

ARTICLE 9 ADMINISTRATION AND ENFORCEMENT**900 OFFICE OF THE ZONING ADMINISTRATOR**

A Zoning Administrator shall be appointed by the City Manager. The Zoning Administrator and clerical assistance as shall be approved from time to time and shall administer and enforce these regulations, except for those duties specifically assigned to the Clerk.

- A. **DUTIES OF THE ZONING ADMINISTRATOR.** (See Section 902 for Enforcement and Liability.)
1. Approve and issue all zoning permits and occupancy certificates and make and maintain records thereof.
 2. Conduct inspections of structures and uses of land to determine compliance with the provisions of these regulations.
 3. Maintain a set of administrative forms to assist applicants and to process the cases considered by the Planning Commission, Board of Zoning Appeals and Governing Body.
 4. Receive, file and forward to the Planning Commission the applications and records for all amendments and special uses which are initially filed with the Zoning Administrator.
 5. Receive, file and forward to the Board of Zoning Appeals the applications and records for all variances and conditional uses which are initially filed with the Zoning Administrator and forward all records of appeals to the Board upon request of the Secretary.
 6. Maintain permanent and current records of the zoning regulations, including but not limited to the zoning map(s), amendments, special uses, appeals, variances, conditional uses and applications thereof and records of hearings thereon.
 7. Provide such technical and clerical assistance as may be required by the Planning Commission, the Board of Zoning Appeals, the Governing Body, and other agencies and officials in the exercise of their duties relating to these regulations.
 8. Maintain for distribution to the public a supply of the current zoning regulations, the zoning map(s) and any rules of the Planning Commission and Board of Zoning Appeals. A fee may be charged to defray the cost of printing and distribution.

9. Maintain the official copy of the zoning map(s) showing the district boundaries. Such map(s) shall be marked "Official copy of zoning district map(s) incorporated into zoning regulations by adoption of Ordinance No. 1436 by the Governing Body of the City of Derby on the 3th day of November, 1992" and shall be open to inspection and available to the public at all reasonable business hours. Each map shall be signed by the Mayor and attested to by the Clerk. Periodic changes to the map(s) shall be noted by the revision date.

B. DUTIES OF THE CLERK. The Clerk shall maintain certain official model records and carry out certain responsibilities in the administration of these regulations as follows:

1. That not less than three copies of these regulations shall be marked by the Clerk as "Official Copy as Incorporated by Ordinance No. 1436" (i.e., the ordinance approved by the Governing Body) and all sections or portions thereof intended to be omitted clearly marked to show any such omissions or showing the articles, sections or portions that are incorporated and to which shall be attached a copy of the incorporating ordinance. Such copies maintained by the Clerk shall be open to inspection and available to the public at all reasonable business hours.
2. That the Clerk supply the Zoning Administrator and the applicable police department, court and all administrative departments of the City charged with the enforcement of the regulations official copies similarly marked as described in Section 900(B)(1), as well as any amendments to these regulations which shall be appended to the copies, and all at the cost to the City.
3. That such clerical assistance be provided by the Clerk to the Governing Body as to facilitate and record the actions of the Governing Body in the exercise of their duties relating to these regulations.

901 ZONING PERMITS AND OCCUPANCY CERTIFICATES ***A. Zoning Permits**

1. Unless a zoning permit shall first have been obtained from the Zoning Administrator, the construction, reconstruction, moving or structural alteration of any building or structure or the improvement of land prior to its use shall not be commenced. Such permits shall not be issued by any other official, employee, department, board or agency of the City. Any zoning permit issued in conflict with the provisions of these regulations shall be null and void.
2. Except for a continuation of an existing use or occupancy, accessory structures or uses, or additions to existing structures or uses, permits must also meet the requirements of the City Subdivision Regulations and, thus, shall not be issued on land which is not shown on a recorded plat or replat or a lot split or exempted from the platting requirements. If platting is not required, all of the public improvements necessary to carry out the requested permit nevertheless may be required, including dedication in lieu of platting such as for easements and additional right-of-way.
3. (a) Except as otherwise provided in this subsection, no principal or accessory building or structure shall be located on or within, or project over, any platted or dedicated public or other utility easement or known utility improvement or installation.

