## **ARTICLE 4**

## DISTRICT REGULATIONS

# PART 1. RESIDENTIAL DISTRICTS

4-101 **R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT**. The R-1 Single Family Residential District is designed to provide a single-family dwelling zone.

## A. PERMITTED USES:

- 1. Agriculture, as defined in these Regulations.
- 2. Single-family dwellings.
- 3. Parks and playgrounds.
- 4. Accessory and temporary uses, as permitted by Article 5.
- 5. Signs, as permitted by Article 6.

# B. CONDITIONAL USES:

- 1. Swimming clubs, tennis clubs, golf courses and clubhouses accessory thereto. Golf courses shall not include golf driving ranges, pitch and putt or miniature golf.
- 2. (Repealed Ord. No.1326, δIV, 6-22-98).
- 3. YMCA, YWCA and other similar uses, as defined in these Regulations.
- 4. Home occupations, as defined in these Regulations.
- 5. Group Day Care Home, as defined in Section 3-602B.
- 6. Day Care Home, as defined in Section 3-602A.
- 7. Roomers and boarders.
- 8. Churches, chapels, temples and synagogues.
- 9. Schools: primary, intermediate and secondary.
- 10. Church offices.(Ord. No. 1614,§ 2;2-23-09)

# C. LOT SIZE REQUIREMENTS:

- 1. Minimum lot area:
  - a. Single-family dwellings R-1: 10,000 square feet of land.
  - b. All other permitted and conditional uses: 15,000 square feet of land.
  - c. Whenever one lot does not meet the required square footage to constitute one building lot to be developed by an individual landowner or developer and part or all of another lot is combined to meet the minimum lot size, a replat will not be required. However, where more than two building lots or a subdivision is proposed a replat must be approved.

## 2. Minimum lot width:

- a. Single-family dwellings R-1: Seventy-five feet (75)
- b. All other permitted and conditional uses: Seventy-five feet (75).
- 3. Minimum lot depth: One hundred feet (100).

# D. BULK REGULATIONS

- 1. The maximum structure height: Thirty-five feet (35).
- 2. Yard Requirements:
  - a. Minimum front yard: Thirty feet (30).
  - b. Minimum side yards:
    - (1) Residential buildings: seven (7) feet on each side of the zoning lot. (Ord. No. 1178 § 10/25/93)
    - (2) All other permitted and conditional uses: Fifteen (15) feet on each side of the zoning lot, except accessory uses which shall be permitted and governed by Article 5.
  - c. Minimum rear yard: Twenty-five (25) feet.

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d. Minimum structure size: Single story: 900 square feet, not to include garages, porches and unenclosed carports and basements except in architecturally designed split levels. Two story: 1250 square feet, not to include garages, porches and unenclosed carports and basements except in architecturally designed split levels.

- 3. Off-street parking and loading as required in Article 7.
- 4-102 **R-2 SINGLE-FAMILY RESIDENTIAL DISTRICT**. The R-2 Single-Family Residential District is designed to provide a single-family dwelling district on smaller building lots.

## A. PERMITTED USES:

- 1. Agriculture, as defined in these Regulations.
- 2. Single-family dwellings.
- 3. Parks and playgrounds.
- 4. Accessory and temporary uses, as permitted by Article 5.
- 5. Signs, as permitted by Article 6.

# B. CONDITIONAL USES:

- 1. Swimming clubs, tennis clubs, golf courses and clubhouses accessory thereto. Golf courses shall not include golf driving ranges, pitch and putt or miniature golf.
- 2. (Repealed Ord. No.1326, δIV, 6-22-98).
- 3. YMCA, YWCA and other similar uses, as defined in these Regulations.
- 4. Home occupations, as defined in these Regulations.
- 5. Group Day Care Home, as defined in Section 3-602B.
- 6. (Repealed Ord. No. 1326, δIV, 6-22-98)
- 7. Churches, chapels, temples and synagogues.
- 8. Schools: primary, intermediate and secondary.
- 9. Church offices.

10. Day Care Home, as defined in Section 3-602A.(Ord No.1614 § 3; 2-23-09)

# C. LOT SIZE REQUIREMENTS:

## 1. Minimum lot area:

- a. Single-family dwellings R-2: Seventy five hundred (7,500) square feet of land.
- b. All other permitted and conditional uses: Fifteen thousand (15,000) square feet of land.
- c. Whenever one lot does not meet the required square footage to constitute one building lot to be developed by an individual landowner or developer, and part or all of another lot is combined to meet the minimum lot size, a replat will not be required. However, where more than two building lots or a subdivision is proposed, a replat must be approved.

# 2. Minimum lot width:

- a. Single-family dwellings R-2: Seventy (70) feet.
- b. All other permitted and conditional uses: Seventy (70) feet.
- 3. Minimum lot depth: One hundred (100) feet.

# D. BULK REGULATIONS:

- 1. The maximum structure height: Thirty-five (35) feet.
- 2. Yard Requirements:
  - a. Minimum front yard: Thirty (30) feet.
  - b. Minimum side yards:
    - (1) Residential buildings: seven (7) feet on each side of the zoning lot. (Ord. No. 1178 § 10/25/93)

- (2) All other permitted and conditional uses: fifteen (15) feet on each side of the zoning lot, except accessory uses which shall be permitted and governed by Article 5.
- c. Minimum rear yard: Twenty-five (25) feet.
- d. Minimum structure size: Single story: Eight hundred (800) square feet per unit, not to include garages, porches, unenclosed carports and basements except in architecturally designed split levels. Two story: Eleven hundred (1100) square feet per unit, not to include garages, porches, unenclosed carports and basements except in architecturally designed split levels.
- 3. Off-street parking and loading as required by Article 7.

# **4-103** R-3 TWO-FAMILY RESIDENTIAL DISTRICT (DUPLEX). R-3 District is designed to provide a two-family residential development.

#### A. PERMITTED USES:

- 1. Single-family dwellings, R-1.
- 2. Two-family dwellings, R-3.
- 3. Parks and playgrounds.
- 4. Accessory and temporary uses, as permitted by Article 5.
- 5. Signs, as permitted by Article 6.

#### B. CONDITIONAL USES:

- 1. Swimming clubs, tennis clubs, golf courses and clubhouses accessory thereto. Golf courses shall not include golf driving ranges, pitch and putt or miniature golf.
- 2. Group Day Care Home, as defined in Section 3- 602B.
- 3. Repealed.
- 4. YMCA, YWCA and other similar uses, as defined in these Regulations.
- 5. Hospitals and other similar institutions, provided that they shall be screened from adjacent residential property and shall be located on an arterial street.
- 6. Home occupations as defined in these Regulations, only in single-

family dwellings.

- 7. Repealed.
- 8. Churches, chapels, temples and synagogues.
- 9. Parks and playgrounds.
- 10. Schools: primary, intermediate and secondary.
- 11. Church offices.
- 12. Day Care Home, as defined in Section 3- 602A.

## C. LOT SIZE REQUIREMENTS

- 1. Minimum lot area:
  - a. Single-family dwelling: Ten thousand (10,000) square feet of land area.
  - b. Single-family attached dwellings and two-family dwellings: 6,250 square feet of land area per dwelling unit with the provision that no single lot may be less than 12,500 square feet in land area.
  - c. All other permitted and conditional uses: 12,500 square feet of land.
  - d. Whenever one lot does not meet the required square footage to constitute one building lot to be developed by an individual landowner or developer and part or all of another lot is combined to meet the minimum lot size, a replat will not be required. However, where more than two building lots or a subdivision is proposed a replat must be approved.

#### 2. Minimum lot width:

- a. Single-family dwellings R-1: Seventy-five (75) feet.
- b. Two-family dwellings R-3: One hundred (100) feet.
- c. All other permitted and conditional uses: One hundred (100) feet.
- 3. Minimum lot depth: One hundred (100) feet.

## D. BULK REGULATIONS:

1. Maximum structure height: Forty (40) feet.

- 2. Yard requirements:
  - a. Minimum front yard: Thirty (30) feet.
  - b. Minimum side yard:
    - (1) Residential buildings: seven (7) feet on each side of the zoning lot.
    - (2) All other permitted and conditional uses: twenty (20) feet required on each side of the zoning lot, except accessory uses which shall be permitted and governed by Article 5.
  - c. Minimum rear yard: Twenty five (25) feet.
  - d. Minimum structure size: Single story: 1100 square feet, not to include garages, porches, unenclosed carports and basements except in architecturally designed split levels. Two story: 1250 square feet, not to include garages, porches, unenclosed carports and basements except in architecturally designed split levels.
- 3. Off-street parking and loading as required in Article 7.

#### E. TWO-FAMILY LOT SPLITS:

- A lot split request for a legally described lot containing a two-family dwelling unit may be granted so long as such lot split occurs along the interior common wall of the unit and extends along such line to the edge of the lot. A lot split may be granted no more than one time for any given lot containing a two-family dwelling unit and shall only be permissible for those structures originally constructed as a two-family dwelling unit. Additionally, no lot split request will be approved unless, at the time of the requested split, the two-family dwelling unit and underlying lot are in compliance with Section 4-103A (PERMITTED USES), 4-103C (LOT SIZE REQUIREMENTS) and 4-103D (BULK REGULATIONS).
- 2. The standards for a two-family lot split are defined in Article 14A of the Merriam Subdivision Regulations.
- 3. All structures that are properly shown on the two-family lot split application at the time of the application submittal, provided that their use and location do not change from the time that the lot-split application is filed with the Community Development Department, shall be considered to be conforming to these Zoning Regulations after the two-family lot split has been filed with the County. Any future expansion of the structure must comply with all applicable Zoning Regulations.

4-104 R-4 MULTIPLE-FAMILY RESIDENTIAL DISTRICT. The R-4 District is designed to

provide for multiple-family development.

#### A. PERMITTED USES:

- 1. Single-family dwellings, R-1.
- 2. Two-family dwellings.
- 3. Multiple-family dwellings.
- 4. Parks and playgrounds.
- 5. Accessory and temporary uses, as permitted by Article 5.
- 6. Signs, as permitted by Article 6.

# B. CONDITIONAL USES:

- 1. Swimming clubs, tennis clubs, golf courses and clubhouses accessory thereto. Golf courses shall not include golf driving ranges, pitch and putt or miniature golf.
- 2. Group Day Care Home, as defined in Section 3-602B.
- 3. Repealed.
- 4. YMCA, YWCA and other similar uses, as defined in these Regulations.
- 5. Hospitals and other similar institutions, provided that they shall be screened from adjacent residential property and shall be located on an arterial street.
- 6. Mortuaries.
- 7. Repealed.
- 8. Churches, chapels, temples and synagogues.
- 9. Parks and playgrounds.
- 10. Schools: primary, intermediate and secondary.
- 11. Church offices.
- 12. Day Care Home, as defined in Section 3-602A.

## C. LOT SIZE REQUIREMENTS:

1. Minimum lot area:

- a. Single-Family dwellings, R-1: 10,000 square feet of land.
- b. Single Family attached or two-family dwellings, R-3: 6,250 square feet of land per family unit.
- c. Multiple-family, R-4: 15,000 square feet of land for a three family unit or more and a minimum of 3,000 square feet of land for each dwelling unit, except that one acre shall be required when a rezoning request is considered that is not adjacent to an existing R-4 or R-5 zone.
- d. Other permitted and conditional uses: one acre of land.
- e. Whenever one lot does not meet the required square footage to develop and part or all of another lot is combined to constitute one lot, a replat shall not be required. However, where more than two building lots or a subdivision is proposed, a replat must be approved.

#### 2. Minimum lot width:

- a. Single-family dwellings, R-1: Seventy-five (75) feet.
- b. Two-family dwellings, R-3: One hundred (100) feet.
- c. All other permitted and conditional uses: One hundred (100) feet.
- 3. Spacing of buildings: In addition to the requirement specified in Section 4-104-C-2-(b), the following building spacings shall apply: All garden apartment buildings shall be so arranged or grouped as to have a reasonably widely spaced distribution over the entire premises. In addition, the buildings shall be so arranged that maximum light, air and open space shall be so located as to best serve the entire project. All garden apartment buildings shall be of new construction, and no existing dwellings may be moved or altered for use as garden apartments.

