

ARTICLE 2

RULES, INTERPRETATIONS AND DEFINITIONS

Sections:

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SECTION 2-1 RULES AND INTERPRETATIONS

2-101.

a. Rules.

1. In the construction of these regulations, the provisions and rules of this section will be followed, except when the context clearly requires otherwise:
 - (a) Words used in the present tense shall include the future.
 - (b) Words in the singular number include the plural number, and words in the plural number include the singular number.
 - (c) The words "use," "used," "occupy" or "occupied" as applied to any land or building shall be construed to include the words "intended," "arranged" or "designed" to be used or occupied.
 - (d) The words "shall" and "must" are mandatory.
 - (e) The word "may" is permissive.
 - (f) The word "person" includes individuals, firms, corporations, associations, governmental bodies and agencies, and all other legal entities.
 - (g) Unless otherwise specified, all distances shall be measured horizontally.
2. Any word or phrase which is defined in this article or elsewhere in these regulations shall have the meaning as so defined whenever the word or phrase is used in these regulations, unless such definition is expressly limited in its meaning or scope.

Unless specifically provided, in computing any period of time prescribed or allowed by these regulations, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. "Legal holiday" includes any day designated as a holiday by the Congress of the United States or by the Kansas legislature. Whenever a notice, petition or other document is required to be filed within a specified time period, the notice,

petition or document must be filed with the appropriate city official or in the appropriate city office not later than 5:00 p.m. on the last day of the period as computed.

b. Interpretations.

1. **Minimum requirements.** In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of public health, safety, morals and welfare.
2. **Overlapping or contradictory regulations.** Where the conditions imposed by any provision of these regulations upon the use of land or structures are either more restrictive or less restrictive than comparable conditions imposed by any other provision of these regulations or of any other law, rule or regulation of any kind, the regulations which are more restrictive shall govern unless otherwise excepted.
3. **Private agreements.** These regulations are not intended to abrogate, annul or otherwise interfere with any easement, covenant or any other private agreement of legal relationship; provided, however, that where the provisions of these regulations are more restrictive (or impose higher standards or requirements) than such easements, covenants or other private agreements or legal relationships, the provisions of these regulations shall govern.
4. **Unlawful structures and uses.** No structure or use which was not lawfully existing at the time of the adoption of these regulations shall become or be made lawful solely by reason of the adoption of these regulations; and to the extent that, and in any respect that, said unlawful structure or use is in conflict with the requirements of these regulations, said structure or use remains unlawful hereunder.

SECTION 2-2 SEPARABILITY

2-201. It is hereby declared to be the intention of the City that the several provisions of these regulations are separable, in accordance with the following rules:

- a. If any court of competent jurisdiction shall adjudge any provisions of these regulations to be invalid, such judgment shall not affect any other provisions of these regulations.
- b. If any court of competent jurisdiction shall adjudge invalid the application of any provision of these regulations to a particular property or structure the judgment shall not affect the applicability of the provisions to any other property or structure.

SECTION 2-3 DEFINITIONS

2-301. For the purposes of these regulations, certain terms or words used herein shall be interpreted or defined as follows, unless the context clearly indicates otherwise:

Abandonment. The cessation or discontinuance of a use or activity without intent to resume, as distinguished from short term interruptions such as periods of remodeling or maintenance or normal periods of vacation or seasonal closure.

Abutting. Adjoining, adjacent or bordering, touching or contiguous.

Access. The right to cross between public and private property allowing pedestrians and vehicles to enter and leave property.

Accessory building. A building subordinate in size and function, located on the same lot or groups of lots as a main building, and which serves a function customarily incidental to the main use. Customary accessory buildings include detached garages, carports and small storage sheds, but not structures used for dwelling purposes.

Accessory use. A subordinate use which serves an incidental function to that of, or which is customarily found in connection with, the main use of the premises. Customary accessory uses include tennis courts, swimming pools, barbecue ovens, air conditioners, fireplaces and satellite dishes.

Adult entertainment business. Adult book stores, video stores, entertainment establishments and novelty stores, all as defined at Section 9-12 of these regulations.

Adult entertainment establishment. Any commercial establishment that offers free admittance or admittance for any form of consideration and which features, presents or makes available to patrons live entertainment, waiting services, books, magazines, periodicals, other printed matter, photographs, films, motion pictures, video cassettes, video productions, CD ROM discs or other software, slides, or other visual representations which are distinguished or characterized by an emphasis on matters depicting, describing or related to "Specified Sexual Activities" or "Specified Anatomical Areas" or both as herein defined. Examples of such uses would include, but is not limited to: Adult cabarets, adult motion/mini theaters, adult theaters, adult arcades, viewing booths, adult hotel/motel or adult lounge.

Adult personal service establishment. An establishment or place primarily in the business of providing non-professional massage, sauna, bathing, exercise, physical therapy, modeling, escorting or conversational services conducted either by employees, performers, contractors or other patrons and which services are distinguished or characterized by an emphasis on matters depicting, describing, performing or related to "Specified Sexual Activities" or "Specified Anatomical Areas" or both as herein defined.

Adult retail store. A commercial establishment in which 2% or more of the floor area or interior wall and window space is dedicated to the display with the intent to sale or rent for any form of consideration any one or more of the following:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, video productions, CD ROM discs or other

software, slides, or other visual representations which are distinguished or characterized by an emphasis on matters depicting, describing, or related to “Specified Sexual Activities” or “Specified Anatomical Areas” or both as herein defined; or

- b. Instruments, devices or paraphernalia which are designed for use in connection with “Specified Sexual Activities”.

Agricultural use. The use of property of five (5) or more acres for the production of plants, animals, or horticultural products, including but not limited to: forages; grains and feed crops; dairy animals and dairy products; beef cattle; sheep; swine; poultry, and horses; bees and apiary products; trees and forest products; fruits, nuts, and berries; vegetables; or nursery, floral, ornamental, or greenhouse products. Land used for agricultural purposes shall **not** include the following:

- Land which is used for recreational purposes; residential suburban property; home sites and yard areas whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of the plants listed above.
- The operation or maintenance of greenhouses, nurseries, or hydroponics farms operated at retail.
- Wholesale or retail sales as an accessory use except the seasonal retail sale of produce.
- The operation or maintenance of a commercial stockyard, feedlot, or other confined livestock feeding operation.
- The operation of auction sales yards.
- The operation of a bed and breakfast.
- The operation of junk, scrap, or salvage yards.
- The operation of kennels.
- The establishment of additional dwelling site for any purpose except as accessory dwellings for bona fide farm help employed on the premises.

