

**Chapter 5
APPLICATIONS AND PROCEDURES**

Sections:

- 5.00 Who May Apply; Application Fees**
- 5.01 Pre-Application Process**
- 5.02 Resubmitting Applications for Plats, Rezoning and Special Use Permits**
- 5.03 Applications -- Proof of Ownership and/or Authorization of Agent**
- 5.04 Rezoning and Special Use Permit Applications – Submission Requirements**
- 5.05 Submission of Technical Studies**
- 5.06 When Applications Deemed Complete**
- 5.07 Application and Submission Deadlines**
- 5.08 Publication Notices**
- 5.09 Notices to Surrounding Property Owners**
- 5.10 Posting of Signs for Rezoning and Special Use Permits**
- 5.11 Public Hearings**
- 5.12 Continuances**
- 5.13 Consideration of Zoning Text Amendments, Rezoning and Special Use Permits**
- 5.14 Protest Petition Procedures**
- 5.15 Criteria for Considering Applications**
- 5.16 Interpretation of Design Guidelines**
- 5.17 Rezoning for Lesser Change**
- 5.18 Consideration of Planned Unit Development Plans**
- 5.19 Planned Unit Development Plans -- Contents and Submission Requirements**
- 5.20 Final Site Development Plans -- Contents and Submission Requirements**
- 5.21 Recording of Site Development Plans**
- 5.22 Abandonment of Final Site Development Plan**
- 5.23 Preliminary Plats -- Contents and Submission Requirements**
- 5.24 Consideration of Preliminary Plats**
- 5.25 Final Plats -- Contents and Submission Requirements**
- 5.26 Consideration of Final Plats**
- 5.27 Applications for Lot Splits**
- 5.28 Consideration of Lot Splits**
- 5.29 Applications for Vacation of Streets or Reservations**
- 5.30 Consideration of Vacations**
- 5.31 Appeals to the Planning Commission and Governing Body**
- 5.32 Appeals to the Board of Zoning Appeals (BZA)**
- 5.33 Consideration of Variances**
- 5.34 Conditional Approvals**
- 5.35 Written Findings**

5.36 Final Decision Where Ordinance Required

5.37 Appeals of Final Decisions

5.38 Filing Fees

5.00 Who May Apply; Application Fees

I. Prior to filing an application provided for in this chapter, a pre-application meeting shall be required between the applicant and City staff, unless such requirement is otherwise waived by the City Administrator.

B. Application for a zoning text amendment may only be filed by the Governing Body or Planning Commission.

C. An application for rezoning to a conventional zoning district or for a revised preliminary site development plan for a planned zoning district may be filed by the Governing Body, the Planning Commission or the landowner or the landowner's agent.

D. An application for an appeal to the Board of Zoning Appeals may be filed by any person aggrieved, or by any officer of the City, or any governmental agency or body affected by any decision of an official administering the provisions of this ordinance.

E. All other applications provided for in this chapter may only be filed by the landowner or the landowner's agent.

F. Fees for all applications provided for in this chapter shall be established by the Governing Body by resolution.

G. All applications shall be made on forms prepared by the City and available from the City Clerk.

5.01 Pre-Application Process

For all applications that involve a public hearing, the applicant is required to meet with the City Administrator or his/her designee prior to formal submission of an application. This conference shall include the following: discussion of technical studies, plans and other information deemed relevant to the specific application request; discussion of the anticipated level of citizen interest; and identification of citizen notification and meeting requirements.

5.02 Resubmitting Applications for Plats, Rezoning and Special Use Permits

When a proposed application for rezoning, special use permit, or plat has been withdrawn by the applicant or denied by the Planning Commission or the Governing Body, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial. However, an application for a different zoning classification or special use permit request can be submitted at any time. In addition, a new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

5.03 Applications - Proof of Ownership and/or Authorization of Agent

- A. Where an application has been filed by a landowner, an affidavit of ownership shall be submitted to the City.
- B. Where an application has been filed by an agent of a landowner, an affidavit of the landowner establishing the agent's authorization to act on behalf of the landowner shall be submitted to the City.
- C. The affidavits required by this section shall be on forms prescribed by the City or in such form as is acceptable to the City, and shall be submitted at the time of filing the application.

5.04 Rezoning and Special Use Permit Applications – Submission Requirements

The following items shall be submitted in support of any application for rezoning or special use permit:

- A. Legal description of the property.
- B. Names, addresses and phone numbers of owner, applicant and agent.
- C. A statement of the reasons why rezoning or special use permit is being requested.
- D. The minutes of the meeting(s) between the applicant and the property owners and home associations within the notification area, if determined to be required during the pre-application meeting.
- E. In the case of an application for special use permit or rezoning to a planned zoning district, a site development plan.
- F. In the case of an application for rezoning to a conventional zoning district, a site development concept plan.
- G. In the case of an application for rezoning to a planned mixed-use zoning district, a site development plan and a land use allocation map.
- H. All studies as may reasonably be required by the City that supports the rezoning or special use permit.
- I. Assurances of adequate public facilities as required in Chapter 1, General Provisions.

5.05 Submission of Technical Studies

- A. City staff may require applicants for rezoning, special use permits, preliminary site development plans, land use allocation maps or preliminary plats to submit such technical studies as may be necessary to enable the Planning Commission and/or Governing Body to evaluate the application. Examples of technical studies that may be required shall include, but not limited to, traffic studies, engineering studies, geologic or hydrologic studies, environmental impact assessments, noise studies, market studies, economic impact reports or architectural surveys. The costs of all studies shall be borne by the applicant.
- B. Upon the submission of any technical or related studies and/or upon any further determination by City staff, certain easements and related improvements such as streets, drainage, watercourses, creek

erosion control, utilities, tree preservation, open areas, or recreational amenities may be required as a condition for approval of the rezoning, site development plan, preliminary plat or final plat. Performance and maintenance bonds for said improvements shall be approved by City staff prior to the issuance of a building permit, and said improvements shall be completed prior to the issuance of a certificate of occupancy.