No two buildings or opposite portions of the buildings shall have a closer relationship than the following:

- a. Back of dwelling unit to back of dwelling unit, forty (40) feet.
- b. Front of dwelling unit to front of dwelling unit, fifty (50) feet.
- c. End to end, twenty (20) feet.
- d. Corner to corner, fifteen (15) feet.
- e. End to back of dwelling unit, twenty-five (25) feet.

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- f. End to front of dwelling unit, forty (40) feet.
- g. No dwelling unit shall face directly upon the rear of another dwelling unit.
- h. Service areas, vestibules, porches, balconies, and canopies not extending more than ten (10) feet from the building shall be excluded from the clearance requirements of subparagraphs (a) and (g) inclusive.
- i. Where the walls of two buildings face each other and the portions of the faces which overlap, or are directly opposite each other, do not exceed fifteen (15) feet in length, and said overlapping portions do not contain windows, the distance between the walls may not be less than nine (9) feet.

# 4. Minimum lot depth:

- a. Single-family dwellings, R-1: One hundred (100) feet.
- b. Two-family dwellings, R-3; One hundred twenty-five (125) feet.
- c. All other permitted and conditional uses: One hundred fifty (150) feet.

#### D. BULK REGULATIONS:

- 1. Maximum structure height: Forty (40) feet.
- 2. Yard requirements:
  - a. Minimum front yard: Thirty (30) feet.
  - b. Minimum side yard:
    - (1) Residential buildings: ten (10) feet on each side of the zoning lot, except at residential buildings which have the entrances to two or more units facing the side yard shall have a minimum side yard of twenty (20) feet on the side of the building on which such entrances are located.
    - (2) All other permitted and conditional uses shall have a side yard of 15 feet on each side, except accessory uses, which shall be permitted and governed by Article 5.
    - (3) Off-street parking and loading as permitted in Article 7.
  - c. Minimum rear yard: Twenty-five (25) feet.

E. An environmental impact study regarding traffic, noise, lighting, parking, stormwater and/or other aesthetic aspects shall be required on a rezoning application as determined by the Zoning Administrator.

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#### F. TWO-FAMILY LOT SPLITS:

- A lot split request for a legally described lot containing a two-family dwelling unit may be granted so long as such lot split occurs along the interior common wall of the unit and extends along such line to the edge of the lot. A lot split may be granted no more than one time for any given lot containing a two-family dwelling unit and shall only be permissible for those structures originally constructed as a two-family dwelling unit. Additionally, no lot split request will be approved unless, at the time of the requested split, the two-family dwelling unit and underlying lot are in compliance with Section 4-103A (PERMITTED USES), 4-103C (LOT SIZE REQUIREMENTS) and 4-103D (BULK REGULATIONS).
- 2. The standards for a two-family lot split are defined in Article 14A of the Merriam Subdivision Regulations.
- 3. All structures that are properly shown on the two-family lot split application at the time of the application submittal, provided that their use and location do not change from the time that the lot-split application is filed with the Community Development Department, shall be considered to be conforming to these Zoning Regulations after the two-family lot split has been filed with the County. Any future expansion of the structure must comply with all applicable Zoning Regulations.

**4-105** R-5 MULTIPLE-FAMILY RESIDENTIAL DISTRICT (HIGH-RISE): The R-5 District is designed to provide for multiple-family high-rise development.

# A. PERMITTED USES:

- 1. Single-family dwellings, R-1.
- 2. Two-family dwellings, R-3.
- 3. Multi-family dwellings.
- 4. Parks and playgrounds.
- 5. Accessory and temporary uses, as permitted in Article 5.
- 6. Signs, as permitted by Article 6.

#### B. CONDITIONAL USES:

1. Swimming clubs, tennis clubs and clubhouses accessory to golf courses. Golf courses shall not include golf driving ranges, pitch and

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- putt or miniature golf.
- 2. Group Day Care Home, as defined in Section 3-602B.
- 3. Repealed.
- 4. YMCA, YWCA and other similar uses, as defined in these Regulations.
- 5. Hospitals and other similar institutions provided that they shall be screened from adjacent residential property and shall be located on an arterial or collector street.
- 6. Mortuaries.
- 7. Repealed.
- 8. Modular residential units.
- 9. Churches, chapels, temples and synagogues.
- 10. Parks and playgrounds.
- 11. Schools: primary, intermediate and secondary.
- 12. Church offices.
- 13. Day Care Home, as defined in Section 3-602A.

## C. LOT SIZE REQUIREMENTS:

- 1. Minimum lot area:
  - a. Single-family dwellings, R-1: 10,000 square feet of land.
  - b. Single-family attached or two-family dwellings, R-3: 6,250 square feet of land area per dwelling unit.
  - c. Multiple-family (R-4): 15,000 square feet of land area for a three family unit and a minimum of 3,000 square feet of land for each unit except that one acre shall be required when a rezoning request considered that is not adjacent to an existing R-4 or R-5 zone, for the protection of adjacent property.
  - d. Multiple Family High Rise, R-5: 1,000 square feet of land per unit with a minimum of 22,500 square feet of land area, except that one acre shall be required when a rezoning request is considered that is not adjacent to an existing R-5 zone.
  - e. Other permitted and conditional uses: one acre of land.
  - f. Whenever one lot does not meet the required square footage

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to constitute one building lot to be developed by an individual landowner or developer, and part or all of another lot is combined to meet the minimum lot size, a replat will not be required. However, where more than two building lots or a subdivision is planned, a replat must be submitted for approval.

#### 2. Minimum lot width:

- a. Single-family dwellings, R-1: Seventy-five (75) feet.
- b. Two-family dwellings, R-3: One hundred (100) feet.
- c. Multi-family dwellings (R-4): One hundred (100) feet.
  - (1) Spacing of buildings: in addition to the requirement specified in 4-105(C)(2)(c), the following building spacings shall apply: All apartment buildings shall be so arranged or grouped as to have a reasonably widely spaced distribution over the entire premises. In addition, the buildings shall be so located as to best serve the entire project. All apartment buildings shall be of new construction, and no existing dwellings may be moved or altered for use as apartments.
  - (2) No two buildings or opposite portions of the buildings shall have a closer relationship than the following:
    - (a) Back of dwelling unit to back of dwelling unit, forty (40) feet.
    - (b) Front of dwelling unit to front-of dwelling unit, fifty (50) feet.
    - (c) End to end, twenty (20) feet.
    - (d) Corner to corner, fifteen (15) feet.
    - (e) End to back of dwelling unit, twenty-five (25) feet.
    - (f) End to front of dwelling unit, forty (40) feet.
    - (g) No dwelling unit shall face directly upon the rear of another dwelling unit.
    - (h) Service areas, vestibules, porches, balconies, and canopies not extending more than ten (10) feet from the building shall be excluded from the clearance requirements of subparagraphs (a) to (g) inclusive.
    - (i) Where the walls of two buildings face each other and the portions of the faces which overlap or are directly opposite each other do not exceed fifteen (15) feet in length and said overlapping portions do not contain windows, the distance between the walls may not be less than nine (9) feet.

- 3. Minimum lot depth:
  - a. Single-family dwellings, R-1: One Hundred (100) feet.
  - b. Two-family dwellings, R-3: One hundred twenty five (125) feet.
  - c. All other permitted and conditional uses: One hundred fifty (150) feet.

#### D. BULK REGULATIONS:

- 1. Maximum structure height: 85 feet, not including chimneys or elevator penthouses with square footage not exceeding the elevator shaft.
- 2. Yard requirements:
  - a. Minimum front yard: 30 feet.
  - b. Minimum side yard:
    - (1) Residential buildings; fifteen (15) feet on each side of the zoning lot, except that residential buildings that have the entrance to two or more units facing the side yard shall have a minimum side yard of twenty (20) feet on the side of the building on which such entrances are located.
    - (2) All other permitted and conditional uses shall have a side yard on each side of twenty (20) feet, except accessory uses which shall be permitted and governed by Article 5.
  - c. Minimum rear yard: Twenty-five (25) feet.
- 3. Off-street parking and loading as required in Article 7.
- E. An environmental impact study, regarding traffic, lighting, noise, parking, stormwater and/or other aesthetic aspects may be required on a rezoning application as determined by the Zoning Administrator.

## F. TWO-FAMILY LOT SPLITS:

1. A lot split request for a legally described lot containing a two-family dwelling unit may be granted so long as such lot split occurs along the interior common wall of the unit and extends along such line to the edge of the lot. A lot split may be granted no more than one time for any given lot containing a two-family dwelling unit and shall only be permissible for those structures originally constructed as a two-family dwelling unit. Additionally, no lot split request will be approved unless,

at the time of the requested split, the two-family dwelling unit and underlying lot are in compliance with Section 4-103A (PERMITTED USES), 4-103C (LOT SIZE REQUIREMENTS) and 4-103D (BULK REGULATIONS).

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- 2. The standards for a two-family lot split are defined in Article 14A of the Merriam Subdivision Regulations.
- 3. All structures that are properly shown on the two-family lot split application at the time of the application submittal, provided that their use and location do not change from the time that the lot-split application is filed with the Community Development Department, shall be considered to be conforming to these Zoning Regulations after the two-family lot split has been filed with the County. Any future expansion of the structure must comply with all applicable Zoning Regulations.(Ord No. 1662; 11-22-2010)
- 4-106 **PLANNED UNIT DEVELOPMENT** shall comply with the zoning regulations set forth in Article 4, Part 1, except as otherwise provided in Article 9 of these Regulations.

# 4-107 CONDOMINIUM RESIDENTIAL DISTRICTS

## A. DEFINITIONS:

- 1. CONDOMINIUM RESIDENTIAL DISTRICT: A zoning district designed exclusively for owner occupied single-family, two-family and multiple-family residential use. Every Condominium Residential District (CRD) shall be designated for one of the following uses:
  - a. Low Density Residential (L).
  - b. Moderate Density Residential (M).
  - c. High Density Residential (H).
- 2. CONDOMINIUM: A residential building containing two or more dwelling units which shall be separately owned in fee, and shall be owner occupied. The land on which the building is built may be 4-owned by the owner of a condominium within the building or by an association.

#### B. PERMITTED USES:

- 1. Single-family dwellings.
- 2. Two-family dwellings.
- 3. Multiple-family dwellings.
- 4. Parks and playgrounds.

- 5. Accessory and temporary uses, as permitted by Article 5 of the Zoning Regulations.
- 6. Signs, as permitted by Article 6 of the Zoning Regulations.

## C. CONDITIONAL USES:

- 1. Swimming clubs, tennis clubs, golf courses and clubhouses accessory thereto. Golf courses shall not include golf driving ranges, pitch and putt or miniature golf.
- 2. (Repealed Ord. No.1326, δIV, 6-22-98).
- 3. Group Day Care Home, as defined in Section 3-602B.
- 4. Home occupations as defined in these Regulations, only in single-family dwellings.
- 5. (Repealed Ord. No. 1326, δIV, 6-22-98)
- 6. Churches, chapels, temples and synagogues.
- 7. Schools: primary, intermediate and secondary.
- 8. Church offices.
- 9. Day Care Home, as defined in Section 3-602A. (Ord. No. 1614 § 7; 2-23-09)

# D. LOT SIZE REQUIREMENTS AND BULK REGULATIONS:

1. Low Density Residential.

Condominium Residential Districts designated for Low Density Residential use (CRD-L) shall comply with the Lot Size Requirements and Bulk Regulations contained in Article 4, R-1 Single-Family Residential District, Section 4-101, except that the density within the development shall not exceed 3-1/2 units per acre.

2. Moderate Density Residential.

Condominium Residential Districts designated for Moderate Density Residential use (CRD-M) shall comply with the Lot Size Requirements and Bulk Regulations contained in Article 4, R-3 Two-Family Residential District, Section 4-103.

