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ARTICLE 1
GENERAL REGULATIONS

Sections:

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SECTION 1-1 TITLE

1-101. These regulations shall hereinafter be known and may be cited as the Subdivision Regulations for the City of Ottawa, Kansas and shall hereinafter be referred to as "these regulations."

SECTION 1-2 PURPOSE

1-201.

- a. Subdivision Regulations are the process through which undeveloped land is converted into buildable lots for residential, commercial and industrial uses. The physical arrangement of these lots along with provisions for streets, alleys, utilities, schools, parks and other community facilities will in a large part determine the quality of life in the community and, therefore, is of public interest. These regulations establish standards that insure that growth will reflect sound planning and will not be detrimental to the community.
- b. These regulations are designed, intended and adopted for the following purposes:
 - 1. To protect and provide for the public health, safety and general welfare of the City of Ottawa.
 - 2. To implement the Comprehensive Plan, area plans and corridor management plans for the City of Ottawa.
(1-201-b-2 02-19-14)
 - 3. To provide for adequate light, air and privacy, to secure safety from fire, flood and other danger, and to prevent overcrowding of the land.
 - 4. To protect and conserve the value and desirability of land and neighborhoods throughout the community.

5. To guide public and private policy and action in order to provide adequate and efficient transportation, water, sewage, schools, parks, playgrounds, recreation and other public requirements and facilities necessary to protect and promote public health, safety and general welfare.
6. To establish reasonable standards of design and procedures for subdivisions and re-subdivisions.
7. To insure proper legal descriptions, monumenting of land, and adequate and accurate platting and records of land subdivision.
8. To harmoniously relate the development of the various tracts of land to the existing community and facilitate the future development of adjoining tracts.
9. To insure that public facilities are available and will have a sufficient capacity to serve the proposed development.
10. To provide for and secure to the proper governmental agencies the actual construction of all such necessary on-site and off-site public improvements including the reservation or dedication of land for park and recreational purposes.
11. To reserve or dedicate land for open space to preserve natural areas for watercourses, drainage ways, woodland, rugged topography, wildlife habitat, and for water quality and quantity, and to protect land from soil erosion.
12. To coordinate the subdividing of land with applicable zoning regulations, and other City regulations which affect the development of the land.

SECTION 1-3 AUTHORITY

1-301. These Subdivision Regulations and minimum standards for land development are adopted by the Planning Commission and approved by the City Governing Body under powers conferred by K.S.A. 12-749 and Article 12, Section 5 of the Constitution of the State of Kansas.

SECTION 1-4 POLICY

1-401.

- a. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace nor unnecessarily subjecting existing development to such danger or peril. It is further intended that land shall not be subdivided until proper provision has been made for drainage, water and sewage and other necessary infrastructure.

- b. Proposed public improvements shall conform to and be properly related to the features of the adopted Ottawa Comprehensive Plan, and all other adopted plans for specific aspects of the City, and adopted capital programs and budgets.

SECTION 1-5 JURISDICTION

1-501.

- a. All portions of the incorporated area of the City of Ottawa;
- b. All unincorporated territory lying outside of the corporate City limits but within any Growth Area or other territory designated by Interlocal Agreement with Franklin County as being subject to these Regulations.

SECTION 1-6 APPLICABILITY

1-601.

- a. The regulations contained herein shall apply to the subdivision of a tract or parcel of land into two or more lots, tracts or other divisions of land for the purpose of sale or of building development, whether immediate or future, including the resubdivision or replatting of land or lots.
- b. The owner(s) of any land subject to these regulations subdividing that land shall prepare a subdivision plat in accordance with the provisions of these regulations. No building or zoning permit shall hereafter be issued for construction on any land that has not been subdivided in compliance with these regulations and all other applicable state laws and local laws in effect at the time of the subdivision of that land.

SECTION 1-7 EXEMPTIONS

1-701. The following transactions shall be exempt from these regulations.

- a. Boundary adjustments between one or more contiguous lots, tracts, or parcels of land, which will not create any additional lots, tracts or parcels, shall not be subject to the subdivision platting, or replatting requirements of these regulations.
- b. A conveyance of land, or interest therein, for use as right-of-way by railroad or other public utilities subject to state or federal regulations where no new public street or public easement of access is created.
- c. A conveyance made to correct a bearing or distance description in a previously recorded conveyance.
- d. Any transfer by operation of law.
- e. Any lot, parcel or tract of land located within the area governed by these Subdivision Regulations which has been legally subdivided, resubdivided, platted or replatted prior to the

effective date of these regulations. For purposes of these regulations, “legally subdivided, resubdivided, platted or replatted” shall include any certificate of survey submitted and recorded, as provided by these requirements, prior to the effective date of these regulations.

- f. The division of a lot, tract or parcel of land that existed prior to the effective date of these regulations and was not previously exempted under any previous subdivision regulations, where no more than one (1) additional lot, tract or parcel is created, provided, however, that the creation of that additional lot, tract or parcel shall comply with the provisions for lot splits set forth in Article 11 of these regulations. Any further division of the lot, tract or parcel, including any remainder parcel or tract, shall be platted in conformance with the requirements of these regulations.
- g. Division of land for agricultural purposes, or single-family residential purposes, in parcels or tracts of land of ten (10) acres or more, when not involving right-of-way for streets or easements and not involving the construction of other than agriculture buildings, shall be exempt from the requirements of these regulations, provided, however that an appropriate setback and easements be provided to protect long-term development of roadways.
- h. The division of a platted lot zoned and used for industrial purposes only, as required by state law, provided each resulting lot has frontage on a public street.

SECTION 1-8 INTERPRETATIONS-CONFLICT

1-801.

- a. Where a requirement of these regulations imposes restrictions that differ from those requirements imposed by any other provision of these regulations or any other statute, regulation, or other provision of law; the provision which imposes the higher or more restrictive standard shall apply.
- b. The provisions of these regulations are not intended to abrogate any easement, covenant, or other private agreement.
- c. A subdivision of land which was not lawfully existing at the time of the adoption of these regulations shall not become or be made lawful solely by reason of the adoption of these regulations.
- d. The provision of these regulations are additional limitations upon all other laws heretofore passed or which may be passed hereafter governing any subject matter set forth in the provisions of these regulations.

SECTION 1-9 VESTING OF DEVELOPMENT RIGHTS

1-901. In conformance with the provisions of K.S.A. 12-764, and any subsequent amendments thereto, the following rules regarding the vesting of development rights shall apply:

- a. The rights of landowners of properties platted or subdivided for low-density residential development shall be protected for use of said land for the intended residential purposes for

a period of five (5) years from the date upon which the plat for such property was first recorded with the Franklin County Register of Deeds. Provided, the division of land was legally done in conformance with the Ottawa Subdivision Regulations in effect at the time of such recording.

- b. Properties divided or platted for any use other than residential purposes shall not be permitted to develop or further develop except in conformance with these regulations and the Ottawa Zoning Regulations. Persons who obtain a validly issued permit under the previous Ottawa Zoning Regulations shall be permitted to develop the property so long as the permit issued under the previous Ottawa Zoning Regulations does not expire. Failure to begin substantial construction under said permit before the expiration of the permit shall not protect the owner from the provisions of these regulations or the Ottawa Zoning Regulations then in effect.

SECTION 1-10 APPROVALS NECESSARY FOR ACCEPTANCE OF SUBDIVISION PLATS; DEDICATIONS WITHIN URBAN GROWTH AREA

(1-10 revised 07-19-06)

1-1001. All subdivision plats or re-plats of land laid out in building lots, and the streets, alleys or other portions of the same intended to be dedicated for public use, or for the use of purchasers or owners of lots fronting thereon, shall be submitted to the Ottawa Planning Commission for its consideration and approval. The approved plat shall be submitted to the City Commission of the City of Ottawa for final plat approval and acceptance of dedications of streets, alleys, easements, and other public ways or sites.

1-1002. Approvals for acceptance of subdivision plats or re-plats of land within an Urban Growth Area, as established by Interlocal Agreement between the City of Ottawa and Franklin County, shall be the same as for plats or re-plats of land within the City’s corporate limits; except that acceptance of dedications of streets, alleys, easements and other public ways or sites shall be by the Franklin County Board of County Commissioners.

(1-1002 added 07-19-06)

SECTION 1-11 ACCRUED RIGHTS AND LIABILITIES SAVED

1-1101. These regulations shall not be construed as abating any action now pending under, or by virtue of, prior existing subdivision regulations, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, corporation, or as waiving any right of the City under any section or provision existing at the time of adoption of these regulations, or as vacating or annulling any rights obtained by any person, firm, or corporation by lawful action of the City except as shall be expressly provided for in these regulations.

SECTION 1-12 SEVERABILITY

1-1201. If any section, subsection or provision of these regulations shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of these regulations as a whole or any part or provision thereof, other than the part so declared to be invalid or unconstitutional. All regulations or parts of regulations in conflict herewith are hereby repealed.

SECTION 1-13 EFFECTIVE DATE

1-1301. These regulations shall be in force and effect from and after passage and publication in accordance with State law.

ARTICLE 2

ADMINISTRATION

Sections:

- 2-1 Appeals
- 2-2 Penalties for Violations
- 2-3 Building Permits
- 2-4 Duties of the Secretary of the Planning Commission
- 2-5 Duties of the Planning Commission
- 2-6 Utility Advisory Committee
- 2-7 Duties of the Utility Advisory Committee
- 2-8 Adoption, Amendment of Subdivision Regulations

SECTION 2-1 APPEALS

2-101. Any decision of the Zoning Administrator or City Engineer on matters contained herein may be appealed to the Board of Zoning Appeals. Any decision of the Planning Commission on matters contained herein may be appealed to the City Governing Body which may reverse or affirm such decision.

SECTION 2-2 PENALTIES FOR VIOLATIONS, ACTIONS FOR ENFORCEMENT

2-201. The owners or agent of a building or premises in or upon which a violation of any provision of these regulations has been committed or shall exist; or the lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist; or the agent, architect, building contractor, or any other person who commits, takes part or assists in any violation or who maintains any building or premises in or upon which violation has been committed or shall exist, shall be guilty of a municipal violation and upon conviction shall be punished by fine not to exceed five hundred dollars (\$500.00). Each and every day that such violation continues shall constitute a separate offense.

2-202. The City Commission or any person, the value or use of whose property is or may be affected by a violation, shall have the authority to maintain suits or actions in any court of competent jurisdiction to enforce these Subdivision Regulations, and to abate nuisances maintained in violation thereof.

SECTION 2-3 BUILDING PERMITS

2-301. No building permit shall be issued by the City for construction on any land subject to these regulations until:

- a. An endorsed copy of the subdivision plat has been recorded in the office of the Register of Deeds of Franklin County.
- b. A recorded plat of the subdivision or an approved lot split, if applicable, is available for the Zoning Administrator's examination.
- c. Required public improvements have been installed or guaranteed in accordance with the provisions of these regulations.

- d. There has been compliance with all of the provisions of these regulations, the conditions of plat approval, and all other applicable state and local laws in effect at the time of the subdivision of said land.

2-302. Lot Splits: No building permit shall be issued for any site which contains a division of a platted lot or an unplatted lot of record, unless such division has been approved in the manner provided by Article 11 (Lot Splits) of these Subdivision Regulations.

2-303. Structures Per Lot: Unless otherwise allowed by the Zoning Regulations for the City of Ottawa, no more than one building permit shall be issued for a principal structure on each unplatted lot of record, each platted lot created as part of a subdivision, or each lot or tract created by a lot split.

2-304. Administration: Upon receipt of the building permit application and certification by the building official that the application is complete, the Zoning Administrator shall affix the date of acceptance on the application. The Zoning Administrator shall authorize the issuance of the building permit within 30 calendar days following examination of the recorded plat. If disapproved, the applicant shall have the right to appeal to the City Governing Body within 30 calendar days.

SECTION 2-4 DUTIES OF THE SECRETARY OF THE PLANNING COMMISSION

2-401.

- a. Maintain permanent and current records with respect to these regulations.
- b. Provide adequate information and assistance in the preliminary conference, if one is held, as needed by the developer to prepare a proper preliminary plat and final plat.
- c. Receive and file, on behalf of the Planning Commission, all applications for preliminary plats and final plats together with other necessary information.
- d. Review all lot splits, preliminary plats, final plats and other supporting data for compliance with these regulations. After determining that all required information is complete as submitted, distribute copies of the plats to other appropriate governmental departments, public utilities, and other agencies for their review, comment and recommendations.
- e. Review final plats for compliance with these regulations of the approved preliminary plat and final plat.
- f. Publish notice of the time, date and subject of public hearings.
- g. Notify all property owners within the specified distance of the proposed subdivision prior to the scheduled Planning Commission public hearing.
- h. Forward preliminary and final plats to the Planning Commission with staff recommendations.
- i. Make such other determinations and decisions as may be required by these regulations, by the Planning Commission, or by the City Governing Body.

SECTION 2-5 DUTIES OF THE PLANNING COMMISSION

2-501.

- a. Hold public hearings, review and decide on all preliminary and final plats as presented to it in accordance with the provisions in these regulations.
- b. Transmit all final plats to the City Governing Body for its approval of the plat, and acceptance of dedications of streets, alleys and other public ways and sites. Consistent with Section 1-1002, acceptance of dedications of streets, alleys and other public ways and sites shall be by the Board of County Commissioners for final plats involving land within the Urban Growth Area.
(2-501-b revised 07-19-06)
- c. Make such decisions and actions as shall be necessary to insure the integrity of and adherence to these regulations.
- d. Compile a list with the reason(s) for disapproval of any plat reviewed by it and provide the developer with such list.
- e. Hold public hearings, review and decide on any proposed amendments to these regulations.
- f. Make other determinations and decisions as may be required of the Planning Commission from time to time by these regulations, and by applicable state law.
- g. Review and prepare recommendations concerning proposed annexations, vacations and dedications.

SECTION 2- 6 UTILITY ADVISORY COMMITTEE

2- 601. A Utility Advisory Committee is hereby created which shall be comprised of the members of the City’s Development Review Committee, and such other persons as the City Manager may from time to time deem necessary, including public or private utility representatives.