C. Notwithstanding the fact that the City staff, did not require submission of any such technical study in support of the application, either the Planning Commission or the Governing Body may require the submission of such study prior to taking action on the application. In such case, the persons or firms selected to perform the studies shall be subject to the approval of the entity requesting that the study be performed. Any decision of the Planning Commission or the Governing Body to require that a study be performed or to disapprove the person or firm selected by the applicant to perform the study shall be final.

5.06 When Applications Deemed Complete

No application shall be deemed complete until all items required to be submitted in support of the application have been submitted and applicable fees paid subject to the provisions of this chapter.

5.07 Application and Submission Deadlines

The City may provide for submission deadlines for materials required in support of any application provided for in this chapter. Compliance with such deadlines shall generally be required in order to have the application placed on an agenda to be heard by the Planning Commission or the Governing Body.

5.08 Publication Notices

Unless otherwise specifically provided for in this chapter, all publication notices for public hearings required by this chapter shall be published in one (1) issue of the official City newspaper so that twenty (20) days shall elapse between the date of the publication and the date of the public hearing. The publication notice shall fix the time and place for the public hearing. Where the hearing is for consideration of changes in the text of this ordinance, or a general revision of the boundaries of zoning districts, the notice shall contain a statement regarding the proposed changes in the ordinance or in the boundaries of the zone or district. If the hearing is on an application which concerns specific property, the property shall be designated by legal description and/or general street location sufficient to identify the property under consideration, and the notice shall contain a general statement regarding the purpose of the application.

5.09 Notices to Surrounding Property Owners

Unless otherwise specifically provided in this chapter, whenever notice to surrounding property owners is required for consideration of an application, such notice shall be given as follows: the applicant, with the assistance of City staff, shall mail all notices at least twenty (20) days prior to the hearing to all owners of record of lands located within at least two hundred (200) feet of the area proposed to be altered for regulations of a City. If the property proposed for rezoning is located adjacent to the City limits, the area of notification shall be extended to one thousand (1,000) feet into the unincorporated area. Such mailed notice shall be given by certified mail, return receipt requested, and shall be in letter form stating the time

and place of the hearing, a general description of the proposal, the legal description and general street location of the property subject to the proposed change, and a statement explaining that the public may be heard at the public hearing. In cases of applications for which protest petitions may be submitted, the notice shall also contain a statement explaining that property owners within two hundred (200) feet (within the City limits) or one thousand (1,000) feet (within the unincorporated area) of the property proposed for change shall have the opportunity to submit a protest petition, in conformance with this ordinance, to be filed with the office of the City Clerk within fourteen (14) days after the date of the conclusion of the public hearing. Newspaper clippings of the publication notices shall not be used for the mailed notice. Mailed notices shall be addressed to the owners of the property and not to mere occupants thereof. When the notice has been properly addressed and mailed, failure to receive mailed notice shall not invalidate any action taken on the application. Prior to the public hearing, the applicant shall file with the City, the returned receipts from the certified mailings and an affidavit stating the names and addresses of the persons to whom notice was sent; failure to submit the affidavit prior to the hearing may result in a continuance of the hearing.

5.10 Posting of Signs for Rezoning and Special Use Permits

In the case of rezoning and special use permits, the City shall place a sign on the property informing the general public that a public hearing will be held at a specific time and place concerning proposed changes in use. The sign shall be furnished by the City to the applicant, and the applicant shall maintain the sign for at least the twenty (20) days immediately preceding the date of the public hearing. The applicant shall file an affidavit with the City Administrator or his/her designee at the time of the public hearing verifying that the sign has been maintained and posted as required by this ordinance and applicable resolutions.

5.11 Public Hearings

Where the consideration of an application requires a public hearing, the following provisions shall apply:

- A. The purpose of a public hearing is to allow the applicant and all other interested parties a reasonable and fair opportunity to be heard, to present evidence relevant to the application and to rebut evidence presented by others.
- B. An accurate written summary of the proceedings shall be made for all public hearings.
- C. The Governing Body, Planning Commission and Board of Zoning Appeals may adopt rules of procedure for public hearings by resolution or bylaws.
- D. If an item which is subject to a public hearing is continued or otherwise carried over to a subsequent date and the public hearing has been opened, then the public hearing shall not be deemed concluded until the date on which the hearing is formally closed. No additional notices shall be required if the public hearing is continued.

5.12 Continuances

A. Any applicant or authorized agent shall have the right to one (1) continuance of a public hearing before the Planning Commission or Board of Zoning Appeals, provided that a written request therefore is filed with the City, at least two (2) business days prior to the date of the scheduled hearing. The applicant shall

make every attempt to notify all persons previously notified of the continuance either by mail or telephone. In any event, the applicant shall cause written notice to be sent ten (10) days prior to the date of the rescheduled public hearing to surrounding property owners in the same manner as required for notice of the original hearing.

B. The Planning Commission, Board of Zoning Appeals, or the Governing Body may grant a continuance of an application. If the Planning Commission or Board of Zoning Appeals continues a public hearing on its own motion, or at the request of the applicant, it may direct the applicant to re-notify property owners within two hundred (200) feet of the subject property, if such notification was required in the first instance.

C. All motions to grant a continuance shall state the date on which the matter is to be heard. A majority vote of those members of the Planning Commission or Board of Zoning Appeals present at the meeting shall be required to grant a continuance.

5.13 Consideration of Zoning Text Amendments, Rezoning and Special Use Permits

A. Public hearing required: Consideration of zoning text amendments, rezoning and special use permits shall require a public hearing before the Planning Commission following a publication notice.

B. Action by Planning Commission: A vote either for or against a zoning text amendment, rezoning or special use permit by a majority of all of the Planning Commissioners present and voting shall constitute a recommendation of the Planning Commission. A tie vote, or the failure to obtain a majority vote of the Planning Commission on any motion, shall be deemed to be a recommendation of disapproval. The Planning Commission's recommendation to approve or disapprove shall be submitted to the Governing Body for action, accompanied by an accurate written summary of the hearing proceedings. A recommendation to approve a zoning text amendment shall be submitted in the form of an ordinance.