3. High Density Residential.

Condominium Residential Districts designated for High Density Residential use (CRD-H) shall comply with the Lot Size Requirements and Bulk Regulations contained in Article 4, R-4 Multiple-Family Residential District, Section 4-104. The minimum lot size for any CRD-H development shall be not less than one acre in area.

# E. REVIEW AND APPROVAL PROCESS:

All Condominium Residential Districts shall be subject to the same review and approval procedures applicable to Planned Districts contained in Sections 4-401 (B) and (C) of these Regulations.

# PART 2. COMMERCIAL DISTRICTS

4-201 **C-O, OFFICE DISTRICT**: This district is designed to provide for restricted commercial and office activities adjacent to arterial and collector streets and highways, but at the same time, avoiding strip commercial development.

## A. Permitted Uses:

- 1. Business and professional offices, provided that any storage space associated with such offices shall not exceed 30 percent of the gross floor area of the principal structure.
- 2. Medical care facilities (excluding hospitals).
- 3. Mortuaries and funeral homes.
- 4. Banks and financial institutions.
- 5. The following uses would be permitted and located in an office building or health care facility, provided that such uses could be accessed only from an interior lobby or hallway and there is no advertising or display visible from the exterior of the structure:
  - (a) Barber, beauty, florist and gift shops;
  - (b) Drugstore;
  - (c) Newsstands; and

- (d) Restaurants (excluding private clubs and drinking establishments as defined in the Merriam Code of Ordinances).
- 6. Tennis clubs and accessory uses thereto, including but not limited to, indoor and outdoor tennis courts and swimming pools.

#### B. CONDITIONAL USES:

The following uses may be permitted as conditional uses:

- 1. Mail order houses.
- 2. Research laboratories.
- 3. Multiple-family residential, subject to applicable requirements contained in these Regulations.
- 4. All uses permitted as conditional uses in the R-4 District.
- 5. Day Care Center. (Ord. No. 1614 § 8; 2-23-09)

# C. LOT SIZE REQUIREMENTS:

- 1. Minimum lot area: 12,500 square feet of land.
- 2. Minimum lot width: Seventy-five (75) feet.
- 3. Minimum lot depth: One hundred (100) feet.

# D. BULK REGULATIONS:

- 1. Maximum structure height: 85 feet, (except multiple-family development which shall be governed by the regulations for the R-4 or R-5 residential districts) provided that there shall be one additional foot of setback on the side yards for each additional two feet of height over 40 feet.
- 2. Minimum yard requirements:
  - a. Minimum front yard: thirty (30) feet on all sides abutting a street as required in Section 4-202 (D) (2) (a) (1), (2), and (3). (Ord. No. 1178 § 10/25/93)
  - b. Minimum side yard: The sum of both sides shall equal twenty (20) feet except when a side yard in this district abuts a

- residential district, a side yard sum of twenty-five (25) feet shall be required.
- c. Minimum rear yard: Fifteen (15) feet when abutting a commercial zoning district, however, twenty-five (25) feet shall be required when abutting a residential district.

- d. If a lot in a commercial district adjoins a residential district, screening shall be provided at the lot lines sufficient to protect, on a year-round basis, the privacy of adjoining residential areas.
- 3. Off-street parking and loading as required in Article 7.

# E. USE LIMITATIONS:

- 1. All business, service, storage and display of goods shall be conducted within a completely enclosed structure, (except as provided in Article 4, Section 201(A) (6).
- 2. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any property located in a residential district and so that no glare is visible to any traffic on any public street.
- 3. Solid screening of not less than 6 feet in height shall be provided along all lot lines that abut a residential district.
- 4. For each zoning lot, there shall be only one curb cut permitted on a street. Such curb cut shall not be greater than 35 feet in event a lot is 50 feet or less in width.
- 5. Off-street parking and loading areas associated with the uses permitted in this distict shall not be permitted in any required front yard.
- F. An environmental impact study, regarding traffic, lighting, noise, parking, stormwater and/or other aesthetic aspects may be required on a rezoning application as determined by the Zoning Administrator.
- 4-202 **C-1, NEIGHBORHOOD SHOPPING DISTRICT:** The Neighborhood Shopping District is designed to permit areas of convenience shopping facilities so located to serve one or more residential neighborhoods.

## A. PERMITTED USES:

- 1. Any use specifically listed as a permitted use in the C-O, Office District.
- 2. Barber, hobby, beauty, garden, florist, antique, shoe, tailor, jewelry and gift shops.
- 3. Food, drug, hardware, applicance, dry goods and clothing stores.
- 4. Camera and photographic supply stores.

- 5. Musical instrument sales and services.
- 6. Day Care Center.(Ord. No. 1614 § 9; 2-23-09)
- 7. Dry cleaning and laundry receiving stations where no processing or cleaning of clothing is done on the premises.
- 8. Restaurants (excluding private clubs and drinking establishments as defined in the Merriam Code of Ordinances).
- 9. Accessory and temporary uses, as permitted by Article 5.
- 10. Signs, as permitted by Article 6.

# B. CONDITIONAL USES:

- 1. (Repealed Ord. No.1326, δIV, 6-22-98).
- 2. Automobile service stations and tire, battery and automobile accessory stores, only if the design of the entrance and exit drives to such service stations or stores will not create hazards for vehicular or pedestrian traffic or congestion in adjacent streets.
- 3. Multiple-family dwellings.
- 4. (Repealed Ord. No.1326, δIV, 6-22-98).
- 5. Package liquor stores (no on-premises consumption).
- 6. Amusement arcades where such use is located not less than 200 feet from any residential zoning district.

## C. LOT SIZE REQUIREMENTS:

- 1. Minimum lot area: Twenty thousand (20,000) square feet of land.
- 2. Minimum lot width: One hundred (100) feet.
- 3. Minimum lot depth: One hundred fifty (150) feet.

#### D. BULK REGULATIONS:

1. Maximum structure height: 35 feet.

# 2. Yard requirements:

- a. Front yard: property located adjacent to the following types of streets shall maintain the following minimum front yard dimensions between the center line of the street right-of-way and the front building line:
  - (1) Residential street: thirty (30) feet from the property line, or fifty-five (55) feet from the street right-of-way center line, whichever is greater. (Ord. No. 1178 § 10/25/93)
  - (2) Collector street: thirty (30) feet from the property line or sixty (60) feet from the street right-of-way center line, whichever is greater. (Ord. No. 1178 § 10/25/93)
  - (3) Arterial street: thirty (30) feet from the property line, or seventy (70) feet from the street right-of-way center line, whichever is greater. (Ord. No. 1178 § 10/25/93)
- b. Side yard: The sum of the two side yards shall be not less than 20 feet, except when a side yard in this district abuts a residential district, a side yard of twenty-five (25) feet shall be provided.
- c. Rear yard: Twenty-five (25) feet when abutting a residential district.
- d. If a lot in a commercial district adjoins a residential district, screening shall be provided at the lot lines sufficient to protect, on a year-round basis, the privacy of adjoining residential areas.
- 3. Off-street parking and loading as required in Article 7.

#### E. USE LIMITATIONS:

- 1. All business establishments shall be retail or service establishments dealing directly with consumers. All goods produced on the premises shall be sold at retail on the premises where produced.
- 2. All business, service, storage and display of goods shall be conducted within a completely enclosed building, except that an area equivalent to not more than 10 percent of the total floor area may be used for outside display and sales.
- 3. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any property located in a residential district and so that no glare is visible to any traffic on any public street.
- 4. Solid screening of not less than 6 feet in height shall be provided along all property lines that abut a residential district.
- 5. Off-street parking and loading areas associated with the uses permitted in this district shall not be permitted in any required front yard.
- F. An environmental impact study, regarding traffic, lighting, noise, parking, stormwater and/or other aesthetic aspects may be required on a rezoning application as determined by the Zoning Administrator.
- 4-203 **C-2, RETAIL BUSINESS DISTRICT**: The C-2 Retail Business District is designed to provide a district for a broad range of retail shopping facilities.

#### A. PERMITTED USES:

- 1. Any use specifically listed as a permitted use in the C-O, Office District or C-1 Neighborhood Shopping District.
- 2. Furniture, carpet and interior decorating stores.
- 3. Fitness centers and sporting goods stores.
- 4. Pet stores and clinics.
- 5. Laundry and dry cleaning receiving stations.
- 6. Blueprinting and photocopy service.
- 7. Schools for music, dance and business.
- 8. Fraternal and service clubs.

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- 9. Automobile sales and service (no outside service).
- 10. (Repealed Ord. No.1326, δIV, 6-22-98).
- 11. Governmental office buildings, recreation and service centers.
- 12. Newspaper offices and printing.
- 13. Package liquor stores (no on-premises consumption).
- 14. Self-service laundry and dry cleaning.
- 15. YMCA and YWCA facilities.
- 16. Veterinary clinics (no animals to be maintained or treated outside).
- 17. Massage Therapy (see other regulations).
- 18. Accessory and temporary uses, as permitted by Article 5.
- 19. Signs, as permitted by Article 6.

# B. CONDITIONAL USES

- 1. Automobile service station.
- 2. Bus stations.
- 3. Hotels and motels.
- 4. (Repealed Ord. No.1612 §IV, 12-22-08)
- 5. Multiple-family residential.
- 6. Radio and television broadcasting stations (no towers).
- 7. (Repealed Ord. No.1326, δIV, 6-22-98).
- 8. Baseball batting cages.
- 9. (Repealed Ord. No.1326, δIV, 6-22-98).
- 10. Theaters (as defined in these Regulations).
- 11. (Repealed Ord. No.1326, δIV, 6-22-98).

12. (Repealed Ord. No.1326, δIV, 6-22-98).

# C. LOT SIZE REQUIREMENTS:

- 1. Minimum lot area: Fifteen thousand (15,000) square feet of land.
- 2. Minimum lot width: Seventy five (75) feet.
- 3. Minimum lot depth: One hundred (100) feet.

# D. BULK REGULATIONS:

- 1. Maximum structure height: 85 feet.
- 2. Yard requirements:
  - a. Front yard: thirty (30) feet as required in Section 4-202 (D) (2) (a) (1), (2), and (3). (Ord. No. 1178 § 10/25/93)
  - b. Side yard: The sum of the two side yards shall be not less than 20 feet, except when a side yard in this district abuts a residential district a side yard of twenty-five (25) feet shall be provided.
  - c. Rear yard: twenty-five (25) feet when abutting a residential district.
  - d. If a lot in a commercial district adjoins a residential district, screening shall be provided at the lot lines sufficient to protect, on a year-round basis, the privacy of adjoining residential areas.
- 3. Off-street parking and loading as required in Article 7.

## E. USE LIMITATIONS:

1. All business establishments shall be retail or service establishments dealing directly with the consumer. All goods produced on the premises shall be sold at retail on the premises where produced. No products produced in this district shall be of a nature that they would

- be classified as a permitted use in the I-1 District if produced separately from a use permitted in this district.
- 2. All business, service, storage and display of goods shall be conducted within a completely enclosed building, except that an area equivalent to not more than ten percent (10%) of the total floor area may be used for outside display and sales of merchandise. (Ord. No. 1377, § 1, 5-22-00)
- 3. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any property located in a residential district and so that no glare is visible to any traffic on any public street.
- 4. Off-street parking and loading areas associated with the uses permitted in this district shall not be permitted in any required front yard.
- F. An environmental impact study regarding traffic, lighting, noise, parking, stormwater and/or other aesthetic aspects may be required on a rezoning application as determined by the Zoning Administrator.
- G. Hours of operation of convenience stores shall be limited to any period of a day between 6:00 a.m. and 11:00 p.m. for convenience stores located within 500 feet of any property zoned for residential purposes, measured from the lot upon which such convenience store is situated.
- 4-204 **C-3, GENERAL COMMERCIAL DISTRICT:** The C-3, General Business District provides for a mixture of retail business and restricted light industrial type uses which are compatible with the existing character of the Merriam Business District.

# A. PERMITTED USES:

- 1. Any use specifically listed as a permitted use in the C-O, Office District; C-1, Neighborhood Shopping District; and C-2, Retail Business District.
- 2. Ambulance service.
- 3. Automobile car wash.
- 4. Automobile rental agencies.
- 5. Automobile service stations.
- 6. Candy manufacturing.