The Zoning Administrator shall serve as Chair of the Utility Advisory Committee and shall be responsible for the preparation of recommendations and reports by the Committee.

SECTION 2-7 DUTIES OF THE UTILITY ADVISORY COMMITTEE

2-701. The Utility Advisory Committee shall meet when called by the Committee Chair. The Committee will review and make appropriate written recommendations to the Planning Commission on all matters referred to the Committee. Such matters may include, but not be limited to annexations, preliminary plats, final plats, planned unit development (PUD) plans, vacations, and dedications.

SECTION 2-8 ADOPTION, AMENDMENT OF SUBDIVISION REGULATIONS

2-801. Consideration of Subdivision Regulations Amendments. Before adopting or amending any subdivision regulations, the Planning Commission shall call and hold a hearing on such regulations or amendments. Notice of such hearing shall be published at least once in the official newspaper. Notice shall be published at least twenty (20) days prior to the hearing. Notice shall fix the time and place for the hearing and shall describe such proposal in general terms. The hearing may be adjourned from time to time and at the conclusion of the same, the Planning Commission shall prepare its recommendations and by an affirmative vote of a majority of the entire membership of the Planning Commission, adopt the same in the form of proposed subdivision regulations and shall submit the same, together with the written summary of the hearing, to the Governing Body.

2-802. Action by the City Governing Body. The Governing Body may either: (1) approve such recommendations by ordinance; (2) override the Planning Commission's recommendation by a 2/3 majority vote; or (3) return the Planning Commission's recommendations, specifying the basis for the Governing Body's failure to approve or disapprove. If the Governing Body returns the Planning Commission's recommendations, the Planning Commission, after considering the same, may resubmit its original recommendations giving the reasons therefore, or submit new and amended recommendations. Upon the receipt of such recommendations, the Governing Body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendations by the respective ordinance, or take no further action. If the Planning Commission fails to deliver its recommendations to the Governing Body following the Planning Commission's next regular meeting after receipt of the Governing Body's report, the Governing Body shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendations and proceed accordingly. The proposed subdivision regulations and any amendments thereto shall become effective upon publication of the adopting ordinance in the official city newspaper as required by law.

ARTICLE 3
DEFINITIONS

Sections:

- 3-1 Rules of Construction
- 3-2 Definitions

SECTION 3-1 RULES OF CONSTRUCTION

3-101.

- a. The language set forth in these regulations shall be interpreted in accordance with the following rules of construction:
 - 1. The singular number includes the plural and the plural the singular.
 - 2. The present tense includes the past and the future tenses and the future tense the present tense.
 - 3. The word "shall" is mandatory while the word "may" is permissive.
 - 4. The words "Building Official" means the officially appointed building official for the City of Ottawa, Kansas.
 - 5. The words "adopted" referencing a regulation, ordinance, or plan legally enforced.
 - 6. The words "subdivision jurisdiction" mean the area as described in Section 1-501 of these regulations.
- a. Any word or phrase which is defined in this Article or elsewhere in these regulations shall have the meaning as so defined whenever used in these regulations, unless such definition is expressly limited in its meaning or scope.
- b. Terms used in these regulations and not defined in this Article or elsewhere in these regulations but defined in the Ottawa Zoning Regulations shall have the definition set forth in such zoning regulations for such terms.
- c. Words or terms not herein defined shall have their ordinary meaning in relation to the context as defined in a dictionary or by statute.

SECTION 3-2 DEFINITIONS

3-201. The following definitions shall be used in the interpretation and construction of these regulations:

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

Access Control. The limitation of public access rights to and from properties abutting streets or highways. Access control is used on major streets and highways, when necessary, to preserve high-quality traffic service and to improve safety.

Agriculture. The use of a tract of land twenty (20) contiguous acres or more in area under one ownership for growing crops, pasturage, horticulture, nurseries, truck farms, dairying or the raising of poultry or cattle and other livestock, except feedlots, and including the structures necessary for carrying out farming operations and the dwelling(s) of those owning and/or operating the premises. Riding academies, boarding stables, dog kennels, or commercial or hydroponic greenhouses shall not be deemed agricultural uses; however, forested and non-producing open space land are considered as agricultural.

Alley. A public thoroughfare which provides only a secondary means of access to abutting property, the right-of-way of which is not less than twenty feet (20') in width.

Approved public sanitary sewer system. A sewage disposal plant, main sanitary sewer lines and other lines approved by the City of Ottawa, Kansas, and/or the Board of County Commissioners of Franklin County, Kansas, and by the Kansas Department of Health and Environment.

Approved public water system. The water treatment plant and service lines approved by the City of Ottawa, Kansas, and/or the Board of County Commissioners of Franklin County, Kansas, and by the Kansas Department of Health and Environment.

Benchmark. Surveying mark made in some object which is permanently fixed in the ground showing the height of that point in relation to sea level. See *Monument*.

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

Bond. See *Performance Bond or Guarantee*.

City Governing Body. The Governing Body of the City of Ottawa, Kansas. Also see *Governing Body*.

Comprehensive Plan. The adopted comprehensive plan for the City of Ottawa.

Cul-de-sac. A vehicular turnaround which is located at the closed end of a dead end street or alley.

Curb cut. The opening along a curb line at which point vehicles may enter or leave a roadway.

Dedication. A gift or donation of property by the owner to the City. The transfer is conveyed by a plat or a written separate instrument. The act of dedicating is completed with a formal acceptance by the Governing Body.

Drainage. The process and course by which surface water moves across the land surface or is conveyed through channels, waterways, pipes, culverts, ducts, or other means. See *Stormwater Management*.

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.

Engineering design. The location (horizontally and vertically) and configuration of streets, alignment of all streets, storm sewers and public utilities, existing or proposed, in public rights-of-way and easements. Minimum elements of design included shall be: alignment, grades and widths of streets; alignment, sizes, grades and depths of all underground storm drainage systems and utilities, including associated fixtures (valves, curb inlets, junction boxes, manholes, hydrants, etc.); alignment, grades and widths of all existing and proposed easements; and the minimum lot area, width and length.

Final plat. A formal document constituted of drawing and writing representing a subdivision which is prepared in accordance with these regulations to be placed on record with the Franklin County Register of Deeds.

Frontage.

- a. **Street frontage:** All of the property on one side of a street between two intersecting streets (crossing or terminating), measured along the line of the street, or if the street is dead-ended, then all of the property abutting on one side between an intersecting street and the dead-end of the street.
- b. **Lot Frontage:** That portion of a lot extending along a street right-of-way line.
- c. **Lot, Double Frontage:** A lot having a frontage on two (2) non-intersecting streets.

Governing Body. The City Commission of the City of Ottawa, Kansas.

Impact fee. A fee imposed by the City on new development pursuant to these regulations in order to mitigate the impacts on community facilities created by the demand for capital improvements by the new development. Impact fees do not include the dedication of rights-of-way or easements for such facilities, or the construction of such improvements.

Improvements. Streets, utilities and other facilities that are to be installed, or agreed to be installed, to current City specifications, by the subdivider on the land to be used for public or private use of the lot owners in the subdivision and local neighborhood traffic and drainage needs, as a condition precedent to the approval and acceptance of a final plat, lot split or PUD.

Improvement district. An area deemed by the Governing Body to be benefited by a public improvement and subject to a special assessment for all or a portion of the cost of the improvement.

Land surveyor or registered land surveyor. A licensed land surveyor registered in the State of Kansas or licensed to practice in the State of Kansas who is responsible for the survey and preparation of the final plat.

Local street. A street intended primarily for access to abutting properties and of limited continuity within a neighborhood.

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

Lot, corner. A lot abutting on two (2) or more streets at their intersection.

Lot coverage. That percentage of a lot which, when viewed directly from above, would be covered by a structure or structures, or any part thereof, including projecting roof eaves.

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

Lot, interior. A lot other than a corner lot which abuts on one street only.

Lot line. The boundary line of a lot.

Lot of record. A lot which is part of a recorded subdivision or a parcel of land which has been recorded in the office of the Franklin County Register of Deeds.

Lot split. The dividing of a lot in a recorded plat or replat of a subdivision into not more than two parcels which creates an additional lot and meets the criteria established within these regulations.

Lot width. Generally the distance between the side lot lines at right angles at the building setback line. For lots that are not rectangular in shape, lot width is determined by measuring the distance across the width of the lot at the setback line.

Major thoroughfare. A street, highway or roadway designated as a major street in the Thoroughfare Plan within the approved Comprehensive Plan.

Marginal access streets or frontage roads. A minor street which is parallel and adjacent to a major street, highway, or railroad right-of-way and provides access to abutting properties.

Minor plat. A subdivision of land into no more than five (5) lots fronting on an existing street and not involving any new street or extension of public facilities.

Monuments. A device used to mark and identify the corners in the boundaries of subdivisions, blocks and lots and the points of curves in the street rights-of-way, and bearing the identification cap of the surveyor. These regulations create three categories of monuments, as follows, with each monument conforming to the standards for placement of boundary surveys as established by the Kansas Board of Technical Professions and further meeting the following requirements applicable to the category of monument:

Monument. A 24" long ½" diameter solid bar to identify the corner boundaries of subdivision blocks. Monument locations shall be marked by a steel fence post. Exterior monuments shall be encased in concrete using a 12" long, 4" diameter section of PVC pipe.

Lot Pin. A solid bar to mark the corners, points of curvature and points of tangent of lots.

Control Marker. A pipe to mark the points of curvature, tangent and intersection of the centerline of street right-of-way. Control markers for point of intersection shall be 24" long ½" diameter pipe.

Open space. An area of land or water or combination thereof planned for passive or active recreation, but does not include areas utilized for streets, alleys, driveways or private roads, off-street parking or loading areas, or required front, rear or side yards.

Pedestrian way. A right-of-way or easement dedicated to public use, which cuts across a block to facilitate pedestrian access to adjacent streets and properties.

Performance bond or guarantee. Any form of guarantee acceptable by the Governing Body, most frequently a surety bond, cash deposit or letter of credit, made out to the Governing Body in an amount equal to as much as 125% of the full cost of the improvements which are required by these regulations, with that cost being estimated by the Project Engineer or for 100% of the contract, and the surety bond or cash deposit being legally sufficient to secure to the Governing Body that the required improvements will be constructed in accordance with these regulations.

Planned Unit Development (PUD). A plan for the development of larger tracts of land as a total design complex which may include residential, commercial or industrial uses or a combination thereof, in a manner which encourages: innovation in development; a greater variety in type, design, and layout of buildings; conservation of land through more efficient use of open space; and efficient use of public facilities and services.

Planning area. The City of Ottawa, and all land in Franklin County lying outside the City, but within three (3) miles of the nearest point of the City limits.

Planning Commission. The City of Ottawa Planning Commission.

Preliminary plat. A tentative map or plan of a proposed subdivision of land showing the character and general details of the proposed development.

Replat. A new plat or a revision to a subdivision or portion thereof for which a final plat has previously been recorded. The approval of a replat is processed in the same manner as a final plat.

Right-of-way. A strip of land occupied or intended to be occupied by a street, highway, crosswalk, railroad, road, electric transmission or distribution line, oil or gas pipeline, water main, sanitary or storm sewer main, or for any other special use. The usage of the term "right-of-way" for land platting purposes shall mean that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels. Rights-of-way intended for streets, crosswalks, water mains, sanitary sewers, storm drains, or any other use involving maintenance by a public agency shall be dedicated to public use by the maker of the plat on which such right-of-way is established.

(3-201 02-19-14)

Roadway. That portion of a street, alley or highway right-of-way which has been graded, surfaced or otherwise improved for use by vehicular traffic, exclusive of sidewalks, driveways and related uses.

Secretary. Secretary of the City of Ottawa Planning Commission.

Setback line or building line. A line shown on a plat generally parallel to the street right-of-way, indicating the limit beyond which buildings or structures may not be erected or altered, except as otherwise provided in these regulations.

Stormwater management. The management of drainage to ensure that water moves in a manner that protects people and property from damage or flooding. Stormwater management includes man-made and natural channels, drainage structures, storage areas, sedimentation control and erosion control. See *Drainage*.

Street. A right-of-way, other than an alley, dedicated to public use, or a private right-of-way serving more than one ownership, which provides principal vehicular and pedestrian access to adjacent properties.

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, sheds and towers.

Subdivider. A person, firm, corporation, partnership, or association who causes land to be divided into a subdivision for himself/herself or for others.

Subdivider's agreement. A contractual agreement signed and notarized by the subdivider and the Governing Body which is conditioned upon acceptance of the final plat for the dedications thereon with primary concern for the design, installation, inspection and financing or guarantees for public improvements.

Subdivision. The division of a tract of land into two 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" 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 plat of the same.

Subdivision Regulations. The adopted City of Ottawa Subdivision Regulations.

Zero lot line. A one or two family dwelling subdivision which allows one (1) exterior wall of a structure on or within one (1) foot of a side property line and the other side yard is double the normal side yard required by the zoning district regulations.

Zoning Administrator. The person authorized and empowered by the Governing Body to administer these regulations.

Zoning regulations. The adopted City of Ottawa Zoning Regulations.

ARTICLE 4

SUBDIVISION DESIGN STANDARDS

Sections:

- 4-1 Applicability
- 4-2 Block Standards
- 4-3 Street Standards
- 4-4 Lot Standards
- 4-5 Easements
- 4-6 Design Techniques
- 4-7 Access Control
- 4-8 Land Subject to Flooding

SECTION 4-1 APPLICABILITY

4-101. All subdivisions of land subject to these regulations shall, as a minimum, conform to the following design standards and to the intent of the Comprehensive Plan, area plans and corridor management plans. Such design standards shall govern the approval of subdivision plats by the Planning Commission and by the Governing Body.

(4-101 Revised 02-19-14)

4-102. Comprehensive Plan Coordination. All subdivisions shall be consistent with the Comprehensive Plan. The Governing Body may disapprove residential subdivision proposals where it is determined that the location of said subdivision is not compatible with the adopted Comprehensive Plan or development policies of the Governing Body. Compatibility of subdivision design with the Comprehensive Plan is also governed by Section 4-6.