C. Governing Body action upon Planning Commission recommendation of a zoning text amendment, rezoning or special use permit: The Governing Body may either (1) approve such recommendations by the adoption of the same by ordinance or resolution; (2) override the Planning Commission's recommendation by a majority vote of the membership of the Governing Body; or (3) may return the same to the Planning Commission for further consideration, together with a statement specifying the basis for the Governing Body's failure to approve or disapprove.

D. Applications returned to Planning Commission: Upon receipt of an application returned by the Governing Body, the Planning Commission may resubmit its original recommendation giving the reasons therefore or submit a new or amended recommendation. If the Planning Commission fails to deliver its recommendation to the Governing Body following the Planning Commission's next regular meeting after the receipt of the Governing Body's report, the Governing Body may consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.

E. Reconsideration by Governing Body: Upon receipt of the Planning Commission's recommendation after reconsideration, the Governing Body may take such action as it deems appropriate, including approval, disapproval or amendment of the application and adoption as amended.

5.14 Protest Petition Procedures

A. A protest against any rezoning or a special use permit application shall be filed in the City Clerk's office not later than the end of the business day (5:00 PM) on the fourteenth (14th) day following the date of the conclusion of the Planning Commission's public hearing held pursuant to the publication notice. For the purposes of calculating the fourteen (14) day period, weekends and holidays shall be counted. Provided, however, if the last day is a non-business day for City offices, then the filing deadline shall be at 5:00 PM on the next regular business day.

B. In order to be considered a "valid" protest, a protest petition must be timely filed and duly signed and verified by the owners of record of twenty (20) percent of the total area required to be notified, excepting public streets and ways, located within or without the corporate limits of the City.

C. Verification of the genuineness and correctness of the signatures on the protest petition, either individually or collectively, shall be made by the City.

D. Once a valid protest petition has been filed with the City, it may not be withdrawn unless every person that signed the original petition signs a verified affidavit which states and fully explains the rights being waived by the withdrawal of the protest petition. Such affidavits of withdrawal must be filed with the City Clerk on or before the last regular business day preceding the Governing Body meeting for which the protest applies.

E. Adoption where protest filed: Where a valid protest petition has been filed, an ordinance approving the rezoning or a resolution approving a special use permit application may be passed by the affirmative vote of at least the majority of the members of the Governing Body.

5.15 Criteria for Considering Applications

In considering any application for rezoning or a special use permit, the Planning Commission and the Governing Body may give consideration to the criteria stated below; to the extent they are pertinent to the particular application. In addition, the Planning Commission and Governing Body may consider other factors which may be relevant to a particular application:

A. The conformance of the proposed use to the Comprehensive Plan and other adopted planning documents and policies.

B. The character of the neighborhood including, but not limited to: land use, zoning, density (residential), architectural style, building materials, height, structural mass, siting, open space and floor-to-area ratio (commercial and industrial).

C. The zoning and uses of nearby properties and the extent to which the proposed use would be in harmony with such zoning and uses.

D. The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations.

E. The length of time the property has remained vacant as zoned.

- F. The extent to which approval of the application would detrimentally affect nearby properties.
- G. The extent to which the proposed use would substantially harm the value of nearby properties.
- H. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.
- I. The extent to which the proposed use would create excessive air pollution, water pollution, noise pollution or other environmental harm.
- J. The economic impact of the proposed use on the community.
- K. The gain, if any, to the public health, safety and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.
- L. The recommendation of professional staff.

Related Information: Design Guidelines; Residential Neighborhood Design Manual; Traditional Neighborhood Design Manual

5.16 Interpretation of Design Guidelines

Any person proposing a development which will be subject to design guidelines may request an interpretation of any such guideline or its application to the particular project. All requests for such an interpretation shall be made to the City and may be submitted prior to or subsequent to the filing of a development application. Any such request shall be made on a form provided by the City and shall be accompanied by such other information as may reasonably be required by the City. A decision on any such request shall be made within five (5) business days following submission of the request or any other information required by the City. The interpretation of the City may be appealed to the Planning Commission. Any determination by the Planning Commission on the appeal of the City's interpretation may be appealed to the City Council, whose determination shall be final.

Related Information: Design Guidelines; Residential Neighborhood Design Manual; Traditional Neighborhood Design Manual

5.17 Rezoning for Lesser Change

The Planning Commission may recommend, and the Governing Body may adopt, a change in zoning which is a lesser change than the one requested, provided that the more restrictive district is in the same residential, commercial or industrial grouping as the district for which the change was requested. The adoption of a lesser district shall only be approved with the consent of the applicant. In no case may a change to a residential district be approved if the application is for a commercial or industrial district, and in no case may a commercial district be approved if the application is for an industrial district.

5.18 Consideration of Planned Unit Development Plans (PUD)

A. After the effective date of this ordinance, no property which has a zoning district classification which requires approval of a PUD may be developed or redeveloped without a preliminary PUD first having been submitted to and approved by the Governing Body.

B. The Governing Body shall review the preliminary PUD to determine if it demonstrates a satisfactory quality of design in the individual buildings and in its site, the appropriateness of the building or buildings to the intended use and the aesthetic appropriateness of the development to its surroundings. In this regard, the Governing Body may seek the advice of the Planning Commission and others. Satisfactory design quality and harmony will involve among other things:

1. The site is capable of accommodating the building(s), parking areas and drives with appropriate open space.
2. The plan is consistent with good land planning, good site engineering design principles and good landscape architectural principles.
3. An appropriate use of quality materials. The harmony and proportion of the overall design.
4. The architectural style which should be appropriate for the project in question and compatible with the overall character of the neighborhood.
5. The site of the structure on the property, as compared to the site of other structures in the immediate neighborhood.
6. The bulk, height and color of the proposed structure as compared to the bulk, height and color of other structures in the immediate neighborhood.
7. Landscaping shall be required on the site and shall be in keeping with the character or design of the site. Existing trees shall be preserved wherever possible.
8. Ingress, egress, internal traffic circulation, off-street parking facilities and pedestrian ways shall be so designed as to promote safety and convenience and shall conform to approve City standards.
9. The plan represents an overall development pattern that is consistent with the Comprehensive Plan, the Official Street Map and other adopted planning documents and policies.