Airport or heliport. The Abilene Municipal Airport. See additional airport-related definitions in Article 23.

Alley. A dedicated public right-of-way, other than a street, which provides only a secondary means of access to abutting property.

Alter or alteration. Any change, addition or modification in construction or use of an existing structure.

Amendment. The change or alteration to the Zoning Regulations in one of the following forms:

- a. A comprehensive revision or modification of the zoning text and/or maps.
- b. A text change in the zone requirements.
- c. The approval of a Conditional Use Permit as provided in these regulations.
- d. A change in the zoning maps, also known as a “rezoning”.

Animal clinic or hospital. Any building or structure designed for examination, observation, treatment, board or care of animals by a doctor of veterinary medicine.

Apartment. See *Dwelling, multiple*.

Applicant. The owner of a tract of land, or his or her duly designated representative, for which an amendment has been requested. Consent shall be required from the legal owner of the premises if the applicant is other than the owner.

Architectural projections. Architectural features and accessories which are deemed desirable or necessary for the health or safety of the public, such as, but not limited to: cornice and eaves, architectural decorations (sills, pediments, etc.), ornamental columns (pillars, columns, moldings, etc.), entrance steps, decks, porches, balconies, permanent awnings and canopies, marquees, and bay windows. The term architectural projection, however, does not include any architectural feature which may be removed or retracted at will from the primary structure, such as a flag pole, retractable awnings, or gutter.

Assisted living facility. Any place or facility caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes apartments for residents and provides or coordinates a range of services including personal care or supervised nursing care available 24 hours-a-day, seven days-a-week for the support of resident independence. The provision of skilled nursing procedures to a resident in an assisted living facility is not prohibited by these regulations.

Attached. A foundation, wall, or roof of a building or structure which is connected to and supported by the foundation, wall, or roof of another building or structure.

Automotive service station. Any building, structure or land used for the dispensing, sale or offering for sale at retail any motor vehicle fuels, oils, or accessories, including lubrication of motor vehicles and replacement or installation of minor parts and accessories.

Automobile, truck and trailer sales and service. A building or premises used for the display and/or sales of new or used automobiles, trucks or trailers and where only incidental, minor repair work is performed.

Awning. A roof-like cover that is temporary in nature and that projects from the wall of a building for the purposes of shielding a doorway or window from the elements.

Basement. That portion of a building that is partly or completely below grade plane for more than one-half of its perimeter. See **Story**.

Bed and breakfast inn. A residential structure other than a hotel or lodging house, where for compensation and by pre-arrangement for definite short term periods, sleeping rooms and meals are provided for one or more persons who are guests at the inn.

Block. A piece or parcel of land entirely surrounded by public highways, streets, streams, railroad rights-of-way, parks, or a combination thereof.

Board of Zoning Appeals. The City of Abilene Board of Zoning Appeals.

Boarding house. See **Lodging house.**

Buildable width. The width of that part of a lot not included within the open spaces required in this chapter.

Building. A structure having a roof supported by columns or walls intended, designed, used or suitable for use for the support, enclosure, shelter or protection of persons, animals or property; and when separated by firewalls each portion of such structure so separated shall be deemed a separate building.

Building, height. The vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or the average height of the highest gable of a pitched or hipped roof. The reference datum is the elevation of the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior wall of a building.

Building line. The building line is equivalent to the building setback line.

Building, principal. A non-accessory building in which a principal use of the lot on which it is located is conducted.

Building setback line. A line within a lot or other parcel of land indicating the limit beyond which a building or structure may not be erected. See **Yard.**

Bulk regulations. Regulations controlling the size of structures and the relationships of structures and uses to each other and to open areas and lot lines. Bulk regulations include regulations controlling:

- a. Maximum height.
- b. Maximum lot coverage.
- c. Minimum size of yards and setbacks.

Campgrounds. Any parcel of ground which provides space for transient occupancy and is used or intended to be used for the parking of one or more camping trailers, tents or similar recreational vehicles. The term campgrounds does not include sales lots on which unoccupied camping trailers, whether new or used, are parked for the purpose of storage, inspection or sale.

Camping trailer. Any vehicular portable dwelling unit designed especially for short-term occupancy such as: travel trailers, tent trailer, truck or auto-mounted camping units, converted buses and trucks, and all other similar units whether self-propelled, pulled, or hauled, and designed primarily for highway travel without the necessity of a conditional permit.

Canopy. A structure, movable or stationary, attached to and deriving its support from framework, posts or other means independent of a connected structure for the purpose of shielding a platform, stoop or sidewalk from the elements; or, a roof-like structure of

permanent nature which projects from the wall of a structure and overhangs the public way.

Cellar. A story having more than one-half of its height below grade.

Child care facilities. See **Day care facilities.**

Church. An establishment, the principal use of which is religious worship, but which may include accessory uses in the main structure or in separate buildings such as Sunday School rooms, child-care facilities, assembly rooms, kitchens, recreational facilities and libraries.

City. The City of Abilene, Kansas.

City Commission. The Abilene City Commission.

Club, Class A. Premises owned or leased by a corporation, partnership, business trust or association and operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the State of Kansas, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates and their families and guests accompanying them.

Club, Class B. Premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

Club or lodge. See **Fraternal, civic and social organizations.**

Club, private. Premises licensed by the State of Kansas in accordance with the Private Club Act, K.S.A. 41-2601 et.seq. A building or premises used for social, recreational, dining or philanthropic purposes, the normal use of which is limited to specific members, patrons, or otherwise listed persons.

Common open space. A parcel of land or an area of water, or combination of both land and water, and designed and intended for the use and enjoyment of the residents of the parking or loading area, publicly owned open space or other facilities dedicated by the developer for public use. Common open space must be substantially free of structures.

Compatible use. A land use which is congruous with, tolerant of, and has minimal adverse effects on existing neighboring uses. Compatibility may be affected by pedestrian or vehicular traffic generation, volume of goods handled and environmental elements such as noise, dust, odor, air pollution, glare, lighting, debris generated, contamination of surface or ground water, aesthetics, vibration and electrical interference.

Comprehensive plan. The currently adopted Comprehensive Plan for the City of Abilene.

Conditional use. A use of any building, structure or parcel of land that, by its nature, is perceived to require special care and attention in siting so as to assure compatibility with surrounding properties and uses.

Conditional use permit. A written document of certification permitting the construction, alteration or establishment of a conditional use created after the effective date of these regulations.

Condominium. A building containing two (2) or more dwelling units which are designed and intended to be separately owned in fee under the Townhouse Ownership Act (K.S.A. 58-3710 *et seq.*) of the State of Kansas.