4-103. Access. Except as otherwise provided in these regulations, all lots located in any subdivision shall take access directly from a street dedicated and accepted for public use.

4-104. Land Subject to Erosion. On land subject to excessive soil movement that may result in erosion, deposition of soil, or increased stormwater runoff, the Planning Commission, in accordance with the City Engineer's recommendations, may require, in addition to those standards set forth in these regulations, necessary Best Management Practices (BMPs) during construction and development of the subdivision.

(4-104 Revised 11-16-11)

4-105. Conformance to Applicable Laws and Regulations. In addition to the requirements established herein, all subdivision plats shall comply with all applicable laws and regulations, including the following:

- a. City zoning regulations;
- b. Regulations of the Kansas Department of Transportation if the subdivision or any lot contained therein abuts a state highway;
- c. City-adopted building and housing codes;
- d. City-adopted fire and life safety codes;

- e. City-adopted stormwater management and erosion and sediment control codes;
(4-105-e Revised 11-16-11)
- f. Any other applicable federal, state or local laws or regulations.
(4-105-f Revised 11-17-11)

SECTION 4-2 BLOCK STANDARDS

4-201.

- a. Length. Intersecting streets, which determine block length, shall be provided at such intervals as to serve cross traffic adequately and to meet existing streets in the neighborhood. In residential districts where no existing plats are recorded, the blocks shall not exceed one thousand two hundred (1,200) feet in length, except that a greater length may be permitted where topography or other conditions justify a departure from this maximum. In blocks longer than seven hundred and fifty (750) feet, pedestrian ways and/or easements through the block may be required by the Director of Planning near the center of the block. Such pedestrian ways or easements shall have a minimum width of ten (10) feet. Pedestrian ways shall have a minimum width of ten (10) feet and shall be constructed in a manner approved by the City Engineer. Blocks for business use should normally not exceed six hundred (600) feet in length.
- b. Width. In residential development, the block width shall normally be sufficient to allow two (2) tiers of lots of appropriate depth. In certain instances, however, a different arrangement may be required in order to provide better circulation or to protect a major circulation route. Blocks intended for business or industrial use shall be of such width and depth as may be considered most suitable for the prospective use. Block width and depth shall be determined with regard to needs for convenient access, safety and circulation and with consideration of topography.

SECTION 4-3 STREET STANDARDS

4-301.

- a. Relationship to Adjoining Street Systems.
 - 1. The arrangement of streets in new subdivisions shall make provisions for the continuation of the existing streets in adjoining additions (or their proper projection where adjoining property is not subdivided) insofar as they may be necessary for public requirements.
 - 2. The width of such streets in new subdivisions shall not be less than the minimum street widths established in the adopted Comprehensive Plan.
 - 3. Alleys, when required, and street arrangement shall permit owners of adjoining property to extend street rights-of-ways into such property.
 - 4. Whenever there exists a dedicated or platted half street or alley adjacent to the tract to be subdivided, the other half of the street or alley shall be platted and dedicated as a public right-of-way or vacated upon the City's determination that the right-of-way is not necessary.
 - 5. Where topographical conditions make street continuance or conformity impracticable, the Planning Commission may approve an alternative layout.

6. Where the preliminary plat submitted covers only a portion of the contiguous land owned by the subdivider, a sketch of the prospective future street system of the entire ownership shall be submitted.
 7. Where a tract is subdivided into lots of an acre or more, the Planning Commission may require an arrangement of lots and streets such as to permit a later subdivision in conformity with the street requirements.
- b. Street Names. Streets that are obviously in alignment with other already existing and named streets shall bear the names of the existing streets. Otherwise names shall be sufficiently different in sound and in spelling from other street names in the City so as not to cause confusion.
 - c. Major or Arterial Streets. Major or arterial streets through subdivisions shall conform to the Comprehensive Plan as adopted by the Planning Commission and the Governing Body.
 - d. Collector Streets. Collector streets shall be designed primarily to gather traffic from minor or local streets and carry it to major or arterial streets.
 - e. Minor or Local Streets. Minor or local streets shall be so designed to discourage through or non-local traffic.
 - f. Cul-de-sacs. For cul-de-sac turnarounds upon which parking is prohibited there shall be a minimum of one hundred (100) feet of right-of-way, of which at least a eighty (80) foot diameter shall be hard surfaced, not including curb and gutter. For cul-de-sac turnarounds upon which parking is permitted, the Fire Chief shall establish the turnaround right-of-way, factors considered will be height, density, water supply, type of development, and the dimensions of hard surfaced area required. Turnarounds shall be provided at the closed end of a dead-end local street segment. Such local street segment should not exceed seven hundred feet (700') in length from the intersection of a cross street to the juncture with the cul-de-sac.
(4-301, f revised 03-18-20)
 - g. Right Angle Intersections. Under normal conditions, streets shall be laid out to intersect, as nearly as possible, at right angles. Where topography or other conditions justify a variation from the right-angle intersection, the minimum angle shall be sixty (60) degrees. The subdivision designer shall make every effort to align intersecting cross streets without an offset. Where an offset is necessary the minimum offset shall be no less than one hundred twenty-five (125) feet.
 - h. Round-a-bouts. Plats may incorporate the proposed use of round-a-bouts in a plat upon the recommendation of the Planning Director and City Engineer.
 - i. Streets Adjacent to a Railroad Right-of-Way, Limited Access Freeway, Principal Highway or Arterial Streets. Where lots front or side, but do not back on railroad rights-of-way, limited access freeways, principal highways, or arterial streets a marginal access street, reverse frontage or frontage road may be required. The distance from said rights-of-way shall be determined with due consideration to minimum distance required for approach connections to future grade-separated intersections.
 - j. Half-Streets. Half-streets shall be avoided, except:
 1. Where they are essential to the reasonable development of the subdivision in conformity with the other requirements of these regulations; or,

Article 4

2. When the Planning Commission finds that it will be practical to require the dedication of the other half of the street when the adjoining property is subdivided. Where a half-street, or portion thereof, is existing and adjacent to a tract to be subdivided, the other half of the street shall be based on minimum requirements as set forth in 4-301.l and shall be platted within such tract.

k. Alleys. Alleys may be required in commercial, industrial and residential areas consistent with the objectives of the City’s zoning regulations and comprehensive plan. Dead end alleys shall be avoided, wherever possible; but if unavoidable, such alleys shall be provided with adequate turnaround facilities at the dead-end.

l. Minimum Requirements. All right-of-way for streets, alleys and public ways, included in the subdivision, hereafter dedicated and accepted, shall not be less than the minimum width for each classification as follows:

	Rural Arterial	Urban Arterial	Rural Collector	Urban Collector	Local Comm./Ind.	Local Resid.	Alley	Commercial Alleys
Number of lanes	2-5	2-5	2-3	2-3	2	2	N/A	N/A
ROW width	120'	100'	100'	80'	80'	60'	20'	25'
Pavement width*	28'+	28'+	28'+	28'+	25'+	23'+	20'	25'
Curb and gutter req.	No	Yes	No	Yes	Yes	Yes	No	No
Shoulder width	6'+	N/A	6'+	N/A	N/A	N/A	N/A	N/A
Sidewalk req.	Both sides	Both sides	Both sides	Both sides	Both sides	One side	N/A	N/A
Min. Sidewalk width	6'	6'	6'	6'	5'	5'	N/A	N/A
Bike Lanes (4' - Both sides)	No	No	Preferred	Preferred	No	No	N/A	N/A
Separate Bike Path (10')	Preferred	Preferred	No	No	No	No	N/A	N/A
Parking	No	No	No	No	TBD	One side**		N/A
Design Speed	40+	40+	30+	30+	30+	30+	20+	20
Driveways	No	No	No***	No***	Yes	Yes	N/A	N/A

Notes

- *Width does not include curb and gutter
- **Parking may be allowed on both sides if pavement width is 27'
- ***May be allowed if adequate justification is provided

m. Additional Requirements. When existing or anticipated traffic on arterial and collector streets warrants greater widths of rights-of-way, or where needed for cuts, fills or utilities, additional right-of-way may be required to be dedicated for any streets.

n. Street Grades. The grades of streets, alleys and other public ways included in any subdivision should not be greater than five percent (5%) or less than one percent (1%). Variations from these standards may be made when warranted by topographic conditions. Such changes shall be approved only upon the recommendation of the City Engineer.

o. Street Alignment. Minimum horizontal and vertical alignment on all streets, except in unusual cases, shall be as follows:

1. Horizontal alignment: Radii at the centerline.

Major streets500
 Local streets150

Design curves shall meet minimum design speed of the road.

- 2. A tangent shall be provided between all reversed curves to provide for a smooth flow of traffic.
- p. Vertical Alignment. All changes in street grade shall be connected by vertical curves of such length as to provide for desired sight distance as set out in American Association of State Highway and Transportation Officials Geometric design standards and shall be subject to the approval of the City Engineer.
- q. Street Layout. Proposed streets shall conform to topography as nearly as possible to reduce drainage problems and grades.
- r. Paving Material. All streets shall be hard surfaced with asphalt or concrete subject to the specifications of the City. All paving must be provided with a stabilized sub-base and concrete curb and gutter unless otherwise directed by Zoning Administrator.

SECTION 4-4 LOT STANDARDS

4-401.

- a. Minimum lot width shall be measured at the building setback line and shall not be less than required by the zoning regulations of the district in which the subdivision is located. Corner lots shall have a width at least twenty (20) feet greater than the minimum width.
- b. Minimum lot depth shall be one hundred and twenty (120) feet, measured through the center of the lot and perpendicular to the property line, or radial to the property line on curved streets, unless in a zoning district that allows for less depth.
- c. Maximum depth of residential lots shall not exceed three (3) times the width of the lot.
- d. If the proposed subdivision is to be served with City water and City sewer or a community-type sewage treatment plant, approval of the plat shall be subject to the minimum requirements set forth in these regulations, the City Code and the zoning regulations of the district in which the subdivision is located.
- e. If the proposed subdivision is to be served with a public water supply, but not with a public sanitary sewer system, the preliminary plat will be submitted on the basis of the minimum of three (3) acre lots and will be subject to the approval of the City and the County Health Department, which shall make or cause to be made soil analysis and percolation tests for each lot and make recommendations to the Planning Commission. The platted lots will be so proportioned as to permit future re-platting consistent with good subdivision design.
- f. Lot dimensions shall comply with the minimum area requirements of the zoning regulations with no lot in a residential district being less than fifty (50) feet in width at the building setback line, except as provided in the HO-O regulations. Non-residential lots shall provide adequate depth and width to provide for the type of use contemplated.

- g. Minimum lot area shall be subject to the zoning district regulations in which the subdivision is located; however, if a zoning lot contained two or more principal residential structures on June 5, 1975, separate substandard lots may be created, according to these regulations, to accommodate these existing residences, provided that side yard requirements are met.
- h. All side lot lines shall bear sixty (60) to ninety (90) degrees from the street right-of-way line on a straight street or from the tangent of a curved street.
- i. Front building or setback lines shall be shown on the final plat for all lots in the subdivision and shall not be less than the setbacks required by the zoning regulations or any other regulation adopted by the Governing Body. The greater setback requirement shall govern.
- j. Double frontage lots shall be avoided unless, in the opinion of the Planning Commission, a variation to this prohibition will give better street alignment and lot arrangement.
- k. Every lot shall have adequate frontage on a public street other than an alley.
- l. The subdivision or re-subdivision of a tract or lot shall not be permitted where said subdivision or re-subdivision places an existing permanent structure in violation of the requirements of the zoning regulations or the minimum design standards of these regulations.
- m. Whenever the area is divided into lots containing one (1) or more acres and there are indications that such lots will eventually be re-subdivided into smaller lots, consideration must be given to the highway, street and lot arrangement of the original subdivision so that additional minor streets can be opened which will permit a logical arrangement of smaller lots. Easements providing for the future opening and extension of such streets may, at the discretion of the Planning Commission, be made a requirement of the plat.
- n. Whenever possible, residential lots shall not take access from arterial streets. The number of lots facing on collector streets shall be kept to a minimum in each subdivision. The street pattern shall be designed so that the side line of lots abut collector streets wherever land shapes and topography permit.
- o. Minimum lot standards for Conservation Subdivisions may differ from the requirements listed above. Refer to Article 13, Section 13-12 for details.

(4-401-o Added 09-19-18)

SECTION 4-5 EASEMENTS

4-501.

- a. Where alleys are not provided, permanent easements of not less than ten (10) feet in width shall be provided on each side of all rear lot lines, and on side lot lines, where necessary, for utility poles, wires, conduits, storm and sanitary sewers, gas, water and heat mains, and other public utilities. Where a utility company or other service provider can demonstrate the need for a wider easement than required above for a specific location, such may be required by the Governing Body and provided by the developer. These easements shall provide for a continuous right-of-way at least twenty (20) feet in width. An additional twelve (12) foot wide temporary construction easement abutting each side of a utility easement shall be provided for initial construction of water, sewer and other utility lines. Such temporary easement shall be terminated by the City upon its determination that development of lots adjoining the easement is completed with all utilities fully installed.

- b. All easements shall be shown on the plat. Permanent easements shall not be obstructed by buildings or permanent vegetation. No fences may be placed in storm drain easements. A property owner may otherwise erect fences and landscape the easement at his or her own risk of loss.
- c. **Drainage Easements.** If a subdivision is traversed by a water course, stormwater pipe, drainage way or channel, then a stormwater easement or drainage right-of-way shall be provided. No utilities would be allowed to run parallel within a drainage easement, although they may cross perpendicular. Such easement or right-of-way shall conform substantially to the lines of the natural water course and shall be of such width or construction, or both, as may be necessary to provide adequate stormwater drainage and for access for maintenance thereof. Parallel streets or parkways may be required in connection therewith. The developer's engineer shall make a study, which shall be reviewed by the City Engineer who shall report his or her recommendation to the Planning Commission as to the desired width of such easement. Such study and report shall be based on the one hundred (100) year flood depth. Maintenance of stormwater easements and drainage right-of-way shall be the responsibility of the owners of property adjoining such easements or right-of-way.
- d. Where a lot or group of lots side or back on an existing high-pressure oil line or existing high-pressure gas line, a fifty-foot (50) setback shall be provided on each side of said oil line or gas line. The fifty-foot (50) setback shall be provided on that part of the lot which abuts the oil line or gas line, and no building or structure shall be located or constructed within said fifty-foot (50) setback. In no case shall any structure be constructed closer than twenty-five foot (25) of the original easement.

