Owner is required to provide a sketch with percolation times to the County Health Department for evaluation and recommendations, prior to receiving a permit for construction of an individual sewage system.

SECTION 13 WIRELESS COMMUNICATIONS TOWERS: Wireless communication and other telecommunications towers other than small electronic communications antennas may be permitted subject to the following requirements:

1. The minimum distance from any lot or property line to any tower, pole or other support structure shall be the total maximum height of the tower, pole or other support structure plus attached antennas.
2. Anchors, guy wires and other accessory structures may not be located in any required yard.
3. The tower, pole or other support structure shall not exceed the maximum height restriction in the zone where it is located by more than thirty (30) feet, unless technical data indicating a greater requirement for adequate reception is provided.
4. Unauthorized access to the tower, pole or other support structure, including anchors and guy wire shall be limited by provision of an immediately surrounding six (6) foot high fence with locking portal. Tower climbing apparatus shall be limited to no lower than twelve (12) feet from the ground.
5. Telecommunications towers shall be located in compliance with the guidelines of the Federal Aviation Regulations with regard to airport approach and clearance around VOR and DVOR Stations.
6. The tower or other support structure shall be designed to permit addition of antenna array for at least two additional service providers so as to limit the number of permitted structures in the zoning jurisdiction.
7. Information certifying safety and structural integrity of the tower and other support structures shall be certified by a licensed engineer and filed with the permit application.
8. When located within one thousand (1,000) feet of a residential district, the tract shall be appropriately landscaped to produce a visually pleasing appearance.
9. An application for a permit to site a wireless telecommunications facility shall be accompanied by the following:
 - a. A site development plan, including landscape provisions and topographic information.

- b. A technical description of the tower and the reasons for its design and location.
 - c. An explanation of need for a separate tower as opposed to an existing facility.
 - d. Information establishing structural integrity and capacity for additional antenna array.
 - e. Proof of ownership or authorization to use the proposed site.
 - f. Copies of any necessary easements.
 - g. A Certificate of liability insurance.
 - h. An affidavit certifying that the space on the proposed tower will be made available to future users when technically feasible.
10. The applicant shall also provide such other additional support information as may be determined by the City.