Convalescent homes. See **Nursing homes, retirement homes** or **convalescent homes**.

County Board or County Commission. The Board of County Commissioners of Dickinson County, Kansas.

Court. An open space which may or may not have direct street access and around which is arranged a single building or a group of related buildings.

Day care facilities. Definitions for those of the following facilities which provide care for children and adults are established by state law and promulgated by regulations of the Kansas Department of Health and Environment (KDHE) and the Kansas Department of Children and Families (DCF). Standards for such definitions may be periodically amended by changes to state regulations and such changes are incorporated by reference herein.

- a. **Adult day care home.** A facility for adults having some or all of the characteristics of homes for the elderly, whether operated for profit or not, which through its operation provides one (1) or more personal services for five (5) or more persons not related by blood or marriage to the owner or operator, for periods of time of less than twenty-four (24) hours. Personal services are in addition to housing and food service, and include but are not limited to: personal assistance with bathing, dressing, housekeeping, eating, supervision of self-administered medication, individual or group activities, and assistance in securing health care from appropriate sources.
- b. **Child care center.** A facility operating in accordance with K.A.R. 28-4-420 *et seq.* which provides care and educational activities for thirteen (13) or more children two (2) weeks to sixteen (16) years of age for more than three (3) and fewer than twenty-four (24) hours per day including daytime, evening and nighttime care; or which provides before and after school care for school-age children and licensed by the State as a child care center. A facility may have fewer than thirteen (13) children and be licensed as a center if the program and building meet child care center regulations as defined by the State of Kansas.
- c. **Day care home.** A home in which care is provided for a maximum of ten (10) children in compliance with the definitions and regulations of the State of Kansas, and licensed by the State as a day care home in accordance with K.A.R. 28-4-113 *et seq.* or a maximum of twelve (12) children regulated as a licensed group day care home by the State of Kansas in accordance with K.A.R. 28-4-113 *et seq.*

- d. **Family day care home.** A home maintained for the purpose of providing children with day-care away from such children’s homes, for fewer than twenty-four (24) hours a day, provided that not more than seven (7) children cared for at such place are under kindergarten age and not more than three (3) of the children cared for at such place are less than eighteen (18) months of age, or a maximum of ten (10) children under sixteen (16) years of age operated in compliance with the definitions and regulations of the State of Kansas, and licensed by the State as a family day care home.
- e. **Group boarding home.** A facility which operates in accordance with K.A.R. 28-4-268 et seq., which provides residential care for not less than five (5) nor more than ten (10) persons unrelated to the caregivers, and which provides residents access to the surrounding community and includes emergency shelters and maternity homes. There are specific criteria for meeting this definition as administered by KDHE.
- f. **Group day care home.** A home in which care is provided for a maximum of twelve (12) children under sixteen (16) years of age, in compliance with the definitions and regulations of the State of Kansas, and licensed by the State as a group day care home. (K.A.R. 28-4-114(f)(1).)
- g. **Preschool.** A day-care facility in compliance with the definitions and regulations of the State of Kansas, and licensed by the State as a preschool which:
 - 1. Provides learning experiences for children who have not attained the age of eligibility to enter kindergarten prescribed in K.S.A. 72-1107(c), and any amendments thereto, and who are thirty (30) months of age or older.
 - 2. Conducts sessions not exceeding three (3) hours per session;
 - 3. Does not enroll any child in more than one (1) session per day; and
 - 4. Does not serve a meal.

The term “preschool” shall include all educational preschools, nursery schools, church-sponsored schools, and cooperatives. A “preschool” may have fewer than thirteen (13) children and shall operate in compliance with the definitions and regulations of the State of Kansas, and licensed by the State as a preschool.

Detached. A building that does not have a wall, roof or other structural member which is connected to and supported by the foundation, wall or roof of another building or structure.

Developer. The owner, or any other person, firm or corporation authorized by the owner, undertaking proceedings under the provisions of these regulations for the purpose of rezoning or seeking a conditional use on land.

Development. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Disability. Shall mean, with respect to a person:

- a. A physical or mental impairment which substantially limits one or more of such person's major life activities; or
- b. Having a record of having such an impairment; or
- c. Being regarded as having such an impairment.

Such term does not include current illegal use of or addiction to a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. Sec. 802).

Distance. Horizontal distances unless otherwise designated.

Drinking establishment. Premises licensed as a drinking establishment by the State of Kansas, open to the public and selling alcoholic liquor by the individual drink, for consumption on the licensed premises, in accordance with K.S.A. 41-2642 and amendments thereto. For purposes of these regulations a drinking establishment shall be regulated the same as a tavern.

Drive-in service. The service of food or other goods, services or entertainment where patrons remain in their motor vehicles which are parked in spaces provided on the premises for that purpose.

Drive-through service. Service where patrons are served through a window or other device while remaining in their motor vehicles and where products served to patrons are normally not consumed on the premises.

Dwelling, attached. A residential structure which is joined to another dwelling at one or more sides by all or a substantial portion of a party wall or walls including walls of an attached garage.

Dwelling, detached. A residential structure which is entirely surrounded by open space on the same lot.

Dwelling, farm. Any structure or portion thereof which is designed and used exclusively for residential purposes and which is located on land used exclusively for agricultural purposes. A farm dwelling shall be considered use of the land for agricultural purposes.

Dwelling, multiple. A residential building having accommodations for and occupied by more than two (2) families, independently.

Dwelling, single-family. A residential building having accommodations for and occupied exclusively by one (1) family.

Dwelling, two-family or duplex. A residential building having accommodations for and occupied exclusively by two (2) families independently.

Dwelling unit. One or more rooms in a residential building or residential portion of a building which are arranged, designed, used or intended for use by not more than one family, and which includes cooking space and sanitary facilities reserved for the occupants thereof.

Easement. An interest in land that is held by someone other than the owner that entitles the holder to a specific limited use or right.

Enlargement. The expansion of a building, structure or use in number, volume, size, area, height, length, width, depth, capacity or ground coverage.

Established building line. A building setback line generally parallel to the street right-of-way line established by existing principal buildings in a block.

Exception. An exception from a provision of these regulations, which may be granted by the Board of Zoning Appeals only when such exception is specifically authorized in these regulations.

Extraterritorial jurisdiction. The area beyond the corporate limits of the City in which the City has the powers to apply comprehensive planning, zoning and subdivision regulations and is exercising such powers.

Family. One or more persons related by blood, marriage or adoption, or pursuant to legal guardianship; living together as a single housekeeping unit; or a group of not more than four (4) unrelated persons living together as a single housekeeping unit.