SECTION 4-6 DESIGN TECHNIQUES

4-601. Subdivision Design: The design of the subdivision shall provide for efficient traffic flow, proper mixing of land uses, and a logical link between surrounding, existing development, and the proposed layout. The Comprehensive Plan should be used as a guide in determining if the design of the proposed subdivision is proper. The Planning Commission shall have the authority to deny a plat or request redesign, if, in its opinion, the layout is not suitable for the site, or if the development of the subdivision would be premature.

SECTION 4-7 ACCESS CONTROL

4-701. In the interest of public safety and for the preservation of the traffic carrying capacity of the street system, the Planning Commission shall have the right to regulate points of access to all property from the public streets system. Such proscriptions shall be indicated on the final plat. Where the Kansas Department of Transportation (KDOT) has jurisdiction and conflict between regulations occurs, the more restrictive shall apply.

SECTION 4-8 LAND SUBJECT TO FLOODING

4-801.

- a. All land subject to an intermediate regional flood shall not be subdivided for any use incompatible with such flooding. An intermediate regional flood is a flood having a 1-percent probability of occurring in any year, or an average frequency of occurrence in the order of once in 100 years, although the flood may occur in any year or even in successive years. It is based on statistical analyses of rainfall intensity and stream flow records available for the watershed and analyses of rainfall and runoff characteristics in the general region of the watershed. Data on precipitation

frequency may be obtained from the National Oceanographic and Atmospheric Administration (NOAA); and flood characteristics for the planning area may be obtained from the Kansas Water Resources Board, the U.S. Army Corps of Engineers (USACE), Kansas City District, or Federal Emergency Management Agency (FEMA).

(4-801-a Revised 09-19-18)

- b. Subdivision proposals shall include regulatory flood elevation data in areas zoned Floodway or Floodplain on the Ottawa Zoning Map, if applicable. Otherwise, the characteristics of the 1-percent (100-year) conveyance shall be determined by the Developer's Engineer using hydrologic and hydraulic methods approved by the City.

(4-801-b Revised 09-19-18)

- c. Adequate drainage shall be provided so as to reduce exposure to flood hazards.

- d. Development of land subject to an intermediate flood must comply with Zoning Regulations Article 19 – Floodplain Management; and Article XX – Stream Setbacks. Where conflicts exist, the more stringent requirements shall govern.

(4-801-d Added 09-19-18)

- e. All public utilities and facilities shall be located so as to minimize or eliminate flood damage, protect the physical and biological integrity of streams, and protect water quality. All proposed development shall be consistent with the need to minimize flood damage. Permanent structures, including but not limited to occupied buildings, out buildings, fences, play equipment, and permanent signage must be placed outside of the 1-percent (100-year) Floodplain or conveyance, and the low opening of any occupied structures must be placed 1 foot above the base flood elevation.

(4-801-e Revised 09-19-18)

SECTION 4-9 SENSITIVE AREAS

4-901. Development for which a landscaping plan is required shall be designed to preserve existing trees, native vegetation and sensitive areas to the greatest extent possible, and shall seek to incorporate existing stands of trees as well as individual trees. Sensitivity to site grading, storm drainage, building location and orientation, and parking lot configuration shall be demonstrated to ensure tree and vegetation preservation. The intent of these regulations is to recognize the need to alter the landscape during site development activities, while setting out standards necessary to ensure tree, vegetation, and sensitive areas preservation to the greatest extent possible.

4-902. A Sensitive Area Designation Plan shall be submitted at the time of plat and site plan review. The plan shall be prepared by a qualified professional such as a biologist, ecologist, environmental scientist or planner, environmental or agricultural engineer, or Landscape Architect; or with input from qualified professionals under the supervision of a licensed designer such as an Architect, Professional Engineer or Landscape Architect. Sensitive Area Designation Plan shall identify all constrained or sensitive lands within the property boundaries and within four hundred (400) feet outside of the property boundaries using publicly available information as approved by the City; including, but not limited to, streams, stream corridors and floodplains, stream setback boundaries, wetlands and steep slopes. The Sensitive Area Designation Plan shall also clearly identify the general location and massing of wooded areas, areas with dense shrubbery, and isolated individual mature hardwood trees present on the property; and all natural or cultural resources and geographic features present on the property and within four hundred (400) feet outside of the property including but not limited to, meadows, grasslands, woodlands, streams, stream corridors, watercourses, prime farmland, wildlife corridors and/or habitat; potential state- or federally-listed threatened or endangered species or critical habitat; historic buildings

and/or sites; archeological sites; cultural features and green space. The plan shall indicate and designate which areas and individual trees are to be preserved and which are to be removed. The Planning Commission shall review the plan and either approve it or direct the applicant to seek alternative site design to improve preservation of existing trees and sensitive areas.

See also, Zoning Articles 20, Section 20-301.c.2; and 28, Section 28-501.b.15.
(4-9 Added 09-19-18)

ARTICLE 5

DEDICATION AND RESERVATION OF PUBLIC SITES AND OPEN SPACE

Sections:

- 5-1 Dedication and Reservation of Public Sites and Open Spaces
- 5-2 Dedication and Reservation of Public Park Land
- 5-3 Action by Governing Body
- 5-4 Use of Land and Fees

SECTION 5-1 DEDICATION AND RESERVATION OF PUBLIC SITES AND OPEN SPACES

5-101. In subdividing land or re-subdividing an existing plat, due consideration shall be given by the subdivider to the preservation of streams, floodplains, and other natural areas; and dedication or reservation of suitable sites for schools, parks, greenway trails, playgrounds, or other public recreational areas or open spaces. In its consideration of any such subdividing or resubdividing the Planning Commission shall make recommendations as to dedications and reservations. Any area so dedicated or reserved shall conform as nearly as possible to the recommendations of the Planning Commission and the Board of Education. All areas to be reserved for, or dedicated to, public use shall be indicated on the Sensitive Areas Designation Plan as required in Article 4, Section 4-902 of these Subdivision Regulations; and shall be indicated on the preliminary plat in order that it may be determined when and in what manner such areas will be dedicated to or acquired.

(5-101 Revised 09-19-18)

SECTION 5-2 DEDICATION AND RESERVATION OF PUBLIC PARK LAND

5-201. General Requirement. In subdividing or resubdividing land zoned and intended for residential use, the developer shall protect streams and floodplains, as well as other natural areas where practical. The developer also shall dedicate or reserve land for public park purposes, pay a fee in lieu of park land dedication, or a combination of dedication or reservation and a fee. The method chosen to meet this requirement shall be proposed by the developer in accordance with the standards set out in these regulations and the recommendation of the Planning Commission. The Planning Commission shall make the final determination about the dedication method. The Governing Body shall not be obligated to accept a dedication or reservation of land even if the final plat approved by the Planning Commission includes a dedication or reservation.

(5-201 Revised 09-19-18)

5-202. Amount of Dedication. The minimum number of acres of land required to be dedicated or reserved shall be determined as follows, based on the presence of stream corridors and density of development as permitted by the zoning of the property being subdivided. The area required to be dedicated or reserved shall be exclusive of all street rights-of-way.

Percent of Total Land Area Being Subdivided to be Dedicated or Reserved for Park Purposes: CS Countryside – 2%; R-1 Low Density Residential – 5%; R-2 Medium Density Residential – 6%; R-3 High Density Residential – 8%. Stream corridors and sensitive resources may count toward the required dedication where a greenway trail is provided or planned, or where the developer can show other recreation uses that are compatible with the preservation of streams and sensitive resources may be safely provided. (5-202 Revised 09-19-18)

5-203. Location and Design Standards. Any land dedicated or reserved shall conform with stormwater management and water quality requirements and the comprehensive plan of the City. The location, size and configuration of the land to be dedicated or reserved shall be determined by the presence of stream corridors and floodplains, stream setbacks, design of the streets, lots, and blocks of the subdivision, with consideration given to the preservation of other natural physical features. All lands to be dedicated or reserved shall meet the following standards:

(5-203 Revised 09-19-18)

a. Streams, floodplains and related natural features shall be preserved in accordance with the City's stormwater management and post construction water quality requirements, Zoning Regulation Article 19 – Floodplain Management; and Article XX – Stream Setbacks. Other natural resources such as wetlands and wooded areas shall be preserved whenever possible, and as required by other state and federal regulations.

(5-203-a Revised 09-19-18)

b. Consideration shall be given to placing parks and bicycle/pedestrian trails where they can be added to by future subdivisions. Where active recreational features other than greenway trails are to be provided:

1. The land shall contain not less than two (2) contiguous acres and be a minimum of two hundred (200) feet at the narrowest dimension. The land shall have at least two hundred (200) feet of street frontage and be easily accessible to residents and to adjacent subdivisions.

2. At least fifty percent (50%) of the land shall have a grade of less than four percent (4%). The balance may consist of streams, steep slopes, ditches, wetlands, lakes or other natural features.

(5-203-b Revised 09-19-18)

c. The land shall have at least two hundred (200) feet of street frontage and be easily accessible to residents of adjacent subdivisions. Consideration shall be given to placing parks where they can be added to by future subdivisions.

(5-203-c Revised 09-19-18)

d. At least fifty percent (50%) of the land shall have a grade of less than four percent (4%). The balance may consist of steep slopes, streams, ditches, lakes or other natural features.

e. Natural features such as wooded areas, streams, and other natural assets shall be preserved whenever possible.

5-204. Payment in Lieu of Dedication or Reservation. In the event land to be dedicated or reserved for park land and recreation is less than the amount of acreage required or the land does not meet location and design standards, the payment of a fee in lieu of dedication or reservation shall be required. The fee shall be based on the total number of dwelling units permitted within the subdivision times a fee schedule for each dwelling unit type. Said fee schedule shall be as established by ordinance adopted by the Governing Body.

(5-204 Revised 09-19-18)

Any fees collected shall be placed in a neighborhood park and/or greenway trails account and used for improvement of neighborhood parks or greenway trails and trail connections to benefit the development and/or City trail network, including acquisition of land. A record of fees paid into and expended from the fund shall be kept by the City. In the event funds have not been expended on

such purposes within fifteen (15) years from the date received the fees shall be refunded in the following manner:

(5-204 Revised 09-19-18)

- a. If paid in full at the time of platting, to the developer.
- b. If paid at the time of the building permit, to the record property owner at the time of the refund.

5-205. Credit for Private Open Space. Private open space for park and recreational purposes within a proposed development may be credited for up to fifty percent (50%) of the requirement for dedication or reservation of public park land or payment of a fee in lieu thereof provided that the following standards are met:

- a. That yards, setbacks and other open areas required by zoning and building regulations shall not be included in computing the area set aside as private open space.
- b. That the private open space shall be reasonably useable for park and recreation purposes.
- c. That the private open space shall be perpetually restricted for park and recreation purposes by recorded plat or restrictive covenant.
- d. That the private open space shall be permanently owned and maintained by the owner of the development or by a legally established homeowners' association, or through a conservation easement dedication to a legally responsible third-party such as a land trust.

(5-205-d Revised 09-19-18)

5-206. Indication on Preliminary Plat. At the time of the preliminary plat submittal, the developer shall indicate whether a dedication or reservation of land or a fee in lieu of dedication is being proposed. Any land proposed to be dedicated or reserved shall be shown on the preliminary plat.

5-207. Prerequisite for Final Plat Approval. When land is being dedicated it shall be shown on the final plat and marked "Dedicated for Public Park Purposes." Such dedications shall not be effective until the dedication has been specifically accepted by the Governing Body.

When a fee in lieu of dedication is required, total payment shall be made prior to final plat approval by the Governing Body or, at the option of the developer, payment may be made at the time of issuance of a building permit on each individual lot. In the latter case, the fee shall be in accordance with the fee schedule referenced in section 5-204.

SECTION 5-3 ACTION BY GOVERNING BODY; ACTION BY BOARD OF COUNTY COMMISSIONERS WITHIN URBAN GROWTH AREA

(5-3 Revised 07-19-06)

5-301. Upon receiving the recommendations of the Planning Commission, the Governing Body may:

- a. Accept such dedication.
- b. Accept, in lieu of the dedication of land, a fee equal to seven (7) percent of the fair market value of the subdivided land.

- c. Waive the requirement if the Governing Body finds that there are sufficient schools, parks, playgrounds or other publicly-owned or operated recreational areas or open spaces in the area of the subdivision.

5-302. In cases involving land within the Urban Growth Area, as established by Interlocal Agreement between the City of Ottawa and Franklin County, the term “Governing Body” shall mean the Board of County Commissioners for purposes of the actions which may be taken pursuant to Section 5-301.

(5-302 added 07-19-06)

SECTION 5-4 USE OF LAND AND FEES

5-401. Land or fees obtained pursuant to this Article shall only be used to obtain public open space, public recreational land or facilities for public use. The Governing Body shall make appropriate findings as to the relationship between the subdivision from which the fees were obtained and such open space, recreational land or facilities for public use.