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7. Construction equipment, sales and rental, excluding heavy equipment such as bulldozers and cranes (no outdoor storage).

- 8. Dental laboratory.
- 9. Artificial limb manufacturer.
- 10. Microchip manufacturer.
- 11. Millinery and artificial flower making.
- 12. Optical goods manufacturer.
- 13. Perfumery.
- 14. Photo engraving company.
- 15. Publishing company.
- 16. Truck sales and service (no outdoor service).
- 17. Signs, as permitted under Article 6.

## B. CONDITIONAL USES:

- 1. Dry cleaning establishments.
- 2. Small woodworking shops.
- 3. Mini-storage facility.

# C. LOT SIZE REQUIREMENTS:

- 1. Minimum lot area: Ten thousand (10,000) square feet of land.
- 2. Minimum lot width: Seventy-five (75) feet.
- 3. Minimum lot depth: One hundred (100) feet.

## D. BULK REGULATIONS:

- 1. Maximum structure height: 85 feet.
- 2. Yard requirements:
  - a. Front yard: 30 feet as required in 4-202(D)(2)(a)(1)(2)(3).

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- b. Side yard: The sum of the two side yards shall be not less than 20 feet, except when a side yard in this district abuts a residential district, a side yard of twenty-five (25) feet shall be provided.
- c. Rear yard: Twenty-five (25) feet when abutting a residential district.
- d. If a lot in a commercial district adjoins a residential district, screening shall be provided at the lot lines sufficient to protect, on a year-round basis, the privacy of adjoining residential areas.
- 3. Off-Street Parking and Loading as required in Article 7.

## E. USE LIMITATIONS:

- 1. All business establishments shall be retail or service establishments dealing directly with the consumer. All goods produced on the premises shall be sold at retail on premises where produced. No products produced in this district shall be of a nature that they would be classified as a permitted use in the I-1 District, except those listed in 4-204(A) and (B).
- 2. All business, service, storage and display of goods shall be conducted within a completely enclosed building, except that an area equivalent to not more than ten percent (10%) of the total floor area may be used for outside display and sales of merchandise. (Ord. No. 1377, § 1, 5-22-00)
- 3. Exterior lighting shall be shaded so that no direct light is cast upon any property located in a residential district and so that no glare becomes hazardous to any traffic on any public street.
- 4. No land or structure in this district shall be used or occupied in any manner so as to create any dangerous, injurious, noxious or otherwise objectionable fire, explosion, manufacturing waste or other hazard; noise or vibration; smoke, dust, odor or other form of air pollution; heat, cold, dampness, electrical or other substance, condition or element in such a manner or in such an amount as to affect adversely the surrounding area, adjoining property or its owners or patrons.
- 5. Off-street parking and loading areas associated with the uses permitted in this district shall not be permitted in any required front yard.

#### PART 3

## INDUSTRIAL DISTRICTS

4-301 **I-1, LIGHT INDUSTRIAL DISTRICT:** The I-1, Light Industrial District is designed to permit a broad range of industrial activities within certain limitations. The uses permitted in this district are required to be in an enclosed structure and all premises are to be landscaped according to an approved landscape plan. All walks, drives and parking areas shall be all-weather surfaced. (Ord. No. 1169, δ1, 7-26-93)

#### A. PERMITTED USES:

- 1. Any use included as a Permmited Use in the C-3 General Commercial District
- 2. Adding machine manufacturing
- 3. Animal Shelter--non-profit
- 4. Apparel and textile manufacturing, warehousing and distribution
- 5. Appliance manufacturing, warehousing and distribution
- 6. Accessory and temporary uses, as permitted by Article 5
- 7. Automobile assembly
- 8. Automobile wash
- 9. Baggage transfer, storage and warehouse
- 10. Bakery, wholesale
- 11. Beverage manufacturing, warehousing and distribution
- 12. Boot and shoe manufacturing
- 13. Business and professional office
- 14. Building materials yard
- 15. Cabinet maker
- 16. Canning and preserving factory
- 17. Carpenter shop
- 18. Carpet cleaning (more than 5 employees)
- 19. Cleaning and pressing
- 20. Clock factory

- 21. Coffin manufacturing
- 22. Cold storage warehouse
- 23. Concrete burial vault company
- 24. Contractors' storage yard
- 25. Cosmetic manufacturing
- 26. Dairy products manufacturing, processing, warehousing and distribution
- 27. Dry goods, wholesale
- 28. Dyeing and cleaning (more than 5 employees)
- 29. Electrical repair
- 30. Electrical sign manufacturing
- 31. Electronic equipment manufacturing, warehousing and distribution
- 32. Enameling and painting
- 33. Engraving plant
- 34. Express storage and delivery stations
- 35. Food products, manufacture
- 36. Fruit and vegetable drying
- 37. Fur warehouse
- 38. Furniture warehouse storage
- 39. Garage repair
- 40. Grocery store, wholesale
- 41. Gymnasium equipment manufacturing
- 42. Hay, grain and feed sold wholesale
- 43. Ice manufacturer
- 44. Jewelry Manufacturer
- 45. Landscape contractor or landscape service business, subject to screening with solid fencing six (6) six feet in height, any portion of the premises on which equipment is parked
- 46. Laundry (employing 5 or more persons)
- 47. (Repealed Ord. No.1326, δIV, 6-22-98).
- 48. Lime and cement warehouse
- 49. Loose-leaf book manufacturer
- 50. Lumber yard
- 51. (Repealed Ord. No.1326, δIV, 6-22-98).
- 52. Mattress manufacturer
- 53. Metal fabrication and assembly
- 54. Mini-storage facility
- 55. Miscellaneous light manufacturing
- 56. Motorcycle repair
- 57. Moving company, with storage facilities
- 58. Musical instrument manufacturing, warehousuing and distribution
- 59. Newspapers, office and printing
- 60. Office building on same site as an industry (factory)
- 61. Office equipment and supply manufacturer

- 62. Paper products manufacturing, warehousing and distribution
- 63. Pencil factory
- 64. Pharmaceutical products manufacturer
- 65. Popcorn factory
- 66. Plumbing shop
- 67. Printing press
- 68. Pump station
- 69. Recreational vehicle, pickup camper, camper shell, pickup cover or boat storage yards subject to screening the entire perimeter of the storage yard with solid fencing not less than six (6) feet in height which storage yard shall not occupy any part of a required front yard
- 70. Recreational vehicle, pickup camper, camper shell, pickup cover or boat <u>sales and service</u> including a hard surface display yard, which yard shall not occupy any part of a required front yard
- 71. (Repealed Ord. No.1326, δIV, 6-22-98).
- 72. Rug cleaning
- 73. Saddlery manufacturer
- 74. Sand and gravel storage yard
- 75. Screw and bolt manufacturer
- 76. Seed company (processing)
- 77. Sheet metal shop
- 78. Sign Painting
- 79. Signs as permitted by Article 6
- 80. Sporting goods manufacturer
- 81. Stair manufacturer
- 82. Storage warehouse
- 83. (Repealed Ord. No.1326, δIV, 6-22-98).
- 84. Taxi cab storage, repair
- 85. Telephone exchange
- 86. Telephone sub-station
- 87. Television receiving aerials serving building to which attached as limited by zoning district
- 88. Thermometer or thermostat manufacturer
- 89. Tire repair shop, recapping, etc
- 90. Transfer company, baggage storage
- 91. Trunk manufacturer
- 92. Upholstery manufacturer
- 93. Vehicle repair (no wrecks or salvage vehicle storage outside)
- 94. Wallpaper manufacturer
- 95. Warehouse
- 96. Watch manufacturer
- 97. Water company appurtenances
- 98. Water proofing treatment and manufacturing
- 99. Welding shop (no salvage yard)

- 100. Wholesale produce storage and market
- 101. Window shade manufacturer
- 102. Wire brush manufacturer
- 103. Wood products manufacturer (Ord. No. 1169,  $\delta$ 1, 7-26-93)

#### B. CONDITIONAL USES:

- 1. Fuel bulk storage and distribution stations.
- 2. Animal Kennels.
- 3. Other manufacturing, wholesaling, warehousing and distribution uses similar in nature and extent to those permitted by Section 4-301A. (Ord. No. 1169,  $\delta$ 1, 7-26-93)

# C. LOT SIZE REQUIREMENTS:

- 1. Minimum lot area: Twenty thousand (20,000) square feet of land.
- 2. Minimum lot width: One hundred (100) feet.
- 3. Minimum lot depth: One hundred fifty (150) feet. (Ord. No. 1169,  $\delta$ 1, 7-26-93)

## D. BULK REGULATIONS:

- 1. Maximum structure height: Seventy five (75) feet.
- 2. Yard requirements:
  - a. Front yard: Thirty (30) feet.
  - b. Side yard: The sum of the two side yards shall be not less than 20 feet, except when a side yard in this district abuts a residential district, a side yard of twenty-five (25) feet shall be provided.
  - c. Rear yard: Twenty-five (25) feet when abutting a residential district.
  - d. If a lot in an Industrial District adjoins a residential district, screening shall be provided at the lot lines sufficient to protect on a year-round basis, the privacy of adjoining residential areas.
- 3. Off-street parking and loading as required in Article 7. (Ord. No. 1169,  $\delta$ 1, 7-26-93)

## E. USE LIMITATIONS:

1. All operations, activities and storage shall be conducted wholly inside of a building or buildings except where permitted use is specified as a

"yard". Provided, however, that in all cases, including "yards", an office of the business in use on the property shall be provided and conducted inside a building. An area equivalent to not more than ten percent (10%) of the total floor area may be used for outside display and sales of merchandise. (Ord. No. 1377, § 1, 5-22-00)

- 2. Servicing and maintenance of vehicles shall be permitted only when such is necessary to the conduct of a permitted use.
- 3. All premises in an I-1 District shall be furnished with all weather hard surface walks and, except for parking areas, the grounds shall be planted and landscaped according to a landscape plan which shall be filed in the Zoning Administrator's Office.
- 4. If a lot in an I-1 District adjoins a residential district, screening shall be provided at the lot lines sufficient to protect, on a year round basis, the privacy of adjoining residential uses.
- 5. No structure shall be used for residential purposes except that a watchman may reside on the premises (see 8-310 also).
- 6. Exterior lighting shall be shaded so that no direct light is cast upon any property located in a residential district or upon any public street where such glare is hazardous to traffic safety.
- 7. No land or structure in this district shall be used or occupied in any manner so as to create any dangerous, injurious, noxious or otherwise objectionable fire, explosion, manufacturing waste or other hazard; noise or vibration; smoke, dust, odor or other form of air pollution; heat, cold, dampness, electrical or other substance, condition or element in such a manner or in such an amount as to affect adversely the surrounding area, or adjoining property or its owners or patrons. (Ord. No. 1169, δ1, 7-26-93)

#### PART 4

#### PLANNED DISTRICTS

#### 4-401 PLANNED DISTRICTS ESTABLISHED

Planned zoning procedures are hereby incorporated in this title as provided in K.S.A. 12-725 to 12-735. Planned zoning districts and their equivalent districts are as follows:

	<u>Planned Districts</u>	Equivalent District
CP-O	Planned Office Business	C-O
CP-1	Planned Neighborhood Shop	C-1
CP-2	Planned Retail Business	C-2
CP-3	Planned General Commercial	C-3
IP-1	Planned Light Industrial	I-1

## 4-402 PLANNED DISTRICTS

- A. Statement of Objectives. The zoning of land to one of the planning districts shall be for the purpose of encouraging and requiring orderly development on a quality level equal to or greater than that of the equivalent standard zoning districts, but permitting deviations from normal and established development techniques. The use of planned zoning procedures is intended to encourage large scale development tracts, efficient development of small tracts, innovative and imaginative site planning, conservation of natural resources and minimum waste of land. The following are specific guidelines to be applied in the consideration and administration of planned districts.
  - 1. A proposal to rezone land to a planned district shall be subject to the same criteria relative to compliance with the comprehensive plan, land use policies, neighborhood compatibility, adequacy of streets and utilities and other elements, as is normal in rezoning deliberations.
  - 2. The application by the developer and the approval by the City of development plans represents a firm commitment by the developer that development will indeed follow the approved plans.
  - 3. Deviations in yard requirements, setbacks and relationships between buildings as set out in the Zoning Distict Regulations may be approved if it is deemed that other amenities or conditions produce an equal or higher standard and quality of development.
  - 4. Commercial areas will be planned and developed so as to result in attractive, viable and safe centers and clusters, as opposed to strip patterns along thoroughfares. Control of vehicular access, architectural quality, landscaping and signs will be exercised to soften the impact on nearby residential neighborhoods, and to assure minimum adverse effects on the street system and other services of the community.