C. Final Site Development Plans:

1. Following approval of the preliminary PUD plan, by the Governing Body, construction may proceed when the property is properly platted pursuant to a final PUD plan. The final PUD plan may be executed by the City Administrator without further consideration by the Governing Body if it complies with the PUD Plans Contents and Submission Requirements contained herein and the requirements pursuant to the preliminary PUD plan approval and generally includes the information needed for the platting process and the issuance of a building permit.

2. If, in the judgment of the City Administrator, the concept of development as depicted on the final PUD plan significantly deviates from the concept of the preliminary PUD plan, the City shall inform the applicant, within seven (7) days that the final PUD plan will have to be considered by the Governing Body.

3. The following changes are not considered significant changes to the preliminary PUD plan and may be approved by the City Administrator:

- a. An increase in floor area or number of dwelling units not exceeding five (5) percent.
- b. Substitution of landscape materials provided that the new materials are the same general size and type.
- c. Minor changes to elevation, building materials, parking lot design, screening fences or walls, building location, etc., that would improve the site or are needed because of circumstances not foreseen at the time the preliminary site development plan was approved by the City.

4. The Governing Body may designate a development area as appropriate for administrative PUD plan approval by the City Administrator. Such areas may be those existing developments with an established site plan and architectural character, or new developments with an approved preliminary development plan including typical building elevations, materials and colors; a general landscape plan; and an approved landscape buffer where applicable. Administrative PUD plan submission requirements shall also be in conformance with PUD Plans, Contents, and Submission Requirements. Applications not in conformance with such plans and the approved preliminary development plan shall not be approved administratively and shall be forwarded to the Governing Body for consideration upon submission of a complete application.

Related Information: Design Guidelines; Residential Neighborhood Design Manual; Traditional Neighborhood Design Manual

5.19 Planned Unit Development (PUD) Plans -- Contents and Submission Requirements

All PUD plans are to be drawn to a standard engineer's scale. The actual scale used will depend on the development and shall be subject to the approval of the City. Twenty (20) copies of the PUD plan shall be submitted in support of the application. In addition, one (1) copy of the proposed site plan and one (1) copy of the proposed building elevations, reduced onto eight and one-half (8½) inch by eleven (11) inch bond paper shall be submitted with the application. Plans placed on a CD in a format approved by the City is required. The PUD plan shall contain the following information:

A. Existing uses, activities and influences on the site and adjacent properties, within two hundred (200) feet:

1. All public streets and easements which are of record. Sufficient dimensions and information to indicate existing and proposed rights-of-way, pavement width and type, number of lanes, medians and median breaks, sidewalks, existing and proposed driveways.
2. Any buildings which exist or are proposed. One (1) and two (2) family residential buildings may be shown in approximate location and general size and shape. Indicate the status of structures

on the site (i.e., vacant, to be removed; good condition, interior remodel only; new, as is; etc.). Indicate the style, type and construction materials of buildings on adjoining properties (i.e., two-story, brown brick ranch residence; 20 foot tall tinted concrete panel industrial building; etc.)

3. Existing and proposed finished grades or contours at two (2) foot intervals. Identify any land areas within the one hundred (100) year floodplain: Existing streams, drainage channels and other bodies of water and all existing and proposed slopes in excess of six (6) percent.

4. The location, size, cross-section and calculation of any drainage structures, such as culverts, paved or earthen ditches or storm water sewers and inlets.

5. Location, massing and pattern of existing vegetation. Indicate proposed on-site preservation, methods and procedures.

6. Existing zoning and land use of site and surrounding properties.

B. Proposed development of the site including:

1. Proposed location of buildings and other structures, parking areas, driveways, walks, noise generation sources and site view (refrigeration units, mechanical equipment, loading docks, etc.) screening, drainage control, landscaping and proposed utility connection layouts for water and sewer. Sufficient dimensions to indicate setbacks, relationship between buildings, property lines, intersections, easements, parking areas and other elements of the plan. If applicable, indicate focal points, site amenities, views within and vistas from the site which are to be emphasized.

2. Building elevations depicting the architectural style, size, exterior construction materials and colors of the proposed buildings. Where several building types are proposed, such as, one and two unit dwellings, apartments and commercial buildings, a separate sketch shall be prepared for each type. If an architectural theme is planned, elaborate on the intent and extent of the scheme and provide details, focal points, etc., (i.e., material justification, period lighting, and pavement patterns). Elevations shall be drawn to a standard architectural scale and dimensions provided to determine relationship between various elements, building height, proportion, adequate screening of mechanical equipment, etc.

3. A schedule shall be included indicating total floor area, dwelling units, land area, parking spaces, land use intensity and all other quantities relative to the submitted plan that are required to determine compliance with this ordinance.

4. General extent and character of all proposed landscaping noting common and botanical names and planting size. Site plans submitted for a plan review, special use permit or final plat shall submit a complete landscaping plan pursuant to requirements of the City.

5. Proposed utility connection layouts.

C. Other relevant information including:

1. Name, address and phone number of the landowner, engineers, architect and others participating in the project.
2. The boundary lines of the area included in the site plan, including bearings, dimensions and reference to a benchmark location, section corner, quarter corner or point on a recorded plat.
3. North arrow and scale (standard engineer for site development plan and standard architectural for building elevations/details).
4. A small key map indicating the location of the property within the City.
5. Name and address of the architect, landscape architect, Planner, engineer, surveyor, or other person involved in the preparation of the plan.
6. Date of preparation of the plan.