ARTICLE 6**SUBMISSION AND APPROVAL OF PLATS****Sections:**

- 6-1 Pre-Application**
- 6-2 Minor Plats**
- 6-3 Preliminary Plats**
- 6-4 Final Plats**

SECTION 6-1 PRE-APPLICATION

6-101. Prior to the filing of the preliminary plat, the subdivider shall contact the Zoning Administrator to determine:

- a. Procedure for filing plats.
- b. Availability of an approved public sewer system and public water system.
- c. Comprehensive Plan requirements for major streets, land use, parks, schools and public open spaces.
- d. Zoning requirements for the property in question and adjacent properties.
- e. Special setback requirements for arterial, collector and local streets.
- f. Franklin County Conservation District conservation measures to be undertaken during initial construction period and to be implemented upon final completion of the project. This shall be accomplished by meeting with the District.
- g. Requirements of application for grading permit as required by the City Code.
- h. Prior to submitting a preliminary plat or minor plat, the subdivider may meet with the City Planning Commission to discuss the type and character of development that will be permitted. The subdivider will submit a tentative sketch of the proposed subdivision at this time with street layout and lots. Upon the approval and recommendation of the Planning Commission, the subdivider may proceed to develop the preliminary plat according to these regulations.

SECTION 6-2 MINOR PLATS**6-201.**

- a. A minor plat is defined as a subdivision of land (1) into no more than four (4) lots fronting on an existing street; (2) not involving any new street or extension of public facilities; (3) not including more than ten (10) acres if a residential plat, nor more than five (5) acres for any other type of plat, unless the Planning Commission approves a larger acreage; and (4) not in conflict with the Comprehensive Plan, or any provision in the zoning regulations or any provision in these regulations.

- b. Minor plats may be submitted in final plat form as described in Section 6-4 without first filing a preliminary plat or having such a preliminary plat approved by the Planning Commission, with the exception that the preliminary plat filing fee shall be submitted with the filing of the minor plat with the Zoning Administrator. Minor plats shall also contain all the information required for the filing of preliminary plats pursuant to Section 6-3.

SECTION 6-3 PRELIMINARY PLATS

6-301. After reaching the preliminary conclusions regarding the requirements for the proposed subdivision, the subdivider may submit a preliminary plat together with any supplemental information necessary to the Zoning Administrator who shall schedule a public hearing with the Planning Commission.

- a. Submission of a Preliminary Plat.
1. Filing Fee and Proof of Ownership. A filing fee as adopted by the Governing Body shall accompany the filing of each preliminary plat. The preliminary plat shall not be accepted for filing until the filing fee therefore has been paid by the subdivider. The subdivider shall submit satisfactory proof of ownership, or a copy of a contract for purchase, of the entire tract to be platted.
 2. Number of Copies. The subdivider shall submit the number of copies per copy schedule of the preliminary plat and vicinity map (if not on the preliminary plat) showing the location of the proposed subdivision. These plans shall be filed with the Secretary of the Planning Commission at least twenty-seven (27) calendar days prior to the regular Planning Commission meeting at which the preliminary plat is to be considered.
 3. The subdivider shall submit, with the preliminary plat, a complete list of the names and mailing addresses of all owners of record of all land within: (a) two hundred (200) feet of property which is within the city limits being proposed for subdividing or re-subdividing or (b) within one thousand (1,000) feet of property outside the city limits when the land being proposed for subdividing or resubdividing lies within two hundred (200) feet of the city limits.
 4. All plats shall be prepared by a Kansas licensed and registered professional engineer or a land surveyor, as required by state statute or regulation of the Kansas Board of Technical Professions. The boundary and topographic survey prepared for the plat shall be completed by a Kansas licensed land surveyor, whose seal and certification shall be shown on the survey.
 5. Preliminary plats shall contain:
 - (a) The proposed name of the subdivision. (The name shall not duplicate or closely resemble the name or names of any existing subdivision.)
 - (b) The location of the boundary lines of the subdivision and references to the section or quarter section lines.
 - (c) The names and addresses of the subdivider, developer, owner, and the engineer, architect, landscape architect or land surveyor who prepared the plat.

- (d) Scale of the plat, 1" = 100' or larger.
- (e) Date of preparation and north arrow.
- (f) Existing conditions:
 - (1) Location, width and name of platted streets, pavement width or other public ways; designation of railroads and utility rights-of-way, parks and other public open spaces; and permanent buildings within or adjacent to the proposed subdivision.
 - (2) All existing sewers, water mains, fire hydrants, gas mains, culverts, electricity transmission lines or other underground installations, or above ground structures, within or adjacent to the proposed subdivision, with pipe size and manholes, grades, elevations, heights and location.
 - (3) Names of adjacent subdivisions together with arrangement of streets and lots, and owners of adjacent parcels of unsubdivided land.
 - (4) Topography with contour intervals of not more than two (2) feet, referred to USGS datum. Where the ground is too flat for contours, spot elevations shall be provided.
 - (5) Location of water courses, bridges, wooded areas, lakes, ravines, above-ground and underground utilities, and such other features as may be pertinent to the subdivision.
 - (6) Current zoning classification and proposed zoning classification if property is proposed to be rezoned.
 - (7) General street layout of adjacent property within two hundred (200) feet to show how streets and other public facilities in the proposed subdivision relate to the adjacent property.
- (g) The general arrangements of lots and their approximate size.
- (h) Location and width of proposed streets, alleys, pedestrian ways and easements and approximate gradient of streets.
- (i) In areas where approved public sewer and/or water systems are proposed to serve the subdivision, a plan of sewage disposal and water supply shall be shown. Proposed manholes, proposed sanitary sewer pipe size, water line pipe size, water line valve and fire hydrant location shall be shown on the preliminary plat. If the connection to existing facilities is off-site, then the location, size and elevation of the existing facilities where the connection is to be made shall be shown on the preliminary plat.

If the proposed development will not use an approved public sewer and/or water system, the size, type and location of sewage disposal and depth or size, type and location of the water supply shall be shown on the preliminary plat. Septic tanks

and lateral fields shall show location, size, soil type, soil depth and soil percolation rates in the preliminary plat.

- (j) Location and size of proposed parks, playgrounds, churches, school sites or other special uses of land to be considered for reservation or dedication for public use.
- (k) Location and size of proposed electrical distribution systems.
- (l) General layout of adjacent unsubdivided property to show how streets and other public facilities in the proposed subdivision relate to the unsubdivided property.
- (m) Vicinity map showing streets within five hundred (500) feet of the boundaries of the proposed subdivision.
- (n) The subdivider shall submit a preliminary grading plan and a preliminary Stormwater Management Study and plan, including: location and size of all storm sewers, conduits and structures existing and proposed storm detention areas, post-construction water quality best management practices, land elevations and contours, necessary widths of all open drainageways, designated sensitive lands, including but not limited to stream setback boundaries. The study and plan shall provide preliminary hydrology and hydraulic analyses and design calculations and shall meet all other requirements for stormwater management as set forth by the City. This plan shall be forwarded to the City Engineer who will prepare a written analysis of the plan for consideration by the Planning Commission.

(6-301-n-Revised 09-19-18)

- b. Review by Utility Advisory Committee. Upon the receipt of the copies of the preliminary plat, the Secretary of the Planning Commission shall send a copy of the plat to each member of the Utility Advisory Committee. The Utility Advisory Committee shall review said plat and submit its recommendations to the Planning Commission.
- c. Approval or Disapproval of Preliminary Plat. Action by the Planning Commission shall be conveyed to the subdivider in writing within fifteen (15) business days after the Planning Commission meeting at which time the plat was considered, and action was taken thereon. Approval of the preliminary plat by the Planning Commission does not constitute an acceptance of the subdivision, but is rather an authorization for the subdivider to proceed with the preparation of the final plat. In cases where the plat is disapproved, the subdivider shall be notified of the reason(s) for such action and what requirements shall be necessary to meet the approval of the Planning Commission. If the Planning Commission fails to approve or disapprove a preliminary plat within sixty (60) days after the plat has been submitted for consideration, then such preliminary plat shall be deemed to have been approved, unless the subdivider shall have consented to extend or waive such time limitation.
- d. Area to be Platted. In order to ensure that the provisions of these regulations are carried out and that the overall subdivision design is prepared in an orderly manner, the Planning Commission may require that a preliminary plat be submitted on all contiguous land under common ownership rather than a parcel or segment. The area may, however, be final platted in smaller parcels or segments as directed by the Planning Commission.
- e. Effective Date. The approval of the preliminary plat shall be effective for a period of twelve (12) consecutive months, unless an extension of time is granted by the Planning Commission. If the

final plat has not been submitted for approval within this period, or extended period, a preliminary plat must be submitted again to the Planning Commission for approval.

6-302. In cases involving land within the Urban Growth Area, as established by Interlocal Agreement between the City of Ottawa and Franklin County, the term “Governing Body” shall mean the Board of County Commissioners with respect to the powers and procedures set out in Section 6-301.
(6-302 added 07-19-06)

SECTION 6-4 FINAL PLAT

6-401.

a. Submission of a Final Plat.

1. After approval of the preliminary plat, the subdivider shall submit engineering designs/construction plans and documents for approval prior to submission of a final plat along with the plat recording fee established by ordinance adopted by the City Governing Body.
2. A digital copy of the final plat (in .dwg format), in state plane coordinates or tied to two section corners and formatted to standards established by the Zoning Administrator, plus the original on mylar and see copy schedule for required number of copies shall be submitted to the Secretary of the Planning Commission at least twenty (20) calendar days prior to the Planning Commission public meeting. The names and signatures of the owner(s) of the property duly acknowledged and notarized shall appear on the original and all copies submitted.
3. The Planning Commission shall be required to hold a public hearing on a final plat only when the Planning Commission finds there is a question whether the final plat as submitted is in substantial conformity with the approved preliminary plat.
4. The final plat, prepared for recording purposes, shall be drawn at a scale of at least 1" = 100' or larger. The size of the sheet on which such final plat is prepared shall be twenty-four inches (24") by thirty-six inches (36"). Each sheet shall have a one and one-half inch (1 1/2") binding edge along the left hand side. Where the proposed plat is of unusual size, the final plat shall be submitted on two (2) or more sheets of the same dimensions. If two (2) or more sheets are required, an index map of the same dimensions shall be attached showing the entire development at a smaller scale. The dimensions indicated are standard for all final plats and compliance is mandatory. Title, description and other written data shall be located either right or left.
5. No building permit will be issued nor shall any lot, tract or parcel of land as described on the final plat be sold or offered for sale until the final plat has been properly filed and recorded with the Register of Deeds. The final plat shall be registered within one year from date of approval by the City Planning Commission, the City Commission, and in the case of a joint committee, the County Board of Commissioners. Failure to file a final plat within the time period specified will render said plat null and void.

b. Information. The final plat shall show and contain the following information.

1. Name of subdivision (not to duplicate or too closely resemble the name of any existing subdivision).

2. Location of section, township, range, county and state, including the descriptive boundaries of the subdivision based on an accurate traverse, giving angular and linear dimensions which must be mathematically correct. The allowable error of closing on any portion of the plat shall be one (1) foot in five thousand (5,000) feet and the error of closure shall be provided. Total acreage of the subdivision shall be provided.
3. The location of existing monuments and benchmarks shall be shown and described on the final plat. Location of such monuments shall be shown in reference to existing official monuments or the nearest established street lines, including the true angles and distances to such reference points or monuments.
4. The location of lots, streets, public highways, alleys, parks and other features, with accurate dimensions in feet and decimals of feet with the length of radii on all curves, and other information necessary to reproduce the plat on the ground.
5. Lots shall be numbered clearly. Blocks shall be numbered or lettered clearly in the center of the block. All lots, however designated, shall be numbered in progressive numbers or by blocks in which they are situated, and their precise length and width shall be stated on the map or plat.
6. The exact locations, widths, and names of all streets, easements, alleys and other rights-of-way to be dedicated.
7. Boundary lines and description of the boundary lines of any area other than streets and alleys which are to be dedicated or reserved for public use.
8. Building setback lines on the front and side streets with dimensions.
9. Name, signature and seal of the registered land surveyor preparing the plat, as appropriate.
10. Name, signature and seal of the registered surveyor verifying that all monuments and control markers have been set in compliance with City requirements and in accordance with the Land Survey Act, K.S.A. 58-2001 *et seq.*
11. Scale of the plat (scale to be shown graphically and in feet per plat scale inch), date of preparation and north arrow.
12. Statement expressing the property owner's intent to dedicate for public use all easements, streets, alleys, and all other public areas previously dedicated.
13. The following certificates, which may be combined where appropriate.
 - (a) A certificate signed and acknowledged by all parties having any record, title, or interest in the land subdivided, and consenting to the preparation and recording of said subdivision map, including all mortgage holders.
 - (b) A certificate signed and acknowledged as above, expressing the property owner's intent to dedicate or reserve all parcels of land shown on the final plat and intended for any public or private uses including those parcels which are intended

for the exclusive use of the lot owners of the subdivision, their licensees, visitors, tenants, and servants.

- (c) The acknowledgment of a notary in the following form:

State of _____,
County of _____

Be it remembered that on this __ day of _____, 20__, before me, a notary public in and for said County and State, came _____, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of same. In testimony whereof, I have hereunto set my hand and affixed my notarial seal the day and year above written.

_____ My Commission Expires: _____
Notary Public

(SEAL)

- (d) The certificate of the Planning Commission in the following form:

State of Kansas
Franklin County

Approved this _____ day of _____, 200_.

_____ Secretary

- (e) The acceptance of easements, rights-of-way and other public dedications by the Governing Body in the following form:

State of Kansas
Franklin County

The dedications shown on this plat have been accepted by the City of Ottawa, Kansas, this _____ day of _____, _____.

_____ Attest: _____
Mayor City Clerk

- (f) The Certificate of the County Clerk in the following form:

State of Kansas
Franklin County

I do hereby certify that current general taxes are paid to date and that there are no delinquent general taxes, no unpaid forfeited taxes and no redeemable tax sales against any of the land included in the plat. I further certify that there are no unpaid special assessment or any deferred installments thereof that have not been apportioned against the tract of land included in the plat.

(6-401-b-13-f revised 05-07-08)

Given under my hand and seal this ____ day of _____, 200__.

County Clerk (SEAL)

- (g) The Certificate as to Special Assessments in the following form:

State of Kansas
Franklin County

I do hereby certify that there are no delinquent or unpaid or forfeited special assessments or any deferred installments thereof that have not been apportioned against the tract of land included in the plat.

Given under my hand and seal this ____ day of _____, 200__.