(b) An accessory structure that is movable or otherwise will not, in the judgment of the City engineer, significantly obstruct a public or utility easement, or the maintenance, repair, replacement or reconstruction of a public or utility improvement or installation located within any such easement, including any authorized future use thereof, may be located within or project over such utility easement, improvement or installation; provided, that the owner thereof shall post and continuously maintain in a conspicuous place upon such building or structure, the following notice:

*“This structure is located within a public utility easement.”
Neither the City of Derby nor any utility company with facilities located within this easement is liable for damage to or destruction of this structure as a result of maintenance, repair or replacement activities, or installation of new facilities, within this easement.”*
4. A zoning permit is not initially required for grading and/or excavating a proposed construction site, unless the site is located

in the Flood Plain District and would result in an increase in flood levels. (See Section 416 for flood plain district.)

5. **Application.** Every application for a zoning permit shall be accompanied by the following:
 - a. A drawing or copy of the plat, in duplicate, of the piece or parcel of land, lot(s), or block(s), or parts or portions thereof, drawn to scale showing the actual dimensions of the zoning lot(s), including any easements thereon.
 - b. A drawing, in duplicate, drawn to scale and in such form as may, from time to time, be prescribed by the Zoning Administrator, showing the location, ground area, height, and bulk of (1) all present and proposed structures, (2) drives and parking spaces, and loading areas, (3) building setback lines in relation to lot lines, (4) waste disposal areas, (5) the use to be made of such present and proposed structures on the land, and (6) such other information as may be required by the Zoning Administrator for the proper enforcement of these regulations.

One copy of such drawings shall be retained by the Zoning Administrator as a public record.

6. **Issuance.** A zoning permit shall be either issued or disapproved by the Zoning Administrator within 10 days after the receipt of an application thereof or within such further period as may be agreed to by the applicant. When the Zoning Administrator refuses to issue a zoning permit, he shall advise the applicant in writing of the reasons for the disapproval.
7. **Period of Validity.** A zoning permit shall become null and void 60 days after the date on which it is issued, unless within said period construction, reconstruction, moving, or structural alteration of a structure is commenced or a use is commenced. If the construction or work is abandoned or suspended for any 120 day period after such a permit is issued, then application must be made for an extension of time to continue the project. The zoning Administrator may grant reasonable extensions of time provided no changes have been made in any applicable regulations. If such changes have occurred, application must be made for a new permit based on the provisions of the new or amended regulations in order to continue the project, unless Section 201(G) applies pertaining to vesting of single-family residential developments. [See Section 201(F) for Effect of Existing Permits].

** *The City may issue zoning permits and occupancy certificates concurrently with the process of issuing building and occupancy permits under City building codes.*

B. Occupancy Certificates. No structure or addition thereto constructed, reconstructed, moved or altered after the effective date of these regulations shall be occupied or used for any purpose; and no land vacant on the effective date of these regulations shall be used for any purpose; and no use of any land or structure shall be changed to any other use, unless an occupancy certificate shall first have been obtained from the Zoning Administrator certifying that the proposed use or occupancy complies with all the provisions of these regulations.

1. Application. Every application for a zoning permit shall be deemed to be an application for an occupancy certificate. Every application for an occupancy certificate for a new or changed use of land or structures where no zoning permit is required shall be filed with the Zoning Administrator and be in such form and contain such information as the Administrator shall provide by general rules.

2. Issuance.

a. No occupancy certificate for a structure or addition thereto constructed, reconstructed, moved, or structurally altered after the effective date of these regulations until such work has been completed and the premises inspected and certified by the Zoning Administrator to be in full and complete compliance with the plans and specifications upon which the Zoning permit was issued.

b. Pending the issuance of a permanent occupancy certificate, a temporary occupancy certificate may be issued to be valid for a period not to exceed six months from its date pending the completion of any addition or improvements or during partial occupancy of the premises; provided, satisfactory guarantees are submitted including the possible use of performance bonds or escrow accounts. An occupancy certificate shall be issued or written notice shall be given to the applicant stating the reasons why a certificate cannot be issued within 10 days after the receipt of an application therefore or after the Zoning Administrator is notified in writing that the structures or premises are ready for occupancy.