D. All studies as may reasonably be required by the City.

5.20 Final Planned Unit Development (PUD) Plans, Contents, and Submission Required

All final PUD plans are to be drawn at the same scale as the preliminary PUD plan. Twenty (20) copies of the final PUD plan shall be submitted in support of the application. In addition, one (1) copy of the development plan and one (1) copy of all building elevations, reduced onto eight and one-half (8½) inch by eleven (11) inch bond paper and plans on a CD in a format approved by the City shall be submitted with the application. The final site development plan shall contain the following information:

A. Information required to be submitted with the preliminary PUD plan.

B. All information relevant to proposed development including:

1. All existing and proposed adjacent public street rights-of-way with centerline location and surface type, condition and width. Location, size and radii of all existing and proposed median breaks and turning lanes. All existing and proposed drive locations, widths, curb cuts and radii.
2. Location of all required building and parking setbacks.
3. Location, dimensions, number of stories, and gross floor area in square feet of all proposed buildings.
4. Final drainage design. Limits, location, size and material to be used in all proposed drainage basins and retaining walls.
5. Building elevations including the following:
 - a. Elevations of all sides of proposed buildings including notation indicating building materials to be used on exteriors and roofs.
 - b. Size, location, color and materials of all signs to be attached to building exteriors.

c. Location, size and materials to be used in all screening of rooftop mechanical equipment.

6. Landscaping and screening plans as required by the City.

7. Location, height, candle power and type of outside lighting fixtures for buildings and parking lots.

8. Location, size, type of material and message of all proposed monument or detached signs.

C. The following shall be submitted in support of the application for final PUD plan approval:

1. Deeds of dedication for all rights-of-way or easements required as a result of preliminary PUD plan approval.

2. A copy of all covenants and restrictions applicable to the development, if required by the terms of the preliminary PUD plan.

3. Evidence of the establishment of the agency for the ownership and maintenance of any common open space and all assurances of the financial and administrative ability of such agency required pursuant to approval of the preliminary PUD plan, if required by the terms of the approved preliminary PUD plan.

4. Evidence of satisfaction of any stipulations of the preliminary PUD plan approval which were conditions precedent to consideration of the final PUD plan.

5. Evidence of platting consistence with the PUD.

5.21 Recording of Planned Unit Development Plans

A. Within thirty (30) days following approval of a final PUD plan, there shall be filed with the Register of Deeds of Sedgwick County a statement that a plan for the area has been approved. The statement shall contain the following information:

1. A legal description of the property.

2. A statement that copies of the plan are on file with the City .

3. A statement as to the nature of the plan, the proposed density or intensity of land uses and other pertinent information sufficient to notify any prospective purchasers or users of land of the existence of such a plan.

4. A statement that the final PUD plan shall become binding upon all successors and assigns unless amended and approved by the City.

B. Within forty-five (45) days following approval of the final PUD plan, the landowner shall furnish a copy of the proof of filing. The statement shall be recorded in accordance with the forms and procedures established by the City and shall contain the following information:

1. A legal description of the property.
2. A statement that the restrictions on development and the responsibility for continuing maintenance and compliance with the final PUD plan shall be binding upon all successors and assigns unless the plan is amended and approved by the City.

5.22 Abandonment of Final Planned Unit Development Plan

In the event that a plan or a section thereof is given final approval and thereafter the landowner abandons said plan or the section thereof, then the landowner shall so notify the City in writing, or in the event the landowner fails to commence the planned development within two (2) years after final approval has been granted, then in either event such final approval shall terminate and shall be deemed null and void. Whenever a final plan or section thereof has been abandoned as provided in this section, no development shall take place on the property until a new final site development plan has been approved and filed with the City.

5.23 Preliminary Plats - Contents and Submission Requirements

Preliminary plats shall be drawn to a scale of one (1) inch to one hundred (100) feet; however, plats of areas in excess of one hundred (100) acres may be drawn to a scale of one (1) inch to two hundred (200) feet. Twenty (20) copies, one digital file per City requirements and one (1) copy reduced onto eight and one-half (8½) by eleven (11) inch bond paper, one CD in an approved format by the City of the preliminary plat shall be submitted in support of the application. The plat shall contain the following information:

A. Data used in the preparation of the plat including:

1. North arrow, scale and date of preparation.
2. Legal description.
3. The boundary lines of the tract with approximate dimensions.
4. Vicinity map, drawn to a scale of one (1) inch equals two thousand (2,000) feet, showing the location of the proposed subdivision in relation to the section of land in which it is situated.
5. Location, elevation and description of the benchmark controlling the vertical survey.
6. A statement clearly identifying the document as a preliminary plat.
7. Name and address of landowner, architect, landscape architect, planner, engineer, surveyor or other person involved in the preparation of the plat.

B. Existing uses, activities and influences on the site and adjacent properties, within four hundred (400) feet:

1. The names of all adjacent subdivisions or, in the case of unplatted land, the names of the landowners of adjacent property.
2. The location, width and names of all existing public or private streets and sidewalks within or adjacent to the tract, together with easements, railroad rights-of-way, and other important features such as section lines and corners, municipal boundary lines and monuments.
3. All platted or existing streets and property lines.
4. Contour lines or spot elevations based on US Geological Survey (USGS) data having the following intervals: two (2) foot contour intervals for ground slopes less than ten (10) percent; five (5) foot contour intervals for ground slopes exceeding ten (10) percent; and spot elevations where the ground is too flat for contours. The date and source of the topographic survey shall be indicated.
5. Description of any existing streets or roads which abut, touch upon or extend through the subdivision. The description shall include types and widths of existing surfaces, rights-of-way widths, and dimensions of any bridges or culverts.
6. Location of the one hundred (100) year floodplain and all watercourses.
7. Natural features such as rock outcroppings, marshes, lakes, wooded areas and isolated preservable trees.
8. Zoning classifications for the tract and adjacent tracts.
9. Any proposed additions or deletions impacting the floodplain, watercourses, and/or drainage.

C. Proposed subdivision of the tract including:

1. The proposed name of the subdivision, which shall not duplicate or closely resemble the name of any subdivision within Sedgwick County.
2. Approximate gradients of proposed streets within the plat.
3. Easements showing width and purpose.
4. The proposed use of land, whether for single-family, multifamily, commercial, industrial, parks, schools or other uses.
5. Lots showing approximate dimensions, minimum lot sizes and proposed lot and block numbers.
6. Location and type of utilities to be installed.