County Clerk (SEAL)

- (h) The Certificate of the County Treasurer in the following form:

State of Kansas
County of Franklin

I do hereby certify that all the taxes due and owed are paid to date on land included in this plat. Given under my hand and seal this ____ day of _____, 200__.

Franklin County Treasurer (SEAL)

- (i) The Filing Record in the following form:

State of Kansas
Franklin County

This is to certify that this instrument was filed for record in the Franklin County Register of Deeds on the __ day of _____, 200__, at ____ AM/PM and is duly recorded at Slide No. _____, Instrument No. _____.

Franklin County Register of Deeds (SEAL)

- (j) The Survey Review Certification in the following form:

This survey has been reviewed and approved for filing, pursuant to K.S.A.58-2005, for content and is in compliance with this act. No other warranties are extended or implied.

Approved by _____ Date _____ (SEAL)

- 14. The following additional data and documents shall be submitted with the final plat.

- (a) A title report by an abstract or title insurance company, or an attorney's opinion of title, showing the name of the owner or owners of the land and all other restrictions, easements or encumbrances on the land. The consent of all such

persons having a financial interest shall be shown on the plat and acknowledged by a notary public.

- (b) If any taxes or special assessments, due and payable, have not been paid in full but have been protested as provided by law, monies or other sufficient escrows guaranteeing such payment of taxes in the event the protest is not upheld, shall be placed on deposit with the City in an amount sufficient to meet this requirement.
 - (c) A copy of any restrictive covenants applicable to the subdivision.
 - (d) Sealed certification from the Project Surveyor that all permanent monuments have been set in accordance with Section 7-2 of these regulations and the Land Survey Act (K.S.A. 58-2001 et seq.).
- c. Governing Body Acceptance. After the approval of the final plat by the Planning Commission, such plat shall be forwarded to the Governing Body for its approval of the plat and the acceptance of streets, alleys, easements or other dedicated public rights-of-way or sites. The Governing Body may take action on the plat at any meeting following approval of the plat by the Planning Commission and the Governing Body should approve or disapprove the plat and shall accept or refuse the dedication of land for public purpose within thirty (30) days after the first meeting of the Governing Body following the date of the submission of the plat to the city clerk. The Governing Body may defer action for an additional thirty (30) days for the purpose of allowing for modifications to comply with the requirements established by the Governing Body. No additional filing fees shall be assessed during that period. If the Governing Body defers or refuses such dedication, it shall advise the Planning Commission of the reasons therefore and request reconsideration by the Planning Commission.
- d. Recording of Final Plat. After acceptance of the public dedications and easements by the Governing Body and receipt of (1) engineering drawings, (2) appropriate petitions for improvements, and (3) the agreement with the developer for all required developer-installed improvements, the Governing Body may approve the final plat by signing the original mylar copy and two additional copies. The Secretary of the Planning Commission shall record the original copy of the final plat with the Register of Deeds of Franklin County. One copy shall be provided to the developer and one copy filed with City records.
- e. Building Permits. No building or zoning permit shall be issued for any structure that is located upon a lot in a subdivision that has not been subdivided in accordance with these Subdivision Regulations. Construction drawings and specifications for all required developer-installed improvements shall be submitted to the City Engineer, and approved, before any building or zoning permit shall be issued. No plat, re-plat, dedication or deed shall be filed with the Register of Deeds until such plat, re-plat, dedication or deed has been approved by the Planning Commission and the Governing Body as required by law.

ARTICLE 7

IMPROVEMENTS

Sections:

- 7-1 Subdivision Types
- 7-2 Required Improvements
- 7-3 Exceptions for Existing Improvements
- 7-4 Waivers

SECTION 7-1 SUBDIVISION TYPES

7-101. For the purposes of this Article, subdivisions shall be classified as follows:

- a. **CLASS “A”:** All subdivisions which are located within the corporate city limits or:
 - 1. All subdivisions adjoining or touching the corporate city limits.
 - 2. Any subdivision adjoining or touching the boundaries of a tract or area for which annexation proceedings have been commenced by the City.
 - 3. Any subdivision touching or adjoining an approved subdivision which touches or adjoins the corporate boundaries of the City.
 - 4. All subdivisions within one-half mile of the City.
- b. **CLASS “B”:** A subdivision lying within the Planning Area that does not adjoin the city limits, that does not adjoin another subdivision that adjoins or touches the city limits, and which is not within one-half mile of the city limits.

7-102. In all classes of subdivisions, the area of the lots will be determined by the availability of an approved public sanitary sewer system and an approved public water system. The determination of whether or not such systems are available in sufficient size and capacity to serve the subdivision shall be made by the Director of Utilities, in consultation with the City Engineer, following review of the preliminary plat.

SECTION 7-2 REQUIRED IMPROVEMENTS

7-201. The subdivider of a proposed subdivision shall install, or provide for installation of, the following facilities and improvements:

- a. Streets. Streets shall be surfaced with concrete, asphaltic concrete, or materials approved by the City Engineer and Public Works Director and shall include the curb and storm sewer inlets. All such improvements shall be installed in accordance with plans approved by the City Engineer.
 - 1. Pavements shall be designed based on the following minimum standard:

- (a) Pavement thickness shall be established by the *Standard Specifications for Road and Bridge Construction*, a publication of the Kansas Department of Transportation, *Standard Specifications and Design Criteria*, a publication of the Kansas City Metropolitan Chapter of the American Public Works Association.

Proposed pavement types and thicknesses shall be approved by the City Engineer and shall meet the minimums established on the Standard Detail Sheets by The City of Ottawa.

Proposed pavement width shall be consistent with the table in Section 4.301.I

- b. Frontage Roads. If a proposed subdivision adjoins or contains an existing or planned arterial street or state or federal highway the Planning Commission may require the subdivision to provide frontage roads, deep lots with rear service alleys or such other design necessary to ensure that access to lots in the subdivision is not taken directly from such street or highway.
- c. Water. Where an approved public water system is proposed to serve the subdivision, said water lines shall be installed in proper easements or within the limits of the street and alley right-of-way and shall comply with applicable provisions of the City's *Development Procedures Policy Manual*. Utility sleeves shall be provided at the time of street construction for extensions of water mains and other utilities if such improvements are to be installed following initial construction of a street. The location and design of utility sleeves shall be approved by the City Engineer.
- d. Sanitary Sewers. Where an approved public sanitary sewer system is proposed to serve the subdivision, the sewer system shall be constructed in compliance with applicable provisions of the City's *Development Procedures Policy Manual* to provide service to each lot within the subdivision. The system of mains and laterals shall collect the sewage within the subdivision and discharge it into a community disposal system approved by the City and the Kansas Department of Health and Environment.
- e. Street Signs. Street signs will be supplied and erected by the owner or developer. The type and style of street sign to be erected shall be approved by the City. Signs may be co-located if possible and approved by the City.
- f. Electricity. Poles, power lines, transformers, and street lights shall be installed and paid for in accordance with policies established by the City.
- g. Sidewalks. Sidewalks shall be installed on both sides of all collector and arterial streets and on one side of all local streets. Sidewalks along minor or local streets shall be not less than five (5) feet in width, sidewalks along major or arterial and collector streets shall not be less than six (6) feet in width. All sidewalks shall be constructed of portland cement concrete and shall comply with the specifications of the Governing Body. Sidewalks shall be located in the platted street right-of-way and located a distance from the property line as specified by the City Engineer. Sidewalks shall also be installed in any pedestrian easements as may be required by the Planning Commission.
- h. Other Improvements. If other improvements are required, according to policies of the Governing Body, such as tree planting, and retaining walls, such improvements shall be made in accordance with the recommendations of the Planning Commission and specifications of the City Engineer.

- i. Storm Drainage. The subdivider shall install culverts, storm sewers, rip-rap slopes, stabilized ditches and other storm drainage improvements and plans for these improvements shall comply with the minimum standards of the Governing Body and shall be examined and approved by the City Engineer prior to construction.
- j. Bench Marks, Corners, Monuments and other Markers.
1. Bench Marks.
 - (a) All elevation shown on plats shall be based on USGS datum.
 - (b) The permanent benchmark location and description that is used to extend datum to the project shall be noted on the Preliminary Plat and Final Plat.
 2. Monuments.
 - (a) Variations to the monument length and diameter may be allowed by the Zoning Administrator based on subsurface conditions.
 - (b) Installation of lot pins shall commence immediately upon the installation of streets, sewer mains and water mains.
 3. U.S. Government Corners. Whenever a survey originates from the United States public land survey corner or any related accessory, the land surveyor shall file a copy of the completed survey and references to the corner or accessory with the Secretary of the State Historical Society and with the County Surveyor. Such survey shall be filed within thirty (30) days of the date the references are made.
 - (a) Any altered, removed, damaged or destroyed corner shall be restored.
 - (b) Whenever such a corner or any related accessory is restored, re-established or replaced due to construction activities, a restoration report shall be filed with the Secretary of the State Historical Society as specified in K.S.A. 21-3724, as amended.
 4. Existing Markers. At any time during construction of the subdivision, if a stone marker should be found, the developer shall mark the location of such marker as required by state law.
- k. Provision of Utilities. The subdivider shall be responsible to provide for and pay the full cost for the proper installation of all utilities, whether on-site or off-site, including: sanitary sewers and connection to approved treatment facilities, water supply, natural gas, electricity and telephone service. Such utilities shall be installed according to the specifications of the controlling utility company or the City.
- l. All telephone and cable television lines, electrical services and distribution lines shall be placed underground, except that this provision shall not include meters, electric and telephone service pedestals, transformers, three-phase feeder lines, subtransmission and transmission lines (34.5kv and above), electrical substations and such other facilities as the utility may deem necessary to install utilizing "overhead" type construction. Variances from this requirement may be authorized by the Zoning Administrator.

- m. Street Trees. Street trees shall be planted by the subdivider on all streets in the subdivision. Such trees may be planted on both sides of the street but not less than five (5) feet from the back of the curb lines but in no event within three (3) feet of an existing or proposed sidewalk. The size and species of street trees shall be approved by the Zoning Administrator.
- n. Erosion Control. Plans for erosion and sediment control shall also be shown consistent with standards required by local, state, and federal regulations and Article 14. Complete erosion and sediment control requirements are available in Chapter 14, Article III, Section 14-306 of the Ottawa Municipal Code.

(7-201-n Revised 11-16-11; 09-19-18)

SECTION 7-3 EXCEPTIONS FOR EXISTING IMPROVEMENTS

7-301.

- a. Where the proposed subdivision is a re-subdivision or concerns an area presently having any or all required improvements as previously set out, and where such improvements meet the requirements of this Article and are in good condition as determined by the City Engineer, no further provision need be made by the subdividers to duplicate such improvements. However, where such existing improvements do not meet said requirements, the subdivider shall provide for the repair, correction, or replacement of such improvements so that all final improvements will then meet said requirements.
- b. Where the proposed subdivision is a re-subdivision or concerns an area presently abutting or containing any existing public street of less than the minimum required right-of-way width or roadway width, land shall be dedicated so as to provide a minimum street right-of-way width established by these regulations and/or Planning Commission policy, and the subdivider of such proposed subdivision shall provide an additional roadway pavement meeting the minimum standards set by these regulations and the City Engineer. The Engineer shall determine what adjustment to make where the aforesaid widenings merge with existing streets which are of smaller width at the boundary of such proposed subdivision. The Engineer may reduce the minimum roadway required by these regulations to match an existing roadway system if the extension of such roadway is already improved at each end of the roadway in the subdivision and the roadway in the subdivision to be reduced is two (2) blocks or less in length. The Engineer may also require lanes to be painted on such widened streets designating driving and parking areas. The foregoing provisions requiring the widening of pavement may be waived by the Planning Commission when the length of such pavement is less than one (1) block.

SECTION 7-4 WAIVERS

7-401. The Governing Body is authorized to grant a waiver of any of the improvements required in this Article. Such waiver may be granted only upon a finding of the Governing Body that the required improvement is either: (1) technically not feasible or (2) no valid public interest is served by requiring the improvement.

ARTICLE 8

IMPROVEMENT PROCEDURES

Sections:

- 8-1 General
- 8-2 Submission of Petitions for Improvements
- 8-3 Final Improvement Plans
- 8-4 Content of Engineering Drawings
- 8-5 Review of Plans
- 8-6 Approval by Planning Commission
- 8-7 Construction of Improvements
- 8-8 Construction Observation
- 8-9 Construction Observation Procedures
- 8-10 Final Inspection
- 8-11 Report to Planning Commission and Governing Body
- 8-12 Acceptance of Improvements

SECTION 8-1 GENERAL [RESERVED FOR FUTURE USE]

SECTION 8-2 SUBMISSION OF PETITIONS FOR IMPROVEMENTS

8-201. If petitions are intended to be submitted to meet the requirements of Article 7, the subdivider shall so indicate at the time of submission of the preliminary plat. If the petition method is in accordance with current policies of the Governing Body, said petitions shall meet the requirements of Section 9-1, and shall be submitted to the Governing Body for review and action.

SECTION 8-3 FINAL IMPROVEMENT PLANS

8-301. In all other instances when petitions have not been authorized for submission, upon the approval of the preliminary plat, the subdivider shall have prepared by a Kansas licensed professional engineer, engineering drawings for proposed required improvements, containing the data and information specified in Section 8-4. Such drawings shall be certified by a licensed professional engineer, and shall be submitted in a number established by the Director of Planning and Codes Administration for distribution to the City Engineer and other City staff at least thirty (30) days prior to the date that approval of the final plat is requested. Failure to do so will be considered automatic consent, by the subdivider, to a waiver or an extension of waiver of any time limitation for plat approval.

SECTION 8-4 CONTENT OF ENGINEERING DRAWINGS

8-401. Engineering drawings for required improvements shall conform to City of Ottawa regulations and contain the following data and information.