Feedlot, commercial. A livestock feedlot or feed yard as defined by K.S.A. 47-1501 as amended from time to time, licensed by and operated under standards set forth by the State of Kansas.

Feedlot, commercial. Any tract of land or structure, pen or corral wherein cattle, horses, sheep, goats or swine not raised on the tract of land and/or not owned by the owner of the land, structure, pen or corral are maintained in close quarters for the purpose of fattening such livestock for final shipment to market.

Fence. A free-standing structure intended to provide privacy, protection or confinement or to redirect a person's direction of travel. A fence may be constructed of but not limited to: wire, chain links, wood, stone or any standard building materials. A fence is not a structure unless it exceeds 80% visual blockage.

Floor area. For the purpose of applying the requirements of off-street loading and parking based on "floor area," floor area shall mean the floor area used or intended to be used by tenants, or for the service to the public as customers, patrons, clients, or patients, including areas occupied by fixtures and equipment for display or sale of merchandise. It shall not include areas used for nonpublic purposes such as storage, incidental repair, processing or packaging of merchandise, restrooms, utilities, kitchens, fitting or dressing rooms.

Fraternal, civic and social organizations. A corporation, partnership, business trust or association which is nonprofit, which has been exempted from the payment of federal income taxes and for which the sale of alcoholic beverages to members and their guests may be allowed under the Class A club definition of the state statutes provided it is secondary and incidental to the promotion of some other common objective of the organization. Said organizations may include, but are not limited to the following: V.F.W., Eagles, Elks, Knights of Columbus, American Legion, Masonic Lodges and Moose Lodges.

Frontage. All the property on one side of a street between two (2) intersecting streets (crossing or terminatings) measured along the line of the street. Where a street is dead-ended, the frontage shall be considered as all that property abutting on one side between an intersecting street and the dead-end of the street.

Garage, private. Any detached accessory building or portion of a principal building designed or used for the housing and storage of motor vehicles and other property which belong to, or are provided for the exclusive use of, the occupants of the lot or premises upon which such building is located and having no provisions for the commercial repair or upkeep of such vehicles.

Garage, public. A building or portion thereof, other than a private or storage garage, or auto body repair garage as defined in this chapter, designed or used for equipping, servicing, repairing, hiring, selling, or storing motor driven vehicles.

Governing body. The Abilene Mayor and City Commission.

Grade. A reference plane representing the average finished ground level adjoining the building at all exterior walls. When the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest point(s) within the area between the building and the property line, or when the property line is more than five (5) feet from the building, between the building and a line five (5) feet from the building.

Group boarding home for adults. A residential dwelling unit for persons, eighteen (18) years of age or over, not constituting a “family” as defined in this section provided however, that this definition shall not include an existing or proposed use of a residential dwelling unit which is in compliance with the definition of “group home” as defined in K.S.A. 12-736. Such latter use shall be considered to be a single-family residential use and shall not be considered a “group boarding home for adults.”

Group boarding home for minors. A residential dwelling unit for persons under 18 years of age who do not constitute a “family” as defined in this section, who for various reasons cannot reside in their natural home and where 24-hour adult care, supervision and consultation exists under license of the Kansas Secretary of the Department of Health and Environment or the Secretary of the Department of Aging and Disabilities Services; provided, however, that this definition shall not include an existing or proposed use of a residential dwelling unit which is in compliance with the definition of “group home” as defined in K.S.A. 12-736. Such latter use shall be considered to be a single-family residential use and shall not be considered to be a “group boarding home for minors.”

Group home. Any dwelling occupied by not more than ten (10) persons, including eight (8) or fewer persons with a disability, which is a physical or mental impairment as defined by K.S.A. 12-736, who need not be related by blood or marriage and not to exceed two (2) staff residents who need not be related by blood or marriage to each other or to the residents of the home. Such a dwelling must be licensed as a group home by the Kansas Department of Children and Families or the Kansas Department of Health and Environment. See also **Large group home**.

Guest house. Living quarters within a detached accessory building located on the same premises with the main building for use by temporary guests of the occupants of the premises, such quarters having no kitchen facilities or separate utilities and not rented or otherwise used as a separate dwelling.

Hard surface. Any permanently applied asphalt or concrete surface of an approved thickness, or other approved surface, excluding asphalt millings with or without a slurry seal, and excluding crushed rock, gravel, loose fill material, grass, sand and dirt.

Hazardous waste disposal facility. Any facility which meets the requirements as defined in K.S.A. 65-3402, as amended.

Home occupation. An accessory occupational use conducted entirely within a dwelling unit by the occupants thereof, which is clearly incidental to the use of the structure for residential purposes and does not change the residential character of the site.

Hospital. A building or group of buildings having room facilities for one or more abiding patients, used for providing services for the in-patient medical and surgical care of sick or injured humans, and which may include related facilities such as laboratories, pharmacies, out-patient departments, training facilities, central service facilities, and staff offices; provided, however, that such related facilities must be incidental and subordinate to the main use and must be an integral part of the hospital operation.

Hotel. A building or structure which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay primarily to transient guests and in which four (4) or more rooms are used for the accommodation of such guests.

Impervious surface. A surface that has been compacted or covered with a layer of material making the surface highly resistant to infiltration by water, such as conventionally surfaced streets, sidewalks, parking lots, driveways and the roofs of buildings.

Improvements. Any structure, grading, street surface, curbs and gutters, sidewalks, bike-ways, cross-walks, water mains, sanitary sewers, storm sewers, drainage ditches, culverts, bridges, trees and other additions or deletions from the natural state of land which increase its utility or habitability.

Infrastructure. Facilities and services needed to sustain industry, residential, commercial, and other land-use activities, including water lines, sewer lines, and other utilities, streets and roads, communications, and public facilities such as parks, schools, etc.

Junk. Materials that include, but are not limited to: scrap copper, brass; rope; rags; batteries; paper; trash; rubber; debris; waste; junked, dismantled, scrapped or wrecked motor vehicles or parts thereof; iron; steel; or other old or scrap ferrous or nonferrous material or similar materials.

Junk yard. See **Salvage yard.**

Kennel boarding. Any place, area, building, or structure where dogs (including those under 12 months of age) are boarded, housed, cared for, fed, or trained by other than the owner.

Kennel breeding. Any place, area, building, or structure where more than four dogs are kept for purposes of breeding, raising, or as pets.

Landowner. The legal or beneficial owner or owners of a lot or tract. The holder of a contract to purchase or other person having an enforceable proprietary interest in a lot or tract shall be deemed a landowner.

Large group home. A group home occupied by more than ten (10) residents, including staff.