7. Proposed utility layouts for water, sewer, storm sewer, gas, electrical, cable and telephone. Under certain circumstances the proposed utility layout for multifamily residential, commercial or industrial subdivisions, may be deferred until site or preliminary development plan submittal.

8. Proposed building setback lines.

D. The following items shall be submitted in support of an application for preliminary plat approval:

1. All studies as may reasonably be required by the City.
2. Assurances of adequate public facilities.
3. For residential and commercial subdivisions, a master fence/screening plan.

5.24 Consideration of Preliminary Plats

A. The Planning Commission shall consider the following criteria and submit their recommendation to the Governing Body:

1. The proposed preliminary plat conforms to the requirements of the Subdivision Code, applicable zoning district regulations and any other applicable provisions of the codes and ordinances of the City.
2. The subdivision represents an overall development pattern that is consistent with the Comprehensive Plan, Official Street Map and City studies.
3. The plat contains a sound, well-conceived parcel and land subdivision layout which is consistent with good land planning and site engineering design principles.
4. The spacing and design of proposed curb cuts and intersection locations is consistent with good traffic engineering design and public safety considerations.
5. All submission requirements have been satisfied.

B. The decision of the Planning Commission to approve or deny the proposed preliminary plat shall be sent to the Governing Body for final action.

C. The approval of a preliminary plat shall be effective for a period of one (1) year. Where a final plat for the subdivision is not submitted for approval within the one (1) year period of time, the preliminary plat shall be deemed null and void and the developer shall be required to resubmit a new preliminary plat for approval subject to the then effective regulations.

D. When a preliminary plat containing a gross land area in excess of twenty (20) acres is submitted for approval, the applicant may indicate the anticipated development or phasing pattern for final platting. The applicant may receive an extension of the one (1) year time limit for submission of the final plat so long as each phase is constructed in accordance with the original phasing plan and subsequent final plats comply with all applicable regulations at the time of final platting.

Related Information: Design Guidelines; Residential Neighborhood Design Manual; Traditional Neighborhood Design Manual

5.25 Final Plats -- Contents and Submission Requirements

A. After a preliminary plat has been approved by the Planning Commission and Governing Body or a preliminary PUD has been approved by the Governing Body a final plat for record may be prepared and submitted to the Planning Commission and Governing Body for approval. The final plat may contain all or a portion of the area contained in the preliminary plat or the preliminary PUD, if one exists.

B. Page sizes for final plats shall be as required by the Sedgwick County Register of Deeds office. When more than one (1) sheet is used for any plat, each sheet shall be numbered consecutively and each sheet shall contain a notation showing the whole number of sheets in the plat and its relation to other sheets (e.g., sheet 1 of 3 sheets).

C. Final plats shall be prepared with the accuracy required for traverse data. The following sheets or drawings shall be submitted with the final plat:

1. Traverse data for the plat, including the coordinate of the boundary of the subdivision with the error of closure. The error of closure for a perimeter distance having a length of ten thousand (10,000) feet or more shall not be more than one (1) in twenty thousand (20,000). For perimeter distances less than ten thousand (10,000) feet in length, the error of closure shall be not more than one (1) in ten thousand (10,000).
2. The computation of all distances, angles and courses that are shown on the final plat unless measured in the field.
3. All stakes, monuments or other evidence found on the ground in use to determine the boundaries of the plat.

D. Final plats shall be drawn to a scale of one (1) inch to one hundred (100) feet, or at such other scale acceptable to the City Administrator. Twenty (20) copies, one (1) digital file, and one (1) copy reduced onto eight and one-half (8½) inch by eleven (11) inch bond paper of the final plat shall be submitted in support of the application. The final plat shall contain the following information:

1. North arrow, scale, date of preparation, legend and controlling physical features such as watercourses, highways and railroads.
2. Legal description.
3. The name of the subdivision, which shall not duplicate or closely resemble the name of any subdivision within Sedgwick County.
4. A vicinity map, drawn to a scale of one (1) inch to two thousand (2,000) feet, showing the location of the proposed subdivision in relation to the section of land in which it is situated.

5. Reference ties to government corners or previous surveys or plats as follows:
 - a. Distance and direction to the monuments used to locate the land described in the certificate of survey.
 - b. The location of all other monuments required to be installed by the provisions of these regulations.
 - c. A reference to the quarter section in which the plat is located.
6. Tract boundary, block boundary, street and other right-of-way lines with distances and angles and/or bearings. Where these lines follow a curve, the central angle, the radius, points of curvature, length of curve and length of intermediate tangents shall be shown.
7. Lot lines with dimensions. Side lot lines shall be at right angles or radial to street lines unless otherwise shown. Rear lot lines shall be parallel to block or tract lines unless otherwise indicated. Points of deflection of rear lot lines shall be indicated by angles and distances.
8. All easements shall be denoted by fine dashed lines, clearly identified, and if already on record, the recorded reference of such easements by book and page number shall be indicated. If an easement is not definitely located of record, a statement of such easement shall be included. The width of the easement, with sufficient ties to locate it definitely with respect to the subdivision, must be shown. If the easement is being dedicated through the plat map, it shall be properly referenced in the owner's certificate of dedication and identification.
9. Calculation sheets containing the length and radii of all curved street and lot lines, bearings, length of all straight streets and lot lines, and the area in square feet of each lot.
10. Block numbers or letters continuing consecutively without omission or duplication throughout the subdivision. Such identification shall be solid, of sufficient size and thickness to stand out, and so placed as to not obliterate any figure.
11. Lot numbers beginning with the number one (1), and numbered consecutively in each block.
12. Land parcels to be dedicated for any purpose, public or private, as distinguished from lots or tracts intended for sale.
13. Building setback lines.
14. "Limits of no access" shall be designated as a solid line in the right-of-way of arterial streets or highways. "Limits of no access" or "LNA" shall appear above this line. Access points shall be designated as a break in this line and a label of "access" or "ACC." Access points shall conform with the design standards of this ordinance.