- a. Plans, profiles, details, specifications and costs estimates for roadway and sidewalk construction, including plans and profiles for each street with a typical cross section of the roadway. The profiles of grade lines shall be shown to a scale ranging from one (1) inch equals twenty (20) to one (1) inch equals fifty feet (50') horizontal. The vertical scale shall be one-fourth (1/4th) the horizontal scale. The cross-sections of the proposed roadway shall be shown at fifty-foot (50')

intervals and a horizontal and vertical scale of one (1) inch equals five feet (5'). This information shall be shown on standard plan and profile sheets unless otherwise required by the City Engineer.

- b. Plans, profiles, details, specifications and detailed cost estimates of proposed storm drainage improvements, along with all appurtenant items of work.
- c. Plans, profiles, details, specifications and detailed cost estimates of proposed water distribution systems and proposed water distribution facilities, along with all fire hydrants, valve assemblies and other appurtenant items of work.
- d. Plans, profiles, details, specifications and detailed cost estimates of sanitary sewer collection systems, along with all appurtenant items of work.
- e. When unusual site conditions exist, the City Engineer may require such additional plans, specifications and drawings as may be necessary for an adequate review of the improvements to be installed.
- f. All plans shall be based on City U.S.G.S. datum for vertical control.
- g. Grading plans for all lots and other sites in the subdivision. At a minimum, grading plans shall indicate the intended direction of storm flows when lots are built upon. The City Engineer may require additional details if necessary to ensure proper post-development drainage and coordination with surrounding properties. Said grading plans will conform with any drainage studies approved for the area or, at the discretion of the City Engineer, drainage studies shall be revised.
- h. All plans for underground wiring shall be prepared by or at the direction of the utility involved.

SECTION 8-5 REVIEW OF PLANS

8-501. The City Engineer and other City staff shall review all engineering plans in order to determine whether such plans are consistent with the approved preliminary plat and comply with design standards. The cost attributable to all engineering drawing review shall be charged to and paid by the subdivider prior to the recording of the final plat. If such plans are consistent and in compliance, the City Engineer shall forward to the Planning Commission a notice that such plans do so conform and comply. In the event that the plans do not so conform and comply, the City Engineer shall notify the subdivider of the specific manner in which such plans do not so conform or comply. The subdivider may then correct such plans and resubmit.

SECTION 8-6 APPROVAL BY PLANNING COMMISSION

8-601. The Planning Commission shall approve a final plat only when the approval of the City Engineer has been received indicating that the plans have been approved or that the appropriate petitions, if authorized, have been filed with the City Engineer.

SECTION 8-7 CONSTRUCTION OF IMPROVEMENTS

8-701. Except where such is otherwise expressly allowed under these regulations, no improvements shall be constructed nor shall any work preliminary thereto be done until such time as a final plat and the engineering drawings accompanying it shall have been approved and there shall have been compliance with all of the requirements relating to an agreement, bond deposit or petition as specified in these regulations.

SECTION 8-8 CONSTRUCTION OBSERVATION**8-801.**

a. All improvements constructed or erected shall be subject to construction observation by the City Public Works and/or Utilities Department staff to determine compliance with the construction plans and City standards. The cost attributable to all inspections required by this regulation shall be charged to and paid by the subdivider. Before any required inspections take place, the subdivider may be required to post a deposit with the City, to cover the cost of such inspections. The subdivider shall give at least one (1) business day notification to such official prior to the performance of any of the following work:

1. All phases of roadway and sidewalk construction.
2. All phases of construction including, but not limited to, water lines, sanitary sewer lines, storm sewer, underground wiring and other required improvements.

SECTION 8-9 CONSTRUCTION OBSERVATION PROCEDURES

8-901. The City Engineer or City staff may conduct an on-site inspection to determine that the work complies with the approved engineering plans and specifications. If, in the opinion of the City Engineer or City staff, such work does not comply with the approved engineering plans and specifications, he or she shall have authority to order that all such work shall be suspended until necessary steps are taken to correct any defects, deficiencies or deviations. Upon the correction of such defects, deficiencies or deviations, the subdivider shall again notify the City Engineer or City staff as provided in Section 8-8.

SECTION 8-10 FINAL INSPECTION

8-1001. Upon completion of all improvements within the area covered by the final plat, the subdivider shall notify the City, which shall thereupon conduct a final inspection of all improvements installed.

SECTION 8-11 REPORT TO GOVERNING BODY

8-1101. When a final inspection or re-inspection indicates that all installed improvements contain no defects, deficiencies or deviations, the inspecting official shall, within ten (10) days of such final inspection, notify the Governing Body that all improvements have been installed in conformance with the engineering plans and specifications accompanying the final plat. If the Governing Body

determines, after consideration of such notice, that there are no defects, deficiencies or deviations in any such improvements as installed, the Governing Body shall so notify the subdivider in writing.

SECTION 8-12 ACCEPTANCE OF IMPROVEMENTS; CERTAIN IMPROVEMENTS WITHIN URBAN GROWTH AREA

(8-12 revised 07-19-06)

8-1201. Except as otherwise provided in 8-1202 for improvements in the Urban Growth Area, upon receipt of the notice to the Governing Body, that all improvements have been installed in conformance with the approved engineering drawings, and with the requirements of these regulations, and all other applicable statutes, ordinances and regulations, the Governing Body and/or such appropriate utility may thereupon by resolution or by letter, respectively, formally accept such improvements. Upon acceptance, the improvements shall become the property of the City or appropriate utility company involved.

(8-1201 revised 07-19-06)

8-1202. In cases involving improvements upon land within the Urban Growth Area, as established by Interlocal Agreement between the City of Ottawa and Franklin County, acceptance of streets, alleys, easements and other public ways or sites shall be by the Franklin County Board of County Commissioners. The County Board may require inspection by the County Public Works Director of completed and installed improvements to identify any defects, deficiencies or deviations in any improvement proposed to be dedicated to Franklin County, including County-maintained roads. A maintenance bond or other financial assurance may be required of a developer as a condition of acceptance of a public improvement, in accordance with County regulations or policies.

(8-1202 added 07-19-06)

ARTICLE 9

GUARANTEE OF INSTALLATION OF IMPROVEMENTS

Sections:

- 9-1 Guarantee of Installation**
- 9-2 Off-Site Improvements**

SECTION 9-1 GUARANTEE OF INSTALLATION

9-101. In lieu of the actual construction of the physical improvements required and the completion of construction occurring prior to recording the final plat, the Governing Body may either (a) waive any requirement of guarantee of installation or (b) accept one of the following methods of guarantee provided it is in accordance with the policies of the Governing Body.

- a. Fiscal sureties may be offered subject to the following:
 - 1. The subdivider shall enter into a subdivider's agreement with the Governing Body under which the subdivider agrees to install such required improvements. Such agreement shall be conditioned upon the acceptances of the final plat by the Governing Body and its filing with the Franklin County Register of Deeds.
 - 2. Simultaneously with the execution of the subdivider's agreement, the subdivider shall furnish a corporate completion bond by a firm authorized to do business in Kansas with good and sufficient sureties thereon or a cashier's check, escrow account or irrevocable letter of credit in favor of the Governing Body, in the amount of the estimated cost as approved by the official responsible for setting and enforcing the applicable design and construction standards of the installation of the required improvements. Such financial guarantee shall be conditioned upon the acceptance of the final plat and further conditioned upon the actual completion and satisfactory installation of such required improvements within two years from the date that the final plat is accepted by the Governing Body.
 - 3. Simultaneously with the execution of the subdivider's agreement, if the subdivider furnishes a corporate completion bond, he or shall also deposit in escrow an amount equal to the cost of all improvements to be made in accordance with the plans and specifications for required improvements or an equivalent amount in the form of a maintenance bond or other securities that may be deemed sufficient by the Governing Body. If a subdivider furnishes a cashier's check, escrow account or irrevocable letter of credit, 15% of the amount of such guarantees shall be held as a deposit in escrow after the final completion of such improvements.
 - 4. The subdivider shall agree that the deposit in escrow may be held by the Governing Body for a period of 18 months after such improvements are completed for the purpose of:
 - (a) Guaranteeing and securing the correction of any defect in material or workmanship furnished for such improvements, latent in character, and not discernible at the time of final inspection or acceptance by the Governing Body; and

- (b) Guarantee against any damage to such improvements by reason of the settling of the ground, base or foundation thereof.
 - (c) Such escrow agreement shall provide that, as such defects have so developed, that the deposit may be applied by the Governing Body for any amounts incurred correcting such defects; and that the balance of such deposit, if any, held at the end of such 18-month period shall be returned by the Governing Body to the depositor, or paid to the order of the depositor without payment of interest.
- b. Petitions to the Governing Body may be submitted as a means of guaranteeing the authority to install improvements at such time as the Governing Body deems appropriate. Petitions may be submitted only when the following conditions exist:
 - 1. The petitions must be brought in the manner set out under Kansas law.
 - 2. The petitions must be approved by the Governing Body concurrently with the acceptance of the final plat.
 - 3. The initiating resolution for such improvement must be adopted by the Governing Body concurrently with the petition approval or as soon thereafter as may be provided by law.
 - 4. A certificate signed by the petitioner must be recorded with the Franklin County Register of Deeds stating that such petitions have been filed and approved by the Governing Body and that certain land within the plat as described will be liable in the future for special assessment for the required improvements authorized.

Such a preconstruction procedure shall be temporarily conditioned on subsequent acceptance of the final plat and a time limit for actual construction mutually agreed upon. Maintenance guarantees may also be required by the Governing Body.
- c. The subdivider shall, prior to the acceptance of the final plat, submit a letter from the utility provider(s) involved stating that satisfactory arrangements have been made by the subdivider guaranteeing the installation of their respective services.
- d. Monuments and benchmarks shall be installed in accordance with the requirements of these regulations and their installation certified by a licensed land surveyor on the final plat before such plat is recorded with the Franklin County Register of Deeds.

SECTION 9-2 OFF-SITE IMPROVEMENTS

9-201. The Governing Body may, upon making a finding of necessity, require the subdivider to install or upgrade off-site improvements located outside the perimeter of a subdivision. Such off-site improvements should be within dedicated rights-of-way or easements and serve a public purpose. The financing and guaranteeing of such improvements shall be administered as if they were the same as on-site improvements. The Governing Body may require such subdivision to participate in any or all of the following facilities and improvements, or any other off-site improvements as recommended by the Planning Commission, if the need is created by a proposed subdivision:

- a. Drainage improvements and drainageways;
- b. Pedestrian ways;
- c. Screening and landscaping;
- d. Grading;
- e. Street improvements;
- f. Traffic control devices;
- g. Parks, recreational areas and open space;
- h. Public water supply and delivery system;
- i. Storm water sewer; and
- j. Sanitary sewer.

ARTICLE 10

VARIANCES AND EXCEPTIONS

Sections:

10-1 Variances and Exceptions

SECTION 10-1 VARIANCES AND EXCEPTIONS

10-101.

a. Whenever the Planning Commission deems full conformance to provisions of these regulations is impractical or impossible due to the size, shape, topographic location or condition, or such usage of land included in a subdivision plat being presented for approval, the Planning Commission may recommend variances or exceptions of these regulations in the final plat. Such recommendation shall intend that substantial justice may be done and the public interest be secured. Such Planning Commission recommendation for authorization of variances or exceptions shall be made by letter of transmittal to the Governing Body. In recommending such variances or exceptions, the Planning Commission must find:

1. That there are special circumstances or conditions affecting the property;
2. That the variances or exceptions are necessary for the reasonable and acceptable development of the property in question; and
3. That the granting of the variances or exceptions will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.
4. Granting of a variance or an exception will not undermine or conflict with the comprehensive plan, area plans or adopted corridor management plans.

(10-101-a-4 - 02-19-14)

b. Such request for exception shall be approved, approved with conditions or disapproved by the Governing Body after its consideration of the recommendation of the Planning Commission. The decision of the Governing Body shall be transmitted in writing to the subdivider and the Planning Commission.

(10-101-b - 02-19-14)

ARTICLE 11

LOT SPLITS

Sections:

- 11-1 Objective
- 11-2 Approval of Lot Splits; Application Procedure
- 11-3 Approval Guidelines
- 11-4 Staff Review and Action
- 11-5 Filing Fee
- 11-6 Appeals

SECTION 11-1 OBJECTIVE

11-101. The objective of this Article is to provide for the division of a tract of land or lot into not more than two buildable lots which meet the minimum size and area requirements for the zoning district in which said lots are located without having to comply with the platting requirements described in Article 6 of these Regulations. The new lots cannot, thereafter, be further subdivided without replatting. The Zoning Administrator may approve or disapprove lot splits in accordance with the requirements of this Article.

11-102. No building permit shall be issued for any structure to be located on a lot produced by a lot split until the lot split has been approved by the Zoning Administrator in accordance with the requirements of this Article.

SECTION 11-2 APPROVAL OF LOT SPLITS; APPLICATION PROCEDURE

11-201. Request for lot split approval shall be made by the owner of the land to the Zoning Administrator. Four (4) copies of a scale drawing of the lots involved if there are no structures thereon or, if structures are located on any part of the lot being split, four (4) copies of a survey of the lot and the location of the structure(s) thereon together with the precise nature, location and dimensions of the proposed lot split, shall accompany the application. The application shall provide a legal description for the original lot and legal descriptions for each of the lots produced by the proposed lot split, and such legal description is required to be certified by a registered land surveyor. The application shall be accompanied by a list of the names and addresses of all persons to receive notices. The Zoning Administrator may require such list to be prepared by a registered abstractor. Written notices shall be mailed to all owners of land within two hundred (200) feet of the property proposed to be split. Such owners shall have ten (10) business days from the date of notification to notify the Zoning Administrator of any protests they may have concerning the lot split. The ten (10) day waiting period may be waived upon submission in writing of statements from those to be notified that they have no objection to the proposed lot split.

SECTION 11-3 APPROVAL GUIDELINES

11-301. The division of lots pursuant to this article shall comply with applicable zoning laws, these Subdivision Regulations, and all other applicable regulations.