Laundry (self-service). An establishment equipped with individual coin- and/or card-operated washing, drying and/or dry cleaning machines.

Laundry. An establishment where commercial laundry and dry cleaning work is undertaken.

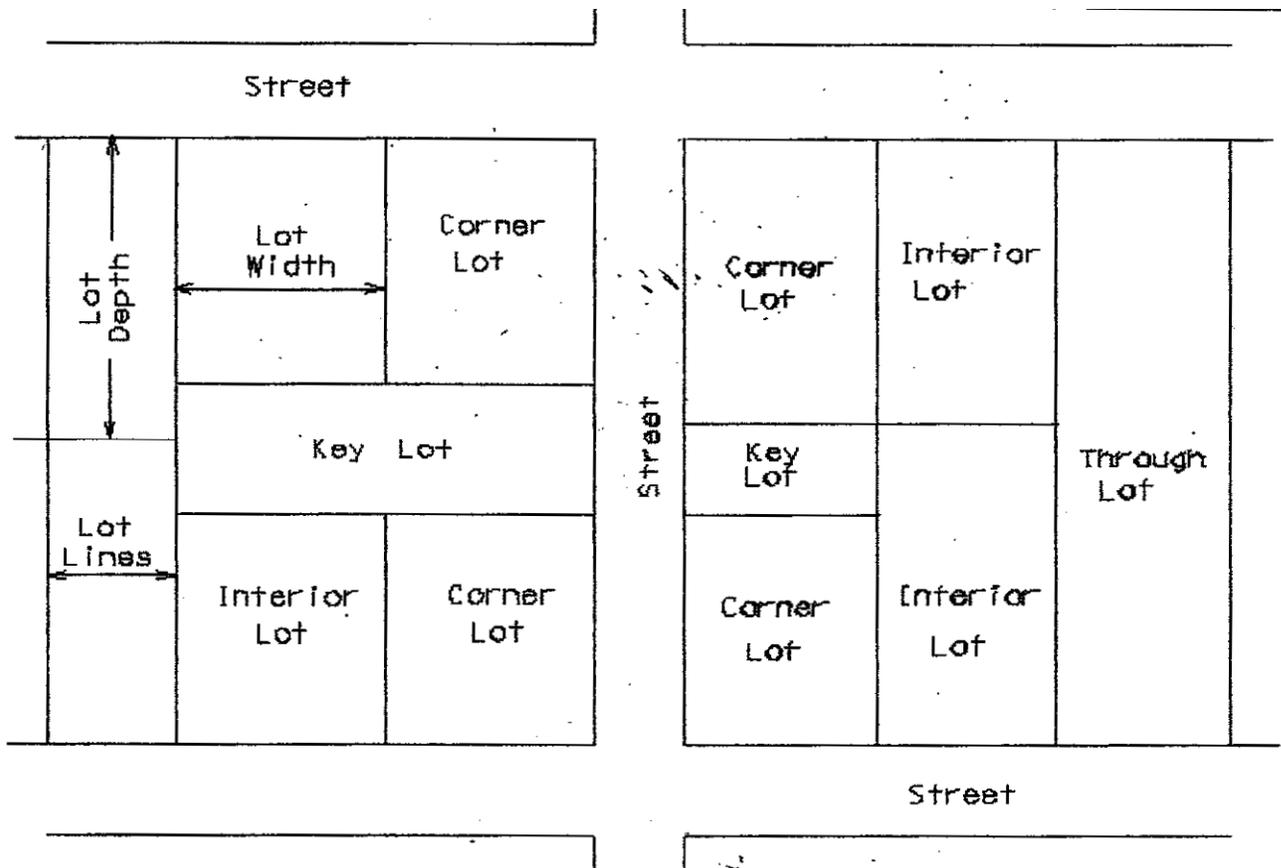
Licensed provider. Shall mean a person or agency who provides mental health services and is licensed by:

- a. The Department of Aging and Disabilities Services pursuant to K.S.A. 75-3307b or K.S.A. 65-425 et seq., and amendments thereto; or
- b. The Behavioral Sciences Regulatory Board pursuant to K.S.A. 75-5346 et seq. or K.S.A. 74-5301 et seq., and amendments thereto; or
- c. The State Board of Healing Arts pursuant to K.S.A. 65-2801 et seq., and amendments thereto.

Loading or unloading space. An off-street space or berth, on the same tract and contiguous with the principle building or group of buildings for the temporary parking of commercial vehicles for loading and unloading of merchandise or materials.

Lodging house. A building other than a hotel or motel, where, for compensation and by prearrangement for definite periods, meals, or lodging and meals, are provided. Individual cooking facilities are not provided.

Lot. A parcel or tract of land (legally described or platted) which is on record in the office of the Dickinson County Register of Deeds. For the purposes of these regulations, a lot shall have a frontage upon a public street right-of-way.



Lot area. The area of a horizontal plane bound by the front, side and rear lot lines, excluding any road right-of-way or road easements. The total area within the property lines of a lot or tract.

Lot, corner. A lot abutting upon two (2) or more streets at their intersection. A corner lot shall be deemed to front upon that street on which it has its least dimension. A corner tract made up of more than one platted lot shall conform to all requirements established for a corner or other lot and shall be deemed to front upon that street on which one or more of such platted lots, which would individually not be classified as corner lots, front.

Lot coverage. The total area of building expressed as a percentage of the total lot, plot or tract.

Lot, depth of. The mean horizontal distance between the front and rear lot lines.

Lot, double frontage. A lot having a frontage on two (2) nonintersecting streets as distinguished from a corner lot.

Lot, interior. A lot whose side line or lines do not abut upon any street.

Lot, key. A lot having its side lot lines coincident on one or both sides with the rear lot lines of adjacent lots.

Lot lines. The lines bounding a lot as defined herein.

Lot of record. A lot which is a part of a subdivision, which has been recorded in the office of the Register of Deeds of Dickinson County or a lot described by metes and bounds, the description of which has been recorded in the office of the Register of Deeds of Dickinson County, prior to the effective date of Abilene Ordinance No. _____.

Lot split. The division of a single lot into not more than two (2) tracts without having to re-subdivide said lot, providing that the resulting lots shall not again be divided without re-platting.

Lot, through. An interior lot having frontages on two (2) streets.

Lot width. The horizontal distance between the side property lines measured at the front property line as it abuts the street or along the street right-of-way line on unplatted streets, except that on cul-de-sac lots, the lot width shall be measured at the required front yard setback line.

Lot, zoning. A parcel or tract of land used, developed, or built upon as a unit under single ownership or control. Said parcel or tract may consist of one or more lots of record, one or more portions of a lot or lots of record, or any combination thereof.