5. The developer may be given latitude in using innovative techniques in the development of land not feasible under application of standard zoning requirements. However, planned zoning shall not be used as a refuge from the requirements of these zoning regulations as to intensity of land use, amount of open space or other established development criteria.

- 6. No use will be permitted in the planned district that is not clearly permitted in the equivalent district.
- 7. For the purpose of this title, the terms shopping center, business park, office park, industrial park, or any similar grouping of buildings shall mean developments that were planned as an integrated unit or cluster on property under unified control or ownership at the time the zoning was approved by the city. The sale, subdivision or other partition of the site after zoning approval does not exempt the project or portions thereof from complying with development standards, architectural quality, sign concepts and other conditions that were committed to at the time of rezoning.
- B. Local Administration Agency. The agency having the authority to administer the planned zoning procedures and implementation of projects in connection therewith shall be the City Planning Commission, together with the City Planning staff assigned to assist such Commission, subject to approval by the Governing Body.

# C. Standards of Development.

- 1. The maximum height of buildings and structures shall be as set out in the equivalent district.
- 2. The intensity of land use, the bulk of buildings, the concentration of population, and the amount of open space, light and air shall be comparable to that required in the equivalent zoning district.
- 3. The permitted uses shall be as set out in the equivalent district; provided, however, limitations may be placed on the occupancy of certain premises, if such limitation is deemed essential to the health, safety or general welfare of the community.
- 4. The City Planning Commission may require assurance of the financial and administrative capabilities of any agency created by a developer for the purpose of maintaining common open space and facilities of a non-public nature.

5. The City Planning Commission and the Governing Body may, in the process of approving preliminary and final plans, approve deviations from the minimum standards in the equivalent districts. Deviations may be granted by the City Planning Commission and the Governing body only where there is ample evidence that said deviation will not adversely affect neighboring property, nor will it constitute the mere granting of a privilege.

- 6. Reduction of setbacks or other open space shall be compensated by additional open space in other appropriate portions of the project. In all cases, such deviation shall be in keeping with good land planning principles, and must be specifically set out in the minutes of the Planning Commission, as well as on plans and other exhibits in the records. The parking requirements shall as a minimum follow the existing district requirements.
- 7. The design of all planned projects, whether commercial or industrial, shall be such that adequate access and circulation by fire fighting equipment is assured and may not be retarded by steep grades, heavy landscaping or building spaces.
- D. Zoning Application Procedure for Planned Districts.
  - 1. <u>Rezoning Applications.</u> Applications for rezoning to one of the Planned Districts shall be administered in the same manner set out in Section 20-21 of the Merriam Code of Ordinances. (Ord. No. 1179 § 10/25/93)
  - 2. Preliminary Development Plan.
    - (a) General Construction Work, as hereinafter defined, shall be prohibited in a planned zoning district without an approved Final Development Plan. A Preliminary Development Plan may accompany a rezoning application or may be submitted separately in the case of existing planned zoning districts. In either case, the plan shall be administered in the manner prescribed above for rezoning applications and as follows:
      - (i) The plan shall be reviewed by the Planning Commission and forwarded with its recommendations to the City Council.
      - (ii) The City Council shall approve, modify or deny the recommendation; or it may return the plan to the Planning Commission for further study.

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(b) Plan contents. Section 9-104(A) of these regulations will be considered as a guideline in determining the information to be included with the Preliminary Development Plan.

- (c) General Construction Work, Definition. General Construction Work, for determining whether a Final Development Plan will be required in a Planned Zoning District, shall be defined as consisting of a scope of work contained in any one of the following improvements:
  - (i) Construction of any new building on the site;
  - (ii) Additions to a building exceeding 5% of the existing floor area;
  - (iii) Significant changes to a building exterior relative to building construction materials, color, appearance and signage; or
  - (iv) Significant changes to the site relative to drainage, grading, parking and driveway layout, landscaping, fencing, signage or other site improvements.
- 3. <u>Final Development Plan.</u> General Construction Work, as defined above, shall be prohibited in a planned zoning district without a Final Development Plan approved by the Planning Commission, except when such approval is specifically included in an approved Preliminary Development Plan. Final Development Plans shall not be approved without prior approval of Preliminary Development Plans and shall not deviate significantly from approved preliminary plans.
- 4. Permitted Uses in Planned Zoning Districts. Except as otherwise herein provided, the uses contained in the list of Permitted Uses in C-O, C-1, C-2, C-3 and I-1 zoning districts are also permitted in CP-O, CP-1, CP-2, CP-3 and IP-1 zoning districts, respectively. Such permitted uses or changes from one permitted use to another permitted use are allowed without further zoning approval by the city, unless uses are specifically limited by an approved Preliminary Development Plan.
- 5. <u>Conditional Uses in Planned Zoning Districts</u>. Conditional Uses contained in the list of Conditional Uses in C-O, C-1, C-2, C-3 and I-1 zoning districts shall not be permitted in Planned Zoning Districts unless specifically allowed by an approved Preliminary and a Final Development Plan.

#### PART 5

#### **SPECIAL USES**

- 3-501 **STATEMENT OF INTENT.** Certain uses of land or buildings may not be appropriate under all circumstances in any zoning district, but may be appropriate in certain districts where adequate precautions can be taken to assure the compatibility of the use with surrounding uses. It is the intent of this Part 5 of Article 4 to allow for such uses, if not otherwise allowed as a permitted use, conditional use, or accessory use, by the granting of a Special Use Permit, subject to the same procedures applicable to a rezoning.
- 4-502 **SPECIAL USES DESIGNATED.** No building, structure, land, or premises shall be used, nor shall any building or structure be erected, constructed, reconstructed, or altered, for one or more of the following special uses, without the issuance of a special use permit by the Governing Body after recommendation thereon by the Planning Commission. Any such approved use shall be subject to the development standards set forth in Section 4-504.
- 1) Adult Uses and Adult Entertainment Uses: I-1 District
- 2) Airports or aviation fields, heliports and helicopter landing pads: C or I Districts
- 3) Assembly halls, fraternal lodges, neighborhood centers, or community centers: R, C or I Districts
- 4) Building structures or premises for public utility services or public service corporations: R, C or I Districts
- 5) Cemeteries, mausoleums or crematories for the disposal of the dead: R, C or I Districts
- 6) Clubs and drinking establishments: C-2, C-3, or I-1 Districts
- 7) Drive-in theaters: I-1 District
- 8) Group boarding homes for minors or group boarding homes for adults: R Districts
- 9) Hospitals, nursing or convalescent homes, congregate care facilities and retirement housing: R or C Districts
- 10) Large animal or small animal hospitals or animal kennels: C-2, C-3 or I-1 Districts
- 11) Off-street parking lots or structures as a principal use, of a temporary or permanent nature: C or I Districts
- 12) Oil or gas drilling and production: I-1 District
- Outdoor storage areas: C-2, C-3 or I-1 Districts
- 14) Outdoor storage of inoperable vehicles by automotive repair establishments: I-1 District
- 15) Penal or correctional institutions: C-2, C-3 or I-1 Districts
- 16) Radio, television, microwave, or other wireless communication towers: As set forth in Part 6 of this Article 4
- 17) Reservoirs, water towers, filter beds or water treatment plants: C or I Districts
- 18) Residential real estate sales offices: R Districts
- 19) Sales and display areas for manufactured homes, mobile homes or modular

housing: C-3 or I-1 Districts

- 20) Sports or recreation facilities of all types, private: C or I Districts
- 21) Taverns, dance facilities, amusement centers and arcades: C-2, C-3 or I-1 Districts
- 22) Temporary use of land for commercial or industrial purposes, as a principal or accessory use: C or I Districts
- 23) Vehicle storage lots for the storage of automobiles, trucks, busses, machinery, or other wheeled vehicles with or without associated office, service, or other support facilities: I-1 District
- 24) Small Wind Energy Systems: R, C or I Districts as set forth in Part 7 of this Article 4.

**SPECIAL USES DESIGNATED.** No building, structure, land, or premises shall be **4-503 SPECIAL USES NOT PERMITTED.** It shall be presumed that any use listed in Section 4-502 shall not be permitted in the City without a special use permit unless that use is also specifically listed as a permitted use or conditional use in a given zoning district.

**4-504DEVELOPMENT STANDARDS FOR SPECIAL USES.** In considering Special Uses, the Planning Commission and Governing Body shall consider the factors for a rezoning as set forth in Chapter 20 of the Merriam Municipal Code.

At the time of approval of any special use permit, the Governing Body may impose such restrictions as to height or bulk of buildings or structures, yard and lot area requirements, parking requirements, open space or landscaping requirements, fencing requirements or other requirements determined to be reasonably necessary for the protection of the public health, safety and welfare of the neighborhood and the community at large. Further, the Governing body may require that the applicant submit a site development plan for approval by the Staff, Planning Commission or Governing Body prior to the issuance of any building or land use permit.

Except where a longer or shorter time has been stated for a specific special use, or is required as a condition of the granting of a Special Use Permit, and except as provided below, the maximum time period for any special use permit, or any extension thereof, shall be 10 years from the date of its issuance. In cases of extreme hardship, the Governing Body may consider granting a permit, or extension thereof, for such period as is warranted under the circumstances.

Renewal of a special use permit is not a matter of right. The same discretion shall attach to a decision to renew a special use permit as existed in the original decision to grant or deny that permit; provided, however, that in considering the decision to grant or deny renewal, any factor which would be relevant to consideration of revocation shall also be relevant to consideration of renewal.

In addition to the general standards set forth above, the following specific standards shall apply to Special Use Permits. (Ord. No. 1344,  $\delta$  1; 12/28/98)

## 1) Adult Uses and Adult Entertainment Uses:

No permit shall be granted unless the distance between the property within which the operation is located and the property line of the nearest residentially zoned property is in excess of 200 feet and distance between the property within which the operation is located and the property line of the nearest school, church, library, auditorium, or public building used by the public is in excess of 500 feet.

No permit shall be approved unless a determination is made that the impacts of traffic access and parking, noise and litter will not adversely affect the surrounding neighborhood.

In no case shall the noise generated by the operation or its patrons exceed 60 dB (a) at any point along any property line of residentially zoned property.

All facilities shall provide enclosed trash structures either inside or outside of the facility of sufficient size to adequately and sanitarily contain all trash produced by the facility. The management shall be responsible for the policing of all trash associated with the operation for the facility.

On-site parking shall be provided at the rate of one parking space for each 2 occupants, to be calculated by building code standards. Parking shall be available to be assigned solely to the proposed establishment and cannot be counted for other establishments except in the case of shopping centers in excess of 300,000 total square feet.

The initial special use permit may be granted for a period of up to 12 months, with renewals for one-year periods thereafter provided all standards of performance are being met.

# 2) Airports or aviation fields, heliports and helicopter landing pads:

At the time of approval of any permit for an airport or aviation field, heliport or helicoptor landing pad, the Governing Body may impose such restrictions on land buildings or structures within an approach or transition plane or turning zone as is necessary to promote safety of navigation and to prevent undue danger from confusing lights, electrical interference or other hazards. The Governing Body shall consider the need for such facility and shall consider the impacts on nearby and/or surrounding residential areas.