15. The name of each street shown on the subdivision plat. Street names shall conform to the existing street naming system.

16. Location and elevation of permanent benchmark, if required.

17. Location and elevations of the one hundred (100) year flood plain for all lots thereby affected shall be shown and shall include calculations.

18. Tracts or easements designating location of fencing and screening for all districts including mixed-use districts subdivisions adjacent to thoroughfares consistent with the approved fence/ screening plan.

19. The following certificates, which may be combined where appropriate:

a. A certificate of execution signed and acknowledged by all parties having any record, title or interest in the land subdivided, and consenting to the preparation and recording of the plat.

b. A certificate signed and acknowledged as above, dedicating all parcels of land shown on the final plat and intended for any public use except those parcels which are intended for the exclusive use of the lot owners of the subdivision, their licensees, visitors or tenants.

c. A certificate granting utility easements as follows: "An easement or license to enter upon, locate, construct and maintain or authorize the location, construction or maintenance and use of conduits, water, gas, electrical, sewer pipes, poles, wires, drainage facilities, ducts and cables, and similar utility facilities, upon, over and under these areas outlined and designated on this plat as "Utility Easement" or "U/E," is hereby granted to the City of Cheney, Kansas, and other governmental entities as may be authorized by state law to use such easement for said purposes."

d. A certificate that all prior existing easement rights to any person, utility or corporation have been absolved on the parcels to be dedicated to public use.

e. A certificate signed by the licensed professional engineer or surveyor responsible for the survey and final plat. The engineer or surveyor shall not sign the plat until all monuments, irons or benchmarks have been set as required by this ordinance. Said signature shall be accompanied by the engineer's or surveyor's seal and shall state the month and year such survey was made.

f. The typewritten or printed names of all persons required by this subsection shall appear below the signature of that person. Signature blocks for certification of Planning Commission and Governing Body approval of the plat and Governing Body acceptance of dedication. The typewritten or printed names of all such City officials shall appear below the signature of that person when executed.

20. Final plat with corner elevations, top of foundation (Top) elevations & Pad elevations (top of garage door) required.

E. The following items shall be submitted in support of the application for final plat approval:

1. A title report by an abstracting or title insurance company, or an attorney's opinion of title, showing the name(s) of the landowner(s) and all other persons who have an interest in or an encumbrance on the platted land. The consent of all such persons shall be shown on the plat.

2. Evidence showing that all taxes and special assessments due and payable have been paid in full. In the case of taxes which have been protested as provided by law, monies or other sufficient escrows guaranteeing the payment of such taxes in the event the protest is not upheld shall be placed on deposit with such officials or governing bodies to meet this requirement.

3. A copy of any covenants or deed restrictions applicable to the subdivision. Such restrictions may appear on the face of the plat or may be submitted separately.

4. Documentation assuring permanent responsibility for the maintenance of the fence/screening tracts or easements.

5. Assurances of adequate public facilities, which may be contained in the documents of a PUD, if one exists.

F. After the final plat is filed of record with the Sedgwick County Register of Deeds, a final digital plat shall be submitted to the City.

5.26 Consideration of Final Plats

A. Final plats shall be approved by the Planning Commission and Governing Body if it determines that:

1. The final plat substantially conforms to the approved preliminary plat or the approved preliminary PUD, if one exists.

2. All submission requirements have been satisfied.

B. Following approval of the final plat by the Planning Commission, the final plat shall be submitted to the Governing Body for approval and review of land proposed to be dedicated for public purposes. The Governing Body shall approve or disapprove the plat and/or the dedication of land for public purposes within thirty (30) days after the first meeting of the Governing Body following the date of the submission of the plat to the City Clerk. The Governing Body may defer action for an additional thirty (30) days for the purpose of allowing for modifications to comply with the requirements established by the Governing Body. No additional filing fees shall be assessed during that period. If the Governing Body defers or disapproves any plat or dedication, it shall advise the Planning Commission of the reasons therefore. No plat shall be filed with the register of deeds unless such plat bears the endorsement that the plat and land dedicated to public purposes has been approved by the Governing Body.

C. Final plats shall be recorded with the Register of Deeds of Sedgwick County within five days following Governing Body approval of land dedicated to public purposes. Final plats which are not recorded within said time period shall be deemed null and void.

5.27 Applications for Lot Splits

Applications for lot splits shall be submitted by the landowner to the City. The application shall be accompanied by twenty (20) copies of a drawing to scale depicting the lots, structures and existing utility easements located on any part of the lot being split, together with the precise nature, location, dimensions and legal descriptions of the new lots to be created. In addition, prior to being submitted to the City, applications for lot splits shall be signed by the various public or private utilities and the City to establish the existence of adequate public easements and facilities to serve the resulting lots.

5.28 Consideration of Lot Splits

A. The City shall approve applications for lot splits if it is determined that the lot has not been previously split, that the new lots so created conform to the requirements of this ordinance, and that adequate street rights-of-way and easements exist to serve the properties. No lot split shall be approved if any of the following conditions exist:

1. A vacation of streets, alleys, utility easements or other public reservations is required or proposed;
2. The split will result in a lot without access to a street;
3. Such action will result in a lot being split into more than two (2) tracts.

B. For those lot splits which result in significant increases in service requirements (e.g., utilities, schools or traffic controls), or which will interfere with maintaining existing service levels (e.g., additional curb cuts or repaving), or which propose private easements for access or utilities, review of the lot split by the Governing Body may be required. Such determination shall be made by the City Administrator or his/her designee.

C. The City Administrator may make such additional requirements as are deemed necessary to carry out the intent and purpose of existing land development regulations and Governing Body policies where such requirements are reasonably related to the development of the properties. Such requirements may include, but are not limited to, installation of public facilities, dedication of right-of-way and easements and submission of covenants for the protection of other landowners in the original subdivision.