Manufactured home. A structure consisting of one or more mobile components manufactured to the standards embodied in the federal Manufactured Home Construction and Safety Standards Act generally known as the HUD Code, established pursuant to 42 U.S.C. 5403. Such structure shall have been constructed after June 15, 1976. Such units shall provide all of the accommodations necessary to be a dwelling unit and shall be connected to all utilities in conformance with applicable regulations. For purposes of these regulations, the term "manufactured home," when used by itself, shall not include a "residential-design manufactured home" as defined in these regulations.

Manufactured home lot. A plot of ground for the placement of one manufactured home for single-family occupancy and the exclusive use of its occupants, and which provides the necessary utility services for water, sewage and electricity.

Manufactured home park. An area, parcel, tract or plot of ground of five (5) or more acres that is equipped as required by these regulations for support of manufactured homes and used or intended to be used by two or more occupied manufactured homes, but under no circumstances shall the manufactured home spaces be sold or offered for sale individually.

Manufactured home skirting. The enclosing of the area between the manufactured home and the ground with a material designed to obscure from view the chassis of a manufactured home.

Manufactured home space. A plot of ground within a manufactured home park, which can accommodate one manufactured home and which provides the necessary utility services for water, sewerage, gas and electricity.

Manufacturing. Any method of processing, developing, fabricating, or assembling, either raw materials, semi-finished materials, or parts into a semi-finished or finished product.

Manufacturing, light. Manufacturing which does not result in the emission of odor, dust, vibration, smoke, gas or noise offensive to the use and enjoyment of adjoining properties.

Medical, dental or health clinic. Any building designed for use by more than one person lawfully engaged in the diagnosis, care and treatment of physical or mental diseases or ailments of human beings and in which no patients are lodged overnight, but which may include a pharmacy.

Mobile home. A transportable, factory-built structure designed to be used as a year-round residential dwelling, which does not meet or was built prior to enactment of the National Manufactured Home Construction and Safety Standards Act, which became effective June 15, 1976. For purposes of these regulations a mobile home is not a manufactured home.

Motel. See *Hotel*.

Motor home. A portable dwelling designed and constructed as an integral part of a self-propelled vehicle used for recreation.

Motor vehicle. A motorized vehicle with rubber tires for use on highways, including passenger cars, pick-ups and trucks.

Motor vehicle body shop. A building or premises used for vehicle body repair including painting.

Motor vehicle repair service. A building or premises used for the repair and servicing of motor vehicles excluding body and paint work.

Motor vehicle storage yard. A building or premises where operable, inoperable, abandoned, wrecked or junked vehicles are stored while awaiting final disposition.

Nonconforming lot of record. A lot, whether with or without improvements, which is part of a recorded subdivision or a parcel of land, the deed to which was recorded prior to the adoption of subdivision regulations and neither said lot nor parcel complies with the lot width or area requirements for any permitted uses in the district in which it is located. See also *Lot of record*.

Nonconforming structure. An existing structure which does not comply with the lot coverage, height or yard requirements which are applicable to new structures in the zoning district in which it is located.

Nonconforming use. An existing use of a structure or of land which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.

Nursing facility. Any place or facility operating 24 hours-a-day, seven days-a-week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care to compensate for activities of daily living limitations.

Nursing facility for mental health. Any place or facility operating 24 hours-a-day, seven days-a-week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care and special mental health services to compensate for activities of daily living limitations.

Nursing homes, retirement homes or convalescent homes. A building operated by an institution or agency licensed by the State of Kansas for the reception, board, care or treatment of three (3) or more unrelated individuals, but not including facilities for the care and treatment of mental illness, or alcohol or narcotics addiction.

Overlay zoning district. A zoning district that is described in the zoning regulations text, mapped, and imposed in addition to those in the underlying zoning district. If a conflict exists between the requirements of the overlay district, and underlying zoning district, the more restrictive requirements shall apply.

Owner. Any person, agent, firm or corporation having a legal or equitable interest in the property.

Parcel. A lot or contiguous group of lots in single ownership or under single control, usually considered a unit for purposes of development.

Penal rehabilitation facility. Sometimes known as a "half-way house" or a "community-based correctional service facility" or a "non-medical resident care facility," means a facility wherein a person convicted of a crime is accepted for supervision, or residential living, or detention, or care, or treatment after having been released, granted probation, or paroled by appropriate authority.

Person. Any individual, firm, co-partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

Premises. A lot, together with all buildings and structures thereon.

Permanent wall foundation. An exterior wall designed to resist frost action. The wall must be continuous around the perimeter of the structure, but may have such openings as required by any adopted Building Code of the City of Abilene. The wall must be designed as a footing and foundation wall and constructed in accordance with any applicable City-adopted building code.

Permitted use. A use by right which is specifically authorized in a particular zoning district.

Planning Commission. The City of Abilene Planning Commission.

Plat. A map depicting the division or subdivision of land into lots, blocks, parcels, tracts or other portions thereof.

- a. **Plat, Final** means a drawing of a permanent nature showing the precise location and dimension of such features as streets, lots, easements and other elements pertinent to transfer of ownership and prepared for permanent record.
- b. **Plat, Preliminary** means a drawing showing the proposed general patterns of streets, lots and land uses within a tract to be subdivided.

Premises. A lot, together with all buildings and structures thereon.

Private club. An association organized and operated for profit or not for profit for persons who are bona fide members paying annual dues, which owns, hires, or leases premises, the use of which premises is restricted to such members and their guests. Alcoholic beverages may be served or sold to members and their guests provided such service or sale of alcoholic beverages is in compliance with all federal, state and local laws.

Professional office. Any building or part thereof used by one or more persons engaged in the practice of a recognized profession, included but not limited to accounting, medicine and law.

Prohibited use. Any use of land or a structure other than legal nonconforming, which is not listed as a permitted use, conditional use or special use within a zoning district.

Public utility. Any business of which the purpose is to furnish any of the following to the general public:

- a. Telephone and other telecommunication services.
- b. Telegraph service.
- c. Electricity.
- d. Natural gas.
- e. Water or stormwater control.
- f. Transportation of persons or property.
- g. Cable television.
- h. Sanitation control.
- i. Any other business so affecting the public interest as to be subject to supervision or regulation by a governmental agency.

Recreational vehicle. A vehicular-type unit built on or for use on a chassis and designed as living quarters, both permanent and temporary, for recreational, camping or travel use, and which has its own motive power, or is mounted on, or which can be drawn by another vehicle. The term recreational vehicle shall include, but not be limited to, motor homes, travel trailers, camper trailers, pickup truck campers, hauling trailers, and camper buses.