- a. No lot split shall be approved if any of the following applies:
 - 1. A new street or alley is needed or proposed.
 - 2. A vacation of streets, alleys, setback lines, access control or easements is required or proposed.
 - 3. If such action will result in significant increases in service requirements, e.g., utilities, schools, traffic control, streets, etc.; or will interfere with maintaining existing service levels, e.g., additional curb cuts, repaving, etc.
 - 4. There is less street right-of-way than required by these regulations or the Comprehensive Plan unless such dedication can be made by separate instrument.
 - 5. All easement requirements have not been satisfied.
 - 6. If such splits will result in a tract without direct access to a public street.
 - 7. A substandard sized lot or parcel will be created, unless a variance for the lot or parcel has been approved by the Board of Zoning Appeals.
 - 8. If the lot has been previously split in accordance with these regulations.
- b. The Zoning Administrator may make such additional requirements as deemed necessary to carry out the intent and purpose of existing land development regulations and policy. Requirements may include, but not be limited to, installation of public and dedication of right-of-way and easements.

SECTION 11-4 STAFF REVIEW AND ACTION

11-401. The Zoning Administrator shall, in writing, either approve with or without conditions or disapprove the lot split within thirty (30) days of application. If approved, and after all conditions have been met, the Zoning Administrator shall sign and furnish a certificate of approval to be affixed to the lot split survey, and a certified copy thereof shall be filed with the Franklin County Register of Deeds, the official designated to issue building or occupancy permits, and a copy shall be furnished to the applicant.

SECTION 11-5 FILING FEE

11-501.

- a. The filing fee for lot split shall be in an amount as established in the City's adopted fee schedule.
- b. Cost of recording documents, publications, writs, and engineering costs are payable in addition to filing fees. These costs will be billed to the applicant.

SECTION 11-6 APPEALS

11-601. Appeals of any determinations by the Zoning Administrator made pursuant to the provisions of this Article may be made by any aggrieved party to the Board of Zoning Appeals which may either approve or disapprove such determination.

ARTICLE 12

VACATIONS AND CORRECTIONS

Sections:

- 12-1 Review and Recommendation by Planning Commission**
- 12-2 Vacation of Unrecorded Plat**
- 12-3 Correction of Platting Errors**
- 12-4 Vacation of Streets, Alleys, Easements and Plats**

SECTION 12-1 REVIEW AND RECOMMENDATION BY PLANNING COMMISSION

12-101.

- a. Before any application for the vacation of any public right-of-way, street, alley, easement, plat, setback or access control shall be approved or recommended for approval by the Governing Body, the application shall be submitted to the Planning Commission for review and recommendation. Said recommendation shall include conditions which are appropriate to protect the best interests of the public, Governing Body and utilities. All vacation applications shall be submitted to the Utility Advisory Committee for review and comments prior to the Planning Commission taking action.
- b. The recommendation of the Planning Commission shall be submitted to the Governing Body. No vacation shall be recommended for approval unless it is established that no private rights will be injured or endangered by such vacation and that the public will suffer no loss or inconvenience by such vacation.
- c. All requests for vacations shall be accompanied by the name and mailing address of all record owners of property touching upon the property proposed to be vacated.
- d. An application for vacation shall be submitted to the Zoning Administrator and shall be accompanied by fees in the amounts established by the Governing Body.
- e. A written receipt shall be issued to the person(s) making such a payment and records thereof shall be kept in such a manner as prescribed by law. No fee shall be required when said application is submitted by any agency. No fee shall be refunded in the event of disapproval by the Planning Commission or Governing Body.

SECTION 12-2 VACATION OF UNRECORDED PLAT

12-201.

- a. Upon written request of the subdivider to the Planning Commission, a preliminary or final plat may be withdrawn from consideration either before or after approval by the Planning Commission.
- b. Upon written request of the subdivider to the Zoning Administrator, a final plat for which dedications, if any, have been accepted by the Governing Body may be vacated by motion of the Governing Body; provided, that (1) the plat has not been recorded; (2) no lots have been sold or transferred; and (3) no improvements have been installed. After the plat is vacated,

the Zoning Administrator shall see that all fiscal sureties are returned to the subdivider except for those expenditures which have been incurred by the City in administrative, legal or engineering costs prior to the date of the request for vacation.

SECTION 12-3 CORRECTION OF PLATTING ERRORS

12-301. If, after recording a final plat, an error is found in distances, angles, bearings, subdivision or street names, block or lot numbers, the computation of dimension or elevation or other details of the plat, except in connection with the outer boundaries of the plat, and if the property described in that part of the plat containing the error is under the ownership of the same person who caused the plat to be prepared, the City Engineer, after substantiation of the existence of the error, may file an affidavit with the Franklin County Register of Deeds that the error was made. The affidavit shall describe the nature and extent of the error and the appropriate correction. The Franklin County Register of Deeds shall record the affidavit and shall place in the margin of the recorded plat a notation that the affidavit has been filed, the date of filing and the book and page where it is recorded. The filing of the affidavit shall correct any errors, but shall have no effect on the validity of the plat or any property interest recorded by reference thereto. A copy of the recorded affidavit shall be filed with the Zoning Administrator. Any costs relating to corrections will be borne by the designer or developer.

SECTION 12-4 VACATION OF STREETS, ALLEYS, EASEMENTS AND PLATS

12-401.

a. The following procedures are provided to vacate streets, alleys or other public reservations such as, but not limited to public easements, dedicated building setback lines, access control, or a part thereof, and including all or parts of recorded plats within the corporate limits of the City:

1. Petitions for vacations received from the Governing Body, the owner of platted land or the owner of land adjoining on both sides of any street, alley, easement or other public reservation may be filed with the Zoning Administrator.
2. The petition shall be reviewed by and comments submitted to the Planning Commission by the Utility Advisory Committee.
3. Following its receipt of the comments of the Utility Advisory Committee, the Planning Commission shall make a recommendation to the Governing Body as to whether the vacation should be approved or disapproved and with or without conditions attached. If the Planning Commission determines that:
 - (a) due and legal notice has been given;
 - (b) no private rights will be injured or endangered; and
 - (c) the public will suffer no loss or inconvenience;

then the Planning Commission shall recommend that such vacation be approved and entered at length in the minutes. Such recommendation may provide for the reservation to the City and/or the owners of any lesser property rights for public

Article 12

utilities, rights-of-way and easements for public service facilities originally located in such vacated land or planned for the future. The petition shall not be recommended by the Planning Commission nor granted by the Governing Body if a written objection is filed with the City Clerk by any owner who would be a proper party to the petition, but has not joined therein. Furthermore, when only a portion of a street, alley or public reservation is proposed to be vacated, the petition shall not be recommended by the Planning Commission nor granted by the Governing Body if a written objection is filed with the City Clerk by any owner of lands which adjoin the portion to be vacated. The recommendation of the Planning Commission to the Governing Body shall be made as provided by K.S.A. 12-752 for the submission and approval of a final plat, and the Governing Body may approve or disapprove the vacation or approve it with or without reservation of lesser easements than as recommended by the Planning Commission.

4. Following the approval of the vacation by the Governing Body, the City Clerk shall certify a copy of the order to the Franklin County Register of Deeds.

ARTICLE 13**CONSERVATION SUBDIVISION DEVELOPMENT STANDARDS****Sections:**

- 13-1 Purpose**
- 13-2 Applicability**
- 13-3 Definitions**
- 13-4 Development Options**
- 13-5 Approval Process**
- 13-6 Development Activities Prohibited**
- 13-7 Waiver**
- 13-8 Subdivision Yield Plan**
- 13-9 Sensitive Area Designation Plan**
- 13-10 Master Development Plan**
- 13-11 Dimensional Standards**
- 13-12 Design Standards**
- 13-13 Use Regulations**
- 13-14 Conservation Land Design Standards**
- 13-15 Permanent Protection of Conservation Lands**
- 13-16 Ownership of Conservation Lands**
- 13-17 Maintenance of Conservation Lands**

SECTION 13-1 PURPOSE

13-101. The purpose of this Article is to provide regulations and standards for residential subdivision development, which:

(13-101 Revised 09-19-18)

- a. Protects constrained and sensitive lands, including those areas containing sensitive and undevelopable features such as steep slopes, floodplains and wetlands, by setting them aside from development;
- b. Conserves conservation and open space land, including those areas containing unique or natural features such as grasslands, woodlands, streams, stream corridors, berms, watercourses, farmland, wildlife habitats, historical buildings and/or sites, archeological sites, and green space, by setting them aside from development;
- c. Provides greater design flexibility and efficiency in the siting of services and infrastructure, including the opportunity to reduce length of roads, utility runs, and the amount of paving required for residential development;
- d. Reduces erosion and sedimentation by the retention of existing vegetation and the minimization of development on steep slopes and other constrained and sensitive lands;
- e. Provides for a diversity of lot sizes to accommodate a variety of age and income groups and residential preferences, so that the community's population diversity may be enhanced;
- f. Provides incentives for the creation of greenways and open space within the City;
- g. Implements adopted City policies to conserve a variety of irreplaceable and environmentally sensitive resource lands;

- h. Implements adopted land use, environment, natural hazards, transportation, and community policies;
- i. Creates neighborhoods with direct visual and/or recreational access to constrained, sensitive and conservation land;
- j. Provides for the conservation and maintenance of constrained, sensitive and conservation land within the City to achieve the above-mentioned goals;
- k. Provides incentives and design alternatives for landowners to minimize impacts on environmental resources such as sensitive lands, wetlands, floodplain, and steep slopes, and to minimize disturbance of natural or cultural features such as mature woodlands, tree lines, wildlife habitats and corridors, historic buildings, and floodplain walls; and
- l. Conserves scenic views and elements of the City's rural and scenic character and minimizes perceived density by minimizing views of new development from existing roads.

SECTION 13-2 APPLICABILITY

13-201. Conservation Subdivision Development is provided as an alternative to development of property as a conventional subdivision pursuant to other applicable provisions of these regulations. Conservation Subdivisions may be developed in any zoning districts where the proposed development includes stream corridors, floodplains, or other natural resource areas. The intent of this Article and the Conservation Subdivision options are to encourage the creation and development of flexibly-designed open space subdivisions, and to provide additional flexibility for the protection of stream corridors, floodplains and other natural resource areas in conventional subdivisions. The election to develop property in this manner is voluntary, and when applied Conservation Subdivisions shall be developed in accordance with and subject to the development standards, conditions, procedures and regulations of this Article and with all other applicable subdivision and zoning regulations of the City which are not otherwise in conflict with the provisions of this Article. See Section 13-1101 for density standards.

(12-201 Revised 09-19-18)

SECTION 13-3 DEFINITIONS

13-301. For purpose of this Article, the following words shall have the following meanings:

Conservation land means land containing unique, historic, cultural, archeological, natural or other significant features, including, but not limited to, grasslands, woodlands, streams, stream corridors, berms, watercourses, farmland, wildlife habitats, historic buildings and/or sites, archeological site, and open space.

Constrained and sensitive land means land which is generally unbuildable and which contains constrained and sensitive features including, but not limited to, wetlands, floodplains, steep slopes, faults and other geologically or environmentally sensitive features.

SECTION 13-4 DEVELOPMENT OPTIONS

13-401. Developers desiring to develop property as a Conservation Subdivision in accordance with and subject to the development standards, conditions, procedures and regulations of this Article are provided the following Conservation Subdivision development options. These options are provided as an incentive for developers to preserve and protect natural resources on their property as permanent open space, particularly streams and floodplains; and to provide increasing incentives for those developers that protect a greater percentage of their property.

- a. **Tier One:** Stream and Floodplain Conservation. Tier One Conservation Subdivision provides for residential development at the base density permitted in the underlying residential zoning district plus a net 5% density incentive. In order to obtain the Tier One density incentive permitted herein, the development must utilize a conservation design which sets aside and preserves all streams, stream corridors, and floodplains.
- b. **Tier Two:** Natural Areas Conservation. Tier Two Conservation Subdivision provides for residential development at the base density permitted in the underlying residential zoning district plus a 10% net density incentive. In order to obtain the Tier Two density incentive permitted herein, the development must utilize a conservation design which sets aside and preserves all streams, floodplains and vegetated stream corridors, and all additional constrained and sensitive lands, natural hazards and resources.
- c. **Tier Three:** Enhanced Conservation. Tier Three Conservation Subdivision provides for residential development at the base density permitted in the underlying residential zoning district plus a 15% net density incentive. In order to obtain the Tier Three density incentive permitted herein, the development must utilize a conservation design which sets aside and preserves all streams, floodplains and vegetated stream corridors; all additional constrained and sensitive lands and natural hazards and resources; and additional, usable open space. The total open space provided must equal at least 35% of the development to qualify.

(13-401, 13-401-a-b Revised; 13-401-c Added 09-19-18)

SECTION 13-5 APPROVAL PROCESS

13-501. Application for a Conservation Subdivision shall be submitted and processed in accordance with the requirements and procedures set forth in the City's Subdivision Regulations, including submission and approval of schematic, preliminary and final plans or plats, and any additional procedural requirements set forth in this Article.

SECTION 13-6 DEVELOPMENT ACTIVITIES PROHIBITED

13-601. In order to ensure the preservation and enhancement of existing conditions of certain property within the City, including, but not limited to, constrained and sensitive lands, natural and cultural resources, wildlife habitat and other unique and sensitive lands, no new development activity shall be permitted on property proposed for development as a Conservation Subdivision prior to final plat approval as provided herein. Upon final plat approval, all development activity shall be conducted in accordance with and subject to applicable permit and development approval processes required by City laws and these regulations. For purposes of this Section, "development activity" shall include any disturbance or alteration of the property in any way, but shall not include continuation of any currently existing permitted use of the property.

SECTION 13-7 WAIVER

13-701. Subject to the provisions set forth herein, any provision of this Article may be waived. Such waiver(s) shall be granted only in limited circumstances as deemed appropriate and necessary by the Board of Zoning Appeals. No waiver shall be granted absent a finding of good cause based upon specific special circumstances attached to the property. No waiver should be granted that would be contrary to the public interest or contrary to the underlying intent of this Article. Any waiver of the required minimum conservation land dedication shall require comparable compensation, off-site improvements, amenities or other consideration of comparable size, quality and/or value.

SECTION 13-8 SUBDIVISION YIELD PLAN

13-801