902 ENFORCEMENT AND LIABILITY

- A. It shall be the duty of the Zoning Administrator to enforce the provisions of these regulations in consultation with the City Attorney in the following manner.
1. To refuse to issue any zoning permit or occupancy certificate for any building structure or use of any premises which would violate any of the provisions herein.
 2. To revoke a zoning permit and issue a stop order at any time for a building or structure or use for which the same was issued when it shall appear (1) that there is a departure from the plans, specifications or conditions as required under terms of the permit; (2) that the permit was procured by false representation; (3) that it was issued by mistake (4) that it violates any provisions of the zoning regulations.
 3. To cause any building, structure, place or premises to be inspected and examined as required by these regulations and to order in writing the remedying of any condition found to exist therein or threat in violation of any provisions herein.
 4. To institute any appropriate action or proceedings to prevent such unlawful action or use or to restrain, correct or abate such violation on or about the premises of any structure which is constructed, reconstructed, moved or altered or land is used in violation of any provisions herein.
- B. The Zoning Administrator or designee charged with the enforcement of these regulations, acting in good faith and without malice in the discharge of the duties described herein, shall not be personally liable for any damage that may accrue to persons or property as a result of any act or by reason of an act or omission in the discharge of such duties. A suit brought against the Administrator because of an act or omission performed by the Administrator in the enforcement of any provision of these regulations or other pertinent laws or ordinances implemented through the enforcement of these regulations shall be defended by the City until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by the City. (See K.S.A. 75-6101, et seq. in general and K.S.A. 75-6109 specifically.)

903 VIOLATIONS

- A. **Penalties.** Pursuant to K.S.A. 12-761, as amended, any violations of these regulations shall be deemed to be a misdemeanor. The owner or agent of a building, structure or premises in or upon which a violation of any provision of these regulations has been committed or shall exist or the lessee or tenant of an entire building or entire premises in or upon which a violation has been committed or shall exist; or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building, structure or premises in or upon which a violation has been committed or shall exist, shall be punished by a fine not to exceed \$500 or by imprisonment for not more than six months for each offense or by both such fine and imprisonment. Each days violation shall constitute a separate offense.
- B. **Remedies.** In case any building or structure is erected, constructed, reconstructed, structurally altered, converted or maintained; or any building, structure or land is used or is proposed to be used in violation of these regulations, the appropriate authorities of the City of Derby, in addition to using other remedies, may institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or to correct or abate such structure or land. In addition to the City, any person, the value or use of whose property is or may be affected by such violation, shall have the authority to maintain suits or actions in any court of competent jurisdiction to enforce these regulations and to abate nuisances in violation thereof.
- C. **Flood Plain Violations.** Any person, company, corporation, institution, municipality or agency of the state who violates any provision of the flood plain provisions of these regulations shall be subject to the penalties and remedies as provided in Section 903(A) and(B) above. Such remedies may also be instituted by the Attorney General and the Chief Engineer of the Division of Water Resources of the Kansas State Board of Agriculture.

904 FEES

For purposes of wholly or partially defraying the costs of the administrative and enforcement provisions described in these regulations, including publication costs, the applicant upon filing an application for an amendment, special use, appeal, variance, conditional use or a zoning permit including occupancy certificates shall pay the Clerk a fee according to the fee schedule approved by the Governing Body. No part of such fee shall thereafter be refunded.

905 REPORTS.

The Zoning Administrator shall periodically report verbally or in writing to the Governing Body and the Planning Commission a summary of all zoning permits issued during the preceding period, giving details of any permitted variations, as well as the current status of all application in process for amendments, special uses, appeals, variances and conditional uses. Such a report shall include comments on any problems encountered in the administration or enforcement of these regulations, which may especially be of use at the annual review established by Section 1105.