Rehabilitation home. A residential building which is used by an organized group licensed or regulated by the State of Kansas to supervise the rehabilitation of the individual occupants. Sometimes such homes are known as "halfway houses" for the rehabilitation of wayward juveniles, drug or alcohol addicts or former offenders.

Residential center. A facility which operates in accordance with K.A.R. 28-4-268 *et seq.* which provides residential care for more than ten (10) persons unrelated to the caregivers, and which provides residents access to the surrounding community and includes emergency shelters and maternity homes. There are specific criteria for meeting this definition as administered by KDHE.

Residential design manufactured home. A manufactured home on a permanent wall foundation which has minimum dimensions of twenty-two (22) body feet in width, a pitched roof, and siding and roofing materials which are customarily used on site-built homes. See **Permanent wall foundation.**

Restaurant. Those establishments whose primary function is to provide food to the public either on premises or as carry out, including such establishments licensed by the state as drinking establishments serving 30 percent or more of their volume in food.

Restaurant, drive-in. An establishment whose primary purpose is the sale, dispensing or serving of food, refreshments or beverages in automobiles, including those establishments where customers may serve themselves, except that this shall not be construed as to include a cafeteria.

Retirement homes. See **Nursing homes, retirement homes** or **convalescent homes.**

Safe house. A facility providing 24-hour residential care for persons unrelated to the care givers. Emergency shelter and maternity care may be provided.

Sale, retail. The sale of goods, merchandise and/or commodities to the ultimate consumer.

Sale, wholesale. The sale of goods for resale, or the sale of goods produced or processed from raw materials which require bulk delivery of the product.

Salvage yard. An area of land with or without structure, used for or occupied by a deposit, collection or storage, outside a completely enclosed structure, of used or discarded materials such as wastepaper, rags or scrap material; or used structural materials, house furnishings, machinery, motor vehicles or parts thereof with or without the dismantling, processing, salvage, sale or other use or disposition of the same. A salvage yard shall also include the dismantling or wrecking of used motor vehicles or trailers, or the storage, sale or dumping of dismantled or wrecked vehicles or their parts. The presence on any lot or parcel of land of 5 or more motor vehicles, which, for a period exceeding thirty (30) days, have not been capable of operating under their own power or from which parts have been or are to be removed for reuse or sale shall be considered to be a salvage yard.

School. Any public or private elementary, junior high, high school, college, university, post-graduate, technical or vocational school, offering courses in general instruction at least five days per week and seven months per year.

Service, gas or filling station. A building or group of buildings and adjacent surfaced area where motor vehicles are or may be refueled and serviced. Self-service pumps without buildings shall also be included.

Setback. The distance between a building and the lot line or street right-of-way line, whichever is applicable.

Setback line, front yard. The line which defines the depth of the required front yard. This line shall be measured from and parallel to the street right-of-way line or highway setback line when one has been established.

Setback line, rear yard or side yard. The line which defines the width or depth of the required rear or side yard. This line shall be measured from and parallel to the property line.

Sight distances. The area within which no sign, fence, wall, planting or other obstruction to vision shall be constructed, placed or maintained.

- a. No such obstruction above three feet (3') above the established street grade shall occur within the area of a corner lot between the lines of the intersecting streets and a straight line connecting them at points twenty feet (20') distant from the intersection of the lot lines.
- b. No wall or fence more than four feet (4') in height may project into or enclose any required front yard. Walls or fences of up to seven feet (7') in height may project into or enclose other required yards.
- c. An area comprising a triangle with legs of five feet (5') measured from the curbline shall be free from any visual obstruction at all points where alleys intersect with public streets.

Sight triangle. A triangular area at a street intersection, other than an intersection within the B-5 central business district, in which nothing shall be erected, placed (including automobiles, trucks and other large vehicles or trailers), planted, or allowed to grow in such a manner as to materially impede vision and, therefore, the safety of vehicles and pedestrians, between the height of 33 inches and eight feet above the grades of the bottom of the curb of the intersecting streets measured from the point of intersection of the centerline of the streets, 90 feet in each direction along the centerline of the streets. At the intersection of major or arterial streets, at intersections outside of the central business district, the 90 foot distance shall be increased to 120 feet.

Specified anatomical areas.

- a. Less than completely and opaquely covered human genitals, pubic region, pubic hair, buttocks, anus and female breasts below a point immediately above the top of the areola; and
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- c. Any combination of the aforementioned in subsection a. and b.

Specified sexual activities. Means and includes any of the following:

- a. The fondling or other erotic touching of “Specified Anatomical Areas” as herein defined; or
- b. Sex acts, normal and perverted, actual or simulated, including but not limited to, intercourse, oral copulation, sodomy, bestiality, cunnilingus, masturbation, or
- c. Excretory functions as part of or in connection with any of the activities set forth in subsections a. and b.; or
- d. Any combination of the aforementioned activities.

Street, arterial. A street or road that is designated in the City Plan for large volumes of traffic to move quickly and safely, and which provides service and access to abutting properties only as a secondary function.

Street, collector. A street or road that is designated in the City of Abilene Comprehensive Plan primarily to gather traffic from local streets and carry it to the arterial system.

Street, dead end. A street or road having only one outlet and no vehicular turnaround, as distinguished from a cul-de-sac.

Street, local. Any public street or road designed primarily to provide access to more than one property.

Street, private. A right-of-way or easement which affords principal means of vehicular access to property abutting thereon, which right-of-way or easement is owned, controlled and maintained by persons other than the public.

Storage area/storage yard. An off-street area used for the placement, keeping and storage of inoperable vehicles, vehicles awaiting repair, and parts thereof; building materials, supplies and equipment; trailers; heavy construction equipment and other motorized vehicles and equipment; but not for junkyard or salvage yard purposes.

Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor or roof next above. If the finished floor level directly above a basement or unused underfloor space is six feet (6') or more above grade as defined herein for more than fifty percent (50%) of the total perimeter or is eight feet (8') or more above grade for a total lineal distance of twenty feet (20') or more, such basement or unused underfloor space shall be considered as a story.

Story above grade plane. Any story having its finished floor surface entire above grade plane, except that a basement shall be considered as a story above grade plane where the finished surface of the floor above the basement is:

- a. More than six (6) feet above grade plane.
- b. More than six (6) feet above the finished ground level for more than fifty percent (50%) of the total building perimeter; or
- c. More than twelve (12) feet above the finished ground level at any point.

Street. A right-of-way, dedicated to the public use, which provides principle vehicular and pedestrian access to adjacent properties.