# 3) <u>Assembly halls, fraternal lodges, neighborhood centers, or community centers:</u>

No permit shall be approved unless a determination is made that the impacts of traffic access and parking, noise and litter will not adversely affect the surrounding neighborhood.

In no case shall the noise generated by the operation or its patrons exceed 60 dB (a) at any point along any property line of residentially zoned property.

# 4) Clubs or drinking establishments:

No permit shall be granted unless the distance between the property within which the operation is located and the property line of the nearest residentially zoned property is in excess of 200 feet and distance between the property within which the operation is located and the property line of the nearest school, church, library, auditorium, or public building used by the public is in excess of 500 feet.

No permit shall be approved unless a determination is made that the impacts of traffic access and parking, noise and litter will not adversely affect the surrounding neighborhood.

In no case shall the noise generated by the operation or its patrons exceed 60 dB (a) at any point along any property line of residentially zoned property.

All facilities shall provide enclosed trash structures either inside or outside of the facility of sufficient size to adequately and sanitarily contain all trash produced by the facility. The management shall be responsible for the policing of all trash associated with the operation for the facility.

On-site parking shall be provided at the rate of one parking space for each 2 occupants, to be calculated by building code standards. Parking shall be available to be assigned solely to the proposed establishment and cannot be

counted for other establishments except in the case of shopping centers in excess of 300,000 total square feet.

An initial permit may be issued for a maximum time period of three years. Subsequent renewals may be issued for a maximum time period of five years. Provided, however, that establishments within facilities such as convention centers, hotels, motels, or similar structures determined not to have traffic, parking, noise, litter or other adverse impacts on surrounding properties, may be issued a special use permit for an indefinite time period.

# 5) Group boarding homes for minors or group boarding homes for adults:

On-site off-street parking spaces shall be provided as follows: one space for each staff member at maximum shift plus one space for each occupant permitted to be sixteen years of age or older unless the permit is conditioned so as to prohibit occupant vehicles on or at the premises.

All off-street parking spaces shall be screened from adjacent properties located within a residential district or containing a residential use with solid walls or fencing a minimum of six feet and a maximum of eight feet in height.

An initial permit may be issued for a maximum time period of two years. Subsequent renewals may be issued for a maximum time period of five years.

## 6) Outdoor storage areas:

Outdoor storage shall not be located in any required front yard and shall not be located forward of any front building line. Any area used for outside storage must be fully enclosed with a solid wall or fence no less than six feet and no greater than eight feet in height. Any outdoor storage area shall be graded to properly drain and shall be paved with asphalt or concrete or other hard surface as set forth in Section 7-102E(2) of these regulations.

Any application for a Special Use Permit for outside storage shall list the items or types of items to be stored within the outside storage area. No items or types of items shall be stored within an outside storage area unless such items are included in the list of materials approved for storage by the Governing Body in the Special Use Permit.

All items stored within an outdoor storage area shall be stored so as to not be visible from any public right-of-way unless specifically exempted from such requirement in the permit.

Any Special Use Permit issued for an outdoor storage area shall be strictly subject to the condition that the City reserves the right to inspect the outdoor

storage area at any reasonable time during normal business hours for compliance with the terms of the conditions of the permit. Any refusal to allow such inspection shall be grounds for the revocation of such Special Use Permit.

# 7) <u>Outdoor Storage of Inoperable Motor Vehicles by Automotive Repair</u> Establishments:

Outdoor storage of inoperable motor vehicles by automotive repair establishments may be only within areas effectively screened from view by solid fencing or other solid screening no less than six (6) feet and no greater than eight (8) feet in height. Outdoor storage areas for inoperable vehicles shall only be located to the rear or to the side of the principal building and shall not be located in any required front yard. Outdoor storage areas for inoperable vehicles must be hard surfaced with concrete or asphalt as for parking. The outdoor storage of an inoperable vehicle shall be limited to a period not exceeding one hundred and twenty (120) days.

### 8) Radio, television, microwave, or other wireless communication towers:

As set forth in Part 6 of this Article 4.

## 9) Residential real estate sales offices:

Real estate sales offices which are not otherwise a permitted use in a residential subdivision or project, may be operated under a special use permit for the purpose of selling properties located within the subdivision or project under such conditions as may be imposed at the time of approval of the permit. No such permit shall be issued for a period exceeding 2 years. The precise location of any such real estate sales office within the subdivision or project shall be indicated on the application for the permit.

# 10) Sales and display areas for manufactured homes, mobile homes or modular housing:

Outdoor display or storage shall not be located in any required front yard nor within ten feet of any side lot line. All area used for display and storage shall be paved with asphalt or concrete as for parking. Any required front yard, except for access drives, shall be maintained as open space and appropriately landscaped in accordance with an approved landscape plan.

All display, storage, or parking areas shall be screened from adjacent properties located within a residential district or containing a residential use with solid walls or fencing a minimum of six feet and a maximum of eight feet in height.

# 11) Sports or recreation facilities of all types, private:

No permit shall be approved unless a determination is made that the impacts of traffic access and parking, noise and litter will not adversely affect the surrounding neighborhood.

All facilities shall provide enclosed trash structures either inside or outside of the facility of sufficient size to adequately and sanitarily contain all trash produced by the facility. The management shall be responsible for the policing of all trash associated with the operation for the facility.

# 12) Taverns, dance facilities, amusement centers and arcades:

No permit shall be granted unless the distance between the property within which the operation is located and the property line of the nearest residentially zoned property is in excess of 200 feet and distance between the property which the operation is located and the property line of the nearest school, church, library, auditorium, or public building used by the public is in excess of 500 feet.

No permit shall be approved unless a determination is made that the impacts of traffic access and parking, noise and litter will not adversely affect the surrounding neighborhood.

In no case shall the noise generated by the operation or its patrons exceed 60 dB (a) at any point along any property line of residentially zoned property.

All facilities shall provide enclosed trash structures either inside or outside of the facility of sufficient size to adequately and sanitarily contain all trash produced by the facility. The management shall be responsible for the policing of all trash associated with the operation for the facility.

On-site parking shall be provided at the rate of one parking space for each 2 occupants, to be calculated by building code standards. Parking shall be available to be assigned solely to the proposed establishment and cannot be counted for other establishments except in the case of shopping centers in excess of 300,000 total square feet.

The initial special use permit may be granted for a period of up to 12 months, with renewals for one-year periods thereafter provided all standards of performance are being met.

## 13) Temporary uses of land for commercial or industrial purposes:

Special use permits for temporary uses of land for commercial or industrial purposes may be granted for a period not to exceed 2 years, subject to renewal for one or more periods of time not to exceed a maximum of 2 years for each renewal. Any stored equipment or material shall be removed from the site on or prior to the date of expiration of the special use permit. This provision shall not be used as means of seeking approval for occupations which are not permitted as conditional uses in residential districts.

14) <u>Vehicle storage lots for the storage of operable automobiles, trucks, busses, machinery, or other wheeled vehicles:</u>

Outdoor storage or parking shall not be located in any required front yard nor within ten feet of any side lot line. All area used for storage or parking shall be paved with asphalt or concrete. Any required front yard, except for access drives, shall be maintained as open space and appropriately landscaped in accordance with an approved landscape plan.

All storage, or parking areas shall be screened from adjacent properties located within a residential district or containing a residential use with solid walls or fencing a minimum of six feet and a maximum of eight feet in height.

No wrecked, dismantled, partially dismantled, or inoperable vehicle shall be placed, stored, or parked on the premises unless contained within a completely enclosed building.

All areas used for the parking or storage of vehicles shall be provided with proper markings delineating parking or storage spaces of appropriate length and width and clearly delineating driving aisles of sufficient width for the type and class of vehicles to be parked or stored. No vehicle shall be parked except in such properly marked parking spaces.

Any area used for the storage or parking of vehicles shall conform to the requirements of the flood hazard protection and prevention, and stormwater management provisions of the Merriam Municipal Code. No motor vehicles

containing fuel, oil, or other petroleum or hazardous products may be parked or stored within a designated flood hazard area unless the Governing Body has approved a feasible emergency plan for the removal of all vehicles from the area subject to flooding within the period of time reasonably and prudently expected to occur between a flood warning and the inundation of the property. (Ord. No. 1383, § 1, 07-24-00)

**4-405 CONSIDERATION OF SPECIAL USE PERMITS.** An application for a Special Use Permit and the consideration of such an application shall follow the same procedures and shall meet the same requirements as established for a rezoning, as set forth in Section 20-21 of the Merriam Municipal Code. Application Fees for Special Use Permits shall be the same as for rezoning requests.

### 4-506 REVOCATION OF SPECIAL USE PERMITS.

### A. Basis for Revocation:

Any special use permit granted under the authority of this chapter is subject to revocation for any or all of the following reasons:

- 1. Non-compliance with any applicable requirement set forth in Section 4-504.
- 2. Non-compliance with any special conditions imposed at the time of approval of the special use permit.
- 3. Violation of any provisions of the Code pertaining to the use of the land, construction or uses of buildings or structures or activities conducted on the premises by the permittee or agents of the permittee.
- 4. Where conditions in the neighborhood have changed to the extent that approval of the permit would be clearly unwarranted if being applied for at the time of revocation.
- 5. Violation of any other applicable Code provisions or any state or federal law or regulation by the permittee or agents of the permittee, provided that such violations relate to the conduct or activity authorized by the special use permit or the qualifications of the permittee or its agents to engage in such conduct or activity.

# B. Procedure For Revocation

- 1. Revocation proceedings may be initiated by a majority vote of the Governing Body.
- 2. Unless the permittee and landowner agree in writing that the permit may be revoked, the Governing Body shall hold a public hearing to consider the revocation of the special use permit.
- 3. The City shall give the permittee and landowner notice of the scheduled revocation hearing at least five days prior to the date scheduled for such hearing. If the permittee and landowner are present at the meeting of the Governing Body at which the revocation proceedings are initiated, no further notice shall be required; otherwise, notice shall be given by personal service or certified mail, return receipt requested. If the notice cannot be delivered or is not accepted, notice may be given by publishing a notice of hearing in the official City newspaper and by posting a notice of hearing on the property at least five days prior to the date scheduled for the hearing.
- 4. At the hearing, the City Attorney, or his or her designee, shall present the evidence known to the City that may justify revocation of the special use permit. Testimony may be presented by members of the City staff, Planning Commission or Governing Body, or by such other witnesses as may be called. Following the presentation of evidence by the City, any person having relevant evidence may present such evidence to the Governing Body. Following the presentation of such evidence, the permittee and landowner shall be entitled to present evidence, including testimony. Following the receipt of all evidence, the public hearing shall be closed. After closing the public hearing, the Governing Body may hear closing statements from the City and the permittee and landowner or their attorney. The Governing Body may render its decision following such closing statements or may take the matter under advisement.
- 5. No special use permit shall be revoked unless a majority of the Governing Body is satisfied by a preponderance of the evidence that grounds for revocation exist. Any motion for the revocation of a special use permit shall clearly state the grounds for revocation. In addition, where the basis for revocation is "changed conditions" pursuant to subsection A.4. of this section, revocation may only occur upon an explicit finding that revocation is necessary for the protection of the public health, safety and/or welfare. Adoption of any motion to revoke a special use permit may be made subject to subsequent

adoption of written findings of fact and conclusions of law, at the discretion of the Governing Body.

6. An appeal of any decision of the Governing Body to revoke a special use permit shall not suspend the order of revocation during the pendency of the appeal unless so ordered by the Johnson County, Kansas District Court.

4-507 DESIGNATION OF PERMITTEE; APPROVAL OF TRANSFEREE. The person making application for a special use permit shall be designated as the permittee for purposes of this Chapter. The use authorized by the permit, however, applies to the real property and not the permittee, and the permits may therefore be transferred as set forth herein. Any person desiring to conduct an approved special use by transfer shall make application to the Zoning Administrator to be substituted as the permittee. The applicant shall furnish such information as reasonably required by the Zoning Administrator to demonstrate that the applicant is the owner of the property subject to the special use permit (or authorized by the owner to conduct the special use), and is otherwise qualified to conduct the special use. No person may use real property for a special use without being approved as permittee, and failure to be so approved shall be grounds for revocation of the special use permit. (Ord. No. 1326  $\delta$  1, 06-22-98).