D. All applications for lot splits shall be acted upon by the City Administrator within thirty (30) days after receipt of a complete application. If the application is approved, the City Administrator shall sign and furnish a certificate of approval to be affixed to the lot split survey, and a certified copy shall be filed with the register of deeds of Sedgwick County, and the City Clerk. Denial of an application for a lot split by the City Administrator may be appealed to the Governing Body. All decisions of the Governing Body shall be final.

5.29 Applications for Vacation of Streets, Reservation, Easements

Where an application for the vacation of any street, alley, utility easement or other public reservation by ordinance is not made by the owners of lands adjoining on both sides of the street, alley or public reservation to be vacated, the application shall be accompanied by affidavits of all such owners not joining in the application indicating their consent to the vacation. Copies of the application shall be filed with the City Clerk. The application shall be accompanied by a legal description and survey or such other drawing acceptable to the City depicting the street, alley or public reservation sought to be vacated and the properties and property ownerships surrounding said street, alley or public reservation. In addition, the applicant shall obtain letters from representatives of any affected utility companies stating that the street, alley, utility easement or other public reservation will not be needed by the service provider. All such letters shall be submitted to the City prior to scheduling a public hearing regarding the proposed vacation.

5.30 Consideration of Vacations

A. Applications to vacate a street, alley, utility easement or other public reservation by ordinance may only be considered at a public hearing before the Governing Body following notice to surrounding property owners and publication. Decisions of the Governing Body are final.

5.31 Appeals to the Governing Body

A. Unless specified elsewhere in this ordinance, appeals of the City staff's decision relating to development design issues shall be considered by the Governing Body. Design issues include the application of adopted policies, design guidelines, and design manuals, as well as the application of site design and building design stipulations of approved PUD plans. Decisions of the Governing Body are final.

B. An application for appeal of a decision of the City staff relating to development design issues, which shall constitute a notice of appeal, shall be filed with the City Administrator within thirty (30) days of the date of the decision by the City staff which is being appealed.

C. The City Administrator or his/her designee shall prepare and transmit to Governing Body a complete record of all proceedings related to the appeal of development design issues.

5.32 Appeals to the Board of Zoning Appeals

A. Unless specified elsewhere in this ordinance, appeals of the building official or any other officer's interpretation of the provisions and standards of this ordinance shall be considered by the Board of Zoning Appeals unless otherwise required by the Governing Body. Such provisions and standards include but are not limited to such items as definitions, permitted uses, height and area regulations, development and performance standards, parking and loading, signage, landscaping and screening, storage, accessory uses, nonconforming situation and vested rights, subdivision regulations, etc.

B. An application for appeal from a decision of the City, the building official or any other officer administering the provisions of this ordinance, which shall constitute a notice of appeal, shall be filed with the City Administrator within thirty (30) days of the date of the decision by the officer administering this ordinance which is being appealed. A copy of the notice of appeal shall be served on the person whose decision is being appealed.

C. The officer whose decision is being appealed shall prepare and transmit to the Board of Zoning Appeals a complete record of all proceedings related to the appeal of the provisions of this ordinance.

5.33 Consideration of Variances

A. The Board of Zoning Appeals may grant a variance from the specific terms of this ordinance which would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship for the applicant, and provided that the spirit of this ordinance shall be observed, the public safety and welfare secured and substantial justice done for the applicant. Provided, however, that the board shall not have jurisdiction to grant a variance for property zoned under a planned development district classification.

B. An application for a variance may only be granted upon a finding by the Board of Zoning Appeals that all of the following conditions have been met:

1. That the variance requested arises from such condition which is unique to the property in question, is not ordinarily found in the same zone or district and is not created by an action or actions of the property owner or the applicant.
2. That the granting of the variance will not adversely affect the rights of adjacent property owners or residents.
3. That the strict application of the provisions of this ordinance would constitute unnecessary hardship upon the property owner represented in the application.
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
5. That granting the variance will not be opposed to the general spirit and intent of this ordinance.

C. Variances shall only be considered after a public hearing has been held, following publication notice and notice to surrounding property owners which border the property. A copy of the publication notice shall also be mailed to the applicant, Planning Commission and Governing Body. Proof of mailing and return receipts shall be filed under oath by the applicant with the City prior to the hearing.

5.34 Conditional Approvals

In approving any application, the Board of Zoning Appeals may stipulate that the approval is subject to compliance with certain specified conditions including, but not limited to, limitations on permitted uses, time of performance requirements, limitation on hours of operation, participation in transportation systems management programs, participation in improvement districts or other programs for financing public facilities, etc. Decisions by the Board of Zoning Appeals are final, but may be appealed under State law to the District Court.

5.35 Written Findings

Unless otherwise specifically provided in this ordinance, written findings are not required for a final decision on any application. Provided, however, that any decision may be expressly made subject to the

subsequent adoption of written findings and in such cases the decision shall not be considered final until such findings are adopted. Provided further that where an appeal of any quasi-judicial decision has been filed in the District Court of Sedgwick County pursuant of KSA 12-760 or KSA 60-2101(d) in cases where written findings have not been adopted, written findings shall be adopted by the Board of Zoning Appeals within forty-five (45) days of service of the appeal on the City and thereafter shall be certified to the district court as part of the administrative record. The forty-five (45) day time period for adoption and certification of findings may be extended with the permission of the district court.

5.36 Final Decision Where Ordinance Required

In the case of approval of a zoning text amendment, rezoning, special use permit or other application where adoption of an ordinance is required, the decision approving the application shall not be deemed to be final until the ordinance has been published in an official City newspaper. Except as otherwise provided herein, in all other cases, the decision shall be deemed final as of the date that the Board of Zoning Appeals votes to approve or deny the application.

5.37 Appeals of Final Decisions

Except where this ordinance provides for an appeal to another quasi-judicial or administrative body, any person, official or agency aggrieved by a final decision on an application provided for in this ordinance desiring to appeal said decision shall file the appeal in the district court of Sedgwick County with thirty (30) days of the making of the decision.

5.38 Filing Fees

Filing fees for all applications shall be established by resolution of the Governing Body.