Street line or street right-of-way line. A dividing line between a lot, tract or parcel of land and the contiguous street.

Structural alterations. Any change in the supporting members of a building, including but not limited to bearing walls or partitions, columns, beams or girders, or any substantial change in the roof or in the exterior walls.

Structure. Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Structures do not include fences but do include, but are not limited to, buildings, walls, sheds and towers.

Subdivision. The division of a tract of land into one or more lots or parcels for the purpose of transfer of ownership or building development, or, if a new street is involved, any division of a parcel of land. The term “subdivision” includes re-subdivision and the term “re-subdivision,” as used herein, shall include any further subdivision of a lot or parcel of land previously subdivided, for sale, use or other purposes, which varies from the latest, approved subdivision of the same.

Subdivision regulations. The City of Abilene Subdivision Regulations, as adopted by the City Governing Body and as amended from time to time.

Tavern. An establishment in which the primary function is the public sale and serving of cereal malt beverages for consumption on the premises. For purposes of these regulations a drinking establishment shall be a tavern.

Tour homes. A dwelling unit occupied as a residence in which commercial tours are conducted on a scheduled basis by the owner and/or occupants for visitors for a fee or financial donation; but not to include occasional and/or seasonal tours of a private residence for non-profit purposes, and in which no retail sales occur.

Townhouse. A single-family dwelling constructed as part of a series of dwellings, all of which are either attached to the adjacent dwelling or dwellings by party walls or are located immediately adjacent thereto with no visible separation between walls or roofs.

Townhouse building. A grouping of two (2) or more townhouses.

Tract. A plot or parcel of land, other than a lot in a subdivision which is recorded in the office of the Dickinson County Register of Deeds.

Trailer. The term “Trailer” shall include a separate vehicle not driven or propelled by its own power, drawn by some independent power. The term “trailer” shall also include recreational vehicles which have their owner motive power and are used as living quarters for recreational camping, vacation, or travel. For purposes of these regulations, the term “trailer” shall not include mobile, manufactured or modular homes.

Trailer camp. Any piece, parcel, tract or plot of ground which provides space for transient occupancy and is used or intended to be used for the parking of one or more camping trailers. The term “trailer camp” does not include sales lot on which unoccupied

camping trailers, whether new or used, are parked for the purpose of storage, inspection, or sale.

Use. The purpose or activity for which the land, or building thereon, is designed, arranged or intended, or for which it is occupied or maintained.

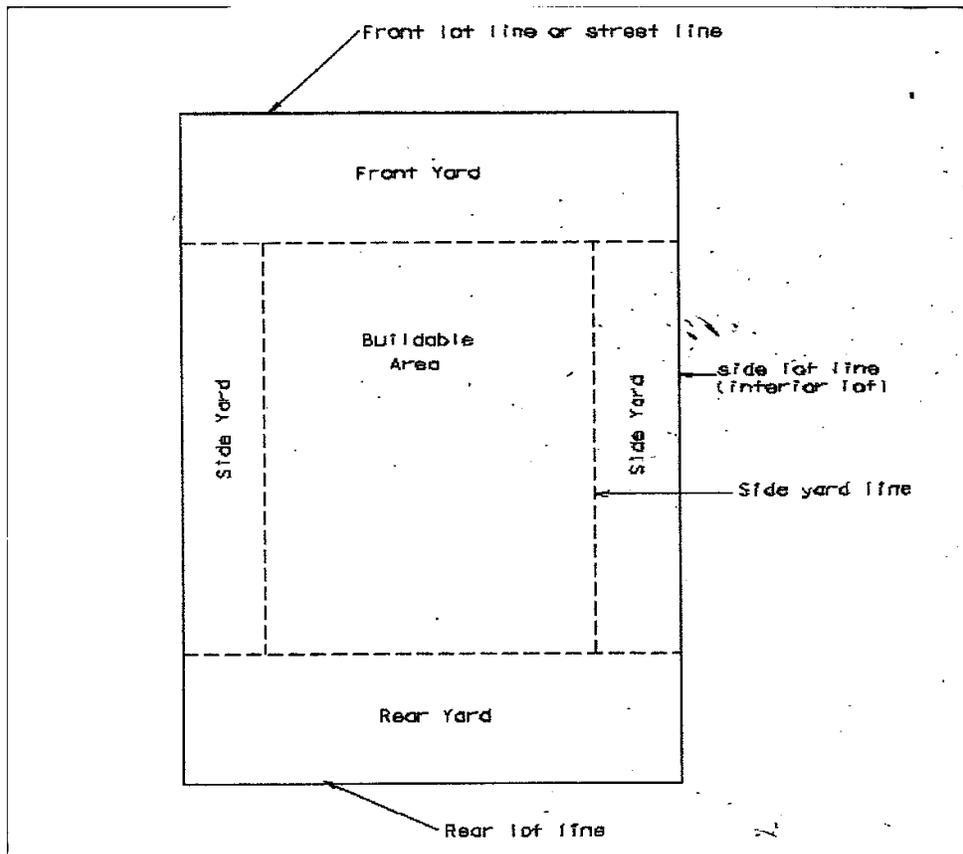
User, permitted. Any land use allowed as a use by right within a zoning district.

Use, principal. The main use of land or buildings as distinguished from a subordinate or accessory use. The principal use may be either a permanent or a special use.

Variance. A specific variation granted by the Board of Zoning Appeals from the specific terms of these regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of these regulations will, in an individual case, result in unnecessary hardship.

Wall. A barrier which encloses, or partially encloses, and which is built of any materials or combination of materials erected to enclose or partially enclose areas of land or portions of a structure.

Yard. A space on the same lot with a main building, open, unoccupied, and unobstructed by buildings or structures from the ground to the sky, except as otherwise provided in these zoning regulations.



Yard, front. A yard extending across the full width of the lot, the depth of which is the least distance between the street right-of-way and the building setback line.

Yard, rear. A yard extending across the full width of the lot between the rear of the main building and the rear lot line, the depth of which is the least distance between the rear lot line and the rear of such main building.

Yard, side. A yard between the main building and the side lot line, extending from the front lot line to the rear lot line.

Zone or district. A section of the zoning area for which uniform regulations governing the use, height, area, size, and intensity of use of buildings, land, and open space are herein established.

Zoning administrator. The person or persons authorized and empowered by the Governing Body to administer the requirements of these zoning regulations.

Zoning area. The area to be zoned as set out on the official zoning map filed of record.

Zoning map. The official zoning map adopted by the City pursuant to K.S.A. 12-753.

Zoning regulations. The term zoning regulations or this or these regulations shall mean the requirements set forth in these regulations.