#### PART 6

## WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS

4-601 **PURPOSE.** The purpose of these regulations is to establish general guidelines for the siting of wireless communications towers and antennas. The goals of these regulations are to: (1) protect residential areas and land uses from potential adverse impacts of towers and antennas; (2) encourage the location of towers in nonresidential areas; (3) minimize the total number of towers throughout the community; (4) strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers; (5) encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal; (6) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques; (7) enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently; (8) consider the public health and safety of communication towers; and (9) avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures. furtherance of these goals, the City of Merriam shall give due consideration to the City's master plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

4-602 **DEFINITIONS.** As used in these regulations, the following terms shall have the meanings set forth below:

Alternative tower structure means man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

Antenna means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

*Backhaul network* means the lines that connect a provider's towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

*Height* means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.

Preexisting towers and preexisting antennas means any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of these regulations, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

*Tower* means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

## 4-603 **APPLICABILITY:**

A. New Towers and Antennas. All new towers or antennas in The City of Merriam shall be subject to these regulations, except as provided in Subsections (b) through (d), inclusive, below.

B. Amateur Radio Station Operators/Receive Only Antennas. These regulations shall not govern any tower, or the installment of any antenna, that is under seventy (70) feet in height and is owned and operated by a

federally-licensed amateur radio station operator or is used exclusively for receive only antennas.

- C. Preexisting Towers or Antennas. Preexisting towers and preexisting antennas shall not be required to meet the requirements of these regulations, other than the requirements of Subsections (f) and (g) of Section 4-604 below.
- D. AM Array. For purposes of implementing these regulations, an AM array, consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

## 4-604 GENERAL REQUIREMENTS:

- A. Principal or Accessory Use. Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.
- B. Lot Size. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.
- C. Inventory of Existing Sites. Each applicant for an antenna and/or tower shall provide to the Zoning Administrator an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of The City of Merriam or within one mile of the border thereof, including specific information about the location, height, and design of each tower. The Zoning Administrator may share such information with other applicants applying for administrative approvals or special use permits under these regulations or other organizations seeking to locate antennas within the jurisdiction of The City of Merriam, provided, however, that the Zoning Administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- D. Aesthetics. Towers and antennas shall meet the following requirements:

- 1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
- 2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
- 3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- E. Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- F. State or Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by these regulations shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- G. Building Codes; Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the City of Merriam concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- H. Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in The City of Merriam irrespective of municipal and county jurisdiction boundaries.

- I. Not Essential Services. Towers and antennas shall be regulated and permitted pursuant to these regulations and shall not be regulated or permitted as essential services, public utilities, or private utilities.
- J. Franchises. Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in The City of Merriam have been obtained and shall file a copy of all required franchises with the Zoning Administrator.
- K. Public Notice. For purposes of these regulations, any special use request, variance request, or appeal of an administratively approved use or special use shall require public notice to all abutting property owners and all property owners of properties that are located within the corresponding separation distance listed in Section 4-607(B)(5)(b), Table 2, in addition to any notice otherwise required by the Zoning Regulations.
- L. Signs. No signs shall be allowed on an antenna or tower.
- M. Buildings and Support Equipment. Buildings and support equipment associated with antennas or towers shall comply with the requirements of Section 8.
- N. Multiple Antenna/Tower Plan. The City of Merriam encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.

#### 4-605 **PERMITTED USES:**

- A. General. The uses listed in this Section are deemed to be permitted uses and shall not require administrative approval or a special use permit.
- B. Permitted Uses. The following uses are specifically permitted:
  - 1. Antennas or towers located on property owned, leased, or otherwise controlled by The City of Merriam provided a license or lease authorizing such antenna or tower has been approved by the Governing Body of the City of Merriam.

## 4-606ADMINISTRATIVELY APPROVED USES:

A. General. The following provisions shall govern the issuance of administrative approvals for towers and antennas.

- 1. The Zoning Administrator may administratively approve the uses listed in this Section.
- 2. Each applicant for administrative approval shall apply to the Zoning Administrator providing the information set forth in Section 4-607 (b)(1) and (b)(3) below and a nonrefundable fee as established for Special Use Permits to compensate the City of Merriam for the costs of reviewing the application.
- 3. The Zoning Administrator shall review the application for administrative approval and determine if the proposed use complies with Section 4-607 (b)(4) and (b)(5) below.
- 4. The Zoning Administrator shall respond to each such application within sixty (60) days after receiving it by either approving or denying the application. If the Zoning Administrator fails to respond to the applicant within said sixty (60) days, then the application shall be deemed to be approved.
- 5. In connection with any such administrative approval, the Zoning Administrator may, in order to encourage shared use, administratively waive any zoning district setback requirements in Section 4-607 (b)(4) or separation distances between towers in Section 4-607 (b)(5) by up to fifty percent (50%).
- 6. In connection with any such administrative approval, the Zoning Administrator may, in order to encourage the use of monopoles, administratively allow the reconstruction of an existing tower to monopole construction.
- 7. If an administrative approval is denied, the applicant shall file an application for a special use permit pursuant to Section 4-607 prior to filing any appeal that may be available under the Zoning Regulations.
- B. List of Administratively Approved Uses. The following uses may be approved by the Zoning Administrator after conducting an administrative review:
  - 1. Locating antennas on existing structures or towers consistent with the terms of subsections (a) and (b) below.
    - a. Antennas on existing structures. Any antenna which is not attached to a tower may be approved by the Zoning Administrator as an accessory use to any commercial, industrial, professional, institutional, or multi-family structure of eight or more dwelling units, provided: the antenna does not

extend more than thirty (30) feet above the highest point of the structure; the antenna complies with all applicable FCC and FAA regulations; and the antenna complies with all applicable building codes.

- b. Antennas on existing towers. An antenna which is attached to an existing tower may be approved by the Zoning Administrator and, to minimize adverse visual impacts associated with the proliferation and clustering of towers, collocation of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such collocation is accomplished in a manner consistent with the following:
  - (1) A tower which is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same tower type as the existing tower, unless the Zoning Administrator allows reconstruction as a monopole.

# (2) Height:

- (a) An existing tower may be modified or rebuild to a taller height, not to exceed thirty (30) feet over the tower's existing height, to accommodate the collocation of an additional antenna.
- (b) The height change referred to in subsection (2)(a) above may only occur one time per communication tower.
- (c) The additional height referred to in subsection (2)(a) shall not require an additional distance separation as set forth in Section 4-607. The tower's premodification height shall be used to calculate such distance separations.

### (3) Onsite location:

- (a) A tower which is being rebuilt to accommodate the collocation of an additional antenna may be moved onsite within fifty (50) feet of its existing location.
- (b) After the tower is rebuilt to accommodate collocation, only one tower may remain on the site.
- (c) A relocated onsite tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to Section 4-607

- (b)(5). The relocation of a tower hereunder shall in no way be allowed to cause a violation of Section 4-607 (b)(5).
- (d) The onsite relocation of a tower which comes within the separation distances to residential units or residentially zoned lands as established in Section 4-607 (b)(5) shall only be permitted when approved by the Zoning Administrator.
- 2. Locating any alternative tower structure in a zoning district other than industrial or heavy commercial that in the judgement of the Zoning Administrator is in conformity with the goals set forth in Section 4-601.
- 3. Installing a cable microcell network through the use of multiple low-powered transmitters/receivers attached to existing wireline systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers.

### 4-607**SPECIAL USE PERMITS:**

- A. General. The following provisions shall govern the issuance of special use permits for towers or antennas by the Governing Body.
  - 1. If the tower or antenna is not a permitted use under Section 4-605 or permitted to be approved administratively pursuant to Section 4-606, then a special use permit shall be required for the construction of a tower or the placement of an antenna in all zoning districts.
  - 2. Applications for special use permits under this Section shall be subject to the procedures and requirements of Article 4, Part 5 of the Zoning Regulations, except as modified in this Section.
  - 3. In granting a special use permit, the Governing Body may impose conditions to the extent the Governing Body concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.
  - 4. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer authorized to practice his or her profession in the State of Kansas.
  - 5. An applicant for a special use permit shall submit the information described in this Section and a non-refundable fee as established for

special use permits, to reimburse the City of Merriam for the costs of reviewing the application.

#### B. Towers.

- 1. Information required. In addition to any information required for applications for special use permits persuant to Article 4, Part 5 of the Zoning Regulations, applicants for a special use permit for a tower shall submit the following information:
  - a. A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), Master Plan classification of the site and all properties within the applicable separation distances set forth in Section 4-607 (b)(5), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information deemed by the Zoning Administrator to be necessary to assess compliance with these regulations.
  - b. Legal description of the parent tract and leased parcel (if applicable).
  - c. The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.
  - d. The separation distance from other towers described in the inventory of existing sites submitted pursuant to Section 4(c) shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
  - e. A landscape plan showing specific landscape materials.
  - f. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
  - g. A description of compliance with Sections 4-604 (c), (d), (e), (f), (g), (j), (l), and (m), 4-607 (b)(4), 4-607 (b)(5) and all applicable federal, state or local laws.

h. A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.

- i. Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.
- j. A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.
- k. A description of the feasible location(s) of future towers or antennas within the City of Merriam based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
- 1. If the proposed equipment generates radio frequency radiation the applicant shall provide certification to the City that the equipment is FCC "type accepted" or shall provide to the City the certification from an RF Engineer that the devices proposed to be installed do not exceed the standards set forth in Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, or successor standards promulgated by the FCC. In the event that more than one emitter of radio frequency (RF) radiation are to be colocated at the same site, or in the event of an application to add an emitter of radio frequency radiation at a site with one or more existing emitters of radio frequency radiation, the applicant shall provide to the City a statement listing the existing and maximum future projected measurements of RF radiation from the proposed facility for the following conditions:

Existing or ambient: the measurement of existing RF radiation.

Existing Plus proposed: Maximum estimate of RF radiation from the existing facility plus the proposed additional emitter of RF radiation.

The statement provided to the City shall be signed and sealed by an RF Engineer, stating that the RF radiation measurements are accurate and meet FCC guidelines.

- 2. Factors Considered in Granting Special Use Permits for Towers. In addition to any standards for consideration of special use permit applications pursuant to Article 4, Part 5 of the Zoning Regulations, the Governing Body shall consider the following factors in determining whether to issue a special use permit, although the Governing Body may waive or reduce the burden on the applicant of one or more of these criteria if the Governing Body concludes that the goals of these regulations are better served thereby:
  - a. Height of the proposed tower;
  - b. Proximity of the tower to residential structures and residential district boundaries:
  - c. Nature of uses on adjacent and nearby properties;
  - d. Surrounding topography;
  - e. Surrounding tree coverage and foliage;
  - f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
  - g. Proposed ingress and egress; and
  - h. Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, as provided in Section 4-607 (b)(3).
- 3. Availability of Suitable Existing Towers, Other Structures, or Alternative Technology. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Governing Body that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Zoning Administrator, Planning Commission, or Governing Body related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
  - No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.
  - b. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
  - c. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

- d. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
- e. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
- f. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
- g. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.
- 4. Setbacks. The following setback requirements shall apply to all towers for which a special use permit is required; provided, however, that the Governing Body may reduce the standard setback requirements if the goals of these regulations would be better served thereby:
  - a. Towers must be set back a distance equal to at least seventy-five percent (75%) of the height of the tower from any adjoining lot line.

- b. Guys and accessory buildings must satisfy the minimum zoning district setback requirements.
- 5. Separation. The following separation requirements shall apply to all towers and antennas for which a special use permit is required; provided, however, that the Governing Body may reduce the standard separation requirements if the goals of these regulations would be better served thereby.
  - a. Separation from off-site uses/designated areas:
    - (1) Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 1, except as otherwise provided in Table 1.
    - (2) Separation requirements for towers shall comply with the minimum standards established in Table 1.
  - b. Separation distances between towers:
    - (1) Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 2.

Table 1

Off-site Use/Designated Area Separation Distance

Single-family or duplex residential units <sup>1</sup>	200 feet or 300% height of tower whichever is greater
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired	200 feet or 300% height of tower <sup>2</sup> whichever is greater
Vacant unplatted residentially zoned lands <sup>3</sup>	100 feet or 100% height of tower whichever is greater
Existing multi-family residential units greater than duplex units	100 feet or 100% height of tower whichever is greater
Non-residentially zoned lands or non-residential uses	None; only setbacks apply

**Table 2** Existing Towers - Types

			Monopole	Monopole
			75 Ft in Height	Less Than
	Lattice	Guyed	or Greater	75 Ft in Height
Lattice	5000	5000	1500	750
Guyed	5000	5000	1500	750
Monopole	1500	1500	1500	750
75 Ft in Height				
or Greater				
Monopole	750	750	750	750
Less Than				
75 Ft in Height				

<sup>&</sup>lt;sup>1</sup> Includes modular homes and mobile homes used for living purposes.

 $<sup>^{2}</sup>$  Separation measured from base of tower to closest building setback line.

<sup>&</sup>lt;sup>3</sup> Includes any unplatted residential use properties without a valid preliminary subdivision plan or valid development plan approval and any multi-family residentially zoned land greater than duplex.

- 6. Security fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the Governing Body may waive such requirements, as it deems appropriate.
- 7. Landscaping. The following requirements shall govern the landscaping surrounding towers for which a special use permit is required; provided, however, that the Governing Body may waive such requirements if the goals of these regulations would be better served thereby.
  - a. Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.
  - In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.
  - c. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

## 4-608 BUILDINGS OR OTHER EQUIPMENT STORAGE.

- A. Antennas Mounted on Structures or Rooftops. The equipment cabinet or structure used in association with antennas shall comply with the following:
  - 1. The cabinet or structure shall not contain more than 150 square feet of gross floor area or be more than 8 feet in height. In addition, for buildings and structures which are less than sixty-five (65) feet in height, the related unmanned equipment structure, if over 150 square feet of gross floor area or 8 feet in height, shall be located on the ground and shall not be located on the roof of the structure.
  - 2. If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than ten percent of the roof area.

- 3. Equipment storage buildings or cabinets shall comply with all applicable building codes.
- B. Antennas Mounted on Utility Poles or Light Poles. The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:
  - 1. In residential districts, the equipment cabinet or structure may be located:
    - a. In a side yard provided the cabinet or structure is no greater than 4 feet in height or 100 square feet of gross floor area and the cabinet/structure is located a minimum of 10 feet from all lot lines. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of at least 42-48 inches and a planted height of at least 36 inches.
    - b. In a rear yard, provided the cabinet or structure is no greater than 8 feet in height or 150 square feet in gross floor area. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 36 inches.
  - 2. In commercial or industrial districts the equipment cabinet or structure shall be no greater than 8 feet in height or 200 square feet on gross floor area. The structure or cabinet shall be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 36 inches. In all other instances, structures or cabinets shall be screened from view of all residential properties which abut or are directly across the street from the structure or cabinet by a solid fence 6 feet in height or an evergreen hedge with an ultimate height of 8 feet and a planted height of at least 36 inches.
- C. Antennas Located on Towers. The related unmanned equipment structure shall not contain more than 240 square feet of gross floor area or be more than 11 feet in height, and shall be located in accordance with the minimum yard requirements of the zoning district in which located.
- D. Modification of Building Size Requirements. The requirement of (a) through (c) of this Section may be modified by the Zoning Administrator in the case of administratively approved uses or by the Governing Body in the case of uses permitted by special use to encourage collocation.

4-609 **REMOVAL OF ABANDONED ANTENNAS AND TOWERS.** Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the City of Merriam notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) days shall be grounds to remove the tower or antenna at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

#### 4-610 NONCONFORMING USES.

- A. Not expansion of Nonconforming Use. Towers that are constructed, and antennas that are installed, in accordance with the provisions of these regulations shall not be deemed to constitute the expansion of a nonconforming use or structure.
- B. Preexisting Towers. Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of these regulations.
- C. Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas. Notwithstanding Section 4-609, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a special use permit and without having to meet the separation requirements specified in Sections 4-607 (b)(4) and (b)(5). The type, height, and location of the tower onsite shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in Section 4-609.

## PART 7 SMALL WIND ENERGY SYSTEM

4-701 **PURPOSE.** The purpose of these regulations is to accommodate Small Wind Energy Systems in appropriate locations, while minimizing adverse visual, safety and environmental impacts of the system.

4-702 **DEFINITIONS.** As used in this Part 7 of Article 4, the following terms shall have the meanings set forth below:

**Abandoned, Abandonment:** The classification of a Small Wind Energy System that has been Out Of Service for a continuous six-month period, poses a danger or is in disrepair.

**Fall Zone**: The potential fall area for the Small Wind Energy System. It is measured by using 115% of the Total Height as the radius around the center point of the base of the Tower.

**Flicker**: The moving shadow created by the sun shining on the rotating blades of the Wind Turbine.

Out Of Service: No longer operates as originally designed.

**Shadow**: The outline created on the surrounding area by the sun shining on the Small Wind Energy System.

**Small Wind Energy System**: A wind energy conversion system consisting of a Wind Turbine, a Tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

**Tower**: The monopole or guyed monopole structure that supports a Wind Turbine.

**Total Height**: The vertical distance from ground level to the tip of the Wind Turbine blade when it is at its highest point.

**Tower Height**: The height above grade of the fixed portion of the Tower, excluding the Wind Turbine.

**Wind Turbine**: The blades and associated mechanical and electrical conversion components mounted on top of the Tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

#### 4-703 APPLICABILITY.

A. Small Wind Energy System Special Use Permit: Small Wind Energy Systems of one (1) or more Wind Turbines may be permitted as either a principal or accessory use in any Residential, Commercial or Industrial zoning district subject to the approval of a Special Use Permit. Small Wind Energy Systems that are constructed in accordance with the provisions of this Article shall not be deemed to constitute the expansion of a nonconforming use.

- B. Approval: No Small Wind Energy System shall be erected, constructed, installed or modified without first receiving a Special Use Permit from the City of Merriam Governing Body as set forth in Article 4, Part 5.
- C. Exemption: All Small Wind Energy Systems installed prior to January 1, 2011 are exempt from the provisions hereof until such time as said Small Wind Energy System is changed or modified in any way.
- D. Restrictions: No roof-mounted Small Wind Energy System shall be permitted under this Article.

## 4-704 **DEVIATIONS.**

The Planning Commission may consider whether to recommend to the Governing Body deviations to this Part 7 of Article 4, based on unique design, special project conditions, site constraints or specific hardship. Deviations should be considered at the time of Planning Commission review of the Small Wind Energy System special use permit application and associated site plan for the Small Wind Energy System. The Planning Commission and Governing Body shall consider the following criteria in acting upon a request for deviation:

- A. **Purpose And Intent Of Code:** Whether granting the deviation is in compliance with the general purpose and intent of the City's Small Wind Energy System regulations as set forth in this Article.
- B. **Impacts On Adjacent Properties:** Whether granting the deviation will adversely affect neighboring property owners or residents.
- C. **Safety:** Whether granting the deviation will adversely affect safety.
- D. **Visual Clutter:** Whether granting the proposed deviation will significantly clutter the visual landscape of the area.

## 4-705 DESIGN AND CONSTRUCTION STANDARDS.

The design of the Small Wind Energy System's buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening, and landscaping that will blend facility components with the natural setting and the environment existing at the time of the installation.

#### A. Setback

- 1. Small Wind Energy System shall be set back a distance equal to 115% of the Total Height from:
  - a. Any public right-of-way.
  - b. Any overhead utility line.
  - c. All property lines.

- d. Any dedicated travel ways to include but not be limited to driveways, parking lots, nature trails or sidewalks.
- 2. Small Wind Energy Systems must meet all setbacks for accessory structures for the zoning district in which the system is located.
- 3. The setback shall be measured to the center of the Tower's base.
- 4. Guy wires used to support the Tower are exempt from the Small Wind Energy System setbacks.

### B. Tower

- 1. Wind Turbines may only by attached to freestanding or guy wired monopole Towers. Lattice towers are explicitly prohibited.
- 2. The combined Total Height of the Tower and turbine shall not exceed 120 feet.
- 3. The applicant shall provide evidence that the proposed Tower does not exceed the height recommended by the manufacturer of the Wind Turbine.
- C. Blade Clearance: There shall be a minimum vertical blade tip clearance from the ground of 20 feet.
- D. Sound Level: The Small Wind Energy System shall not operate in such a manner as to create a nuisance to surrounding properties. The applicant will provide dBA calculations at all surrounding property lines sufficient to demonstrate compliance with Article III of the Merriam Zoning Regulations.
- E. Vibration: Small Wind Energy Systems shall not cause vibrations through the ground which are perceptible beyond the property line of the parcel on which it is located.
- F. Reception Interference: Small Wind Energy Systems shall not cause interference with television, microwave, navigational or radio reception to neighboring areas.
- G. Shadowing/Flicker: Small Wind Energy Systems shall be sited in a manner that does not result in significant Flicker or Shadowing on neighboring properties.
- H. Ice Throw: The potential ice throw or ice shedding from the Wind Turbine shall not cross the property lines of the site nor impinge on any right-of-way or overhead utility.
- I. Safety: Small Wind Energy Systems shall comply with all safety requirements as outlined by the National Electrical Code and the manufacturer's guidelines.
- J. Signs: All signs, both temporary and permanent, are prohibited on the Small Wind Energy System except as follows:
  - 1. Any signage required by local, state and/or federal regulations.

- 2. Warning, safety, and maintenance signage.
- K. Code Compliance: The Small Wind Energy System shall comply with all applicable sections of the Merriam Code.
- L. Aviation: The Small Wind Energy System shall be built to comply with all applicable Federal Aviation Administration regulations.
- M. Visual Impacts: It is inherent that Small Wind Energy Systems may pose some visual impacts due to the Tower Height needed to access the wind resources. The purpose of this section is to balance the visual impacts with the applicant's ability to access wind resources.
  - 1. The applicant shall demonstrate through project site planning and proposed mitigation that the Small Wind Energy System's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to, information regarding site selection, turbine design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground.
  - 2. The color of the Small Wind Energy System shall be a non-reflective, unobtrusive color that blends in with the surrounding environment.
  - 3. A Small Wind Energy System shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the Small Wind Energy System.
- N. Utility Connection: If the proposed Small Wind Energy System is to be connected to the power grid through net metering, it shall adhere to all applicable Merriam Code regulations as well as meet any standards set forth by the applicable utility company.

# O. Access:

- 1. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- 2. The Tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground.
- P. Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the Small Wind Energy System and as otherwise prescribed by applicable laws, regulations, and ordinances.

#### 4-706 ABANDONMENT.

- A. At such time that a Small Wind Energy System is deemed to be Abandoned by the Community Development Director or his/her designee, a Notice of Abandonment shall be sent to the property owner notifying the property owner that the Small Wind Energy System must be repaired or physically removed within fourteen (14) days.
  - 1. "Physically removed" shall include, but not be limited to:
    - a. Removal of the Wind Turbine and Tower and related above-grade structures.
    - b. Restoration of the location of the Small Wind Energy System to its natural condition, except that any landscaping, grading or below-grade foundation may remain.
  - 2. Extensions of the 14-day period specified herein may be granted by the Community Development Director at the request of the property owner if such owner demonstrates that due diligence is being exercised to place the Small Wind Energy System back into service.
- B. In the event that the property owner fails to repair or physically remove the Small Wind Energy System within the 14-day period specified in the Notice of Abandonment, or any extension granted thereto by the Community Development Director as set forth above, the Small Wind Energy System shall be deemed to constitute a nuisance and shall be abated as set forth in Chapter 18 of the Merriam Code. (Ord. No. 1666; 2-28-2011).
- **4-707 SEVERABILITY.** The various parts, sections and clauses of these regulations are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby. (Ord. No. 1328  $\delta$  1, 06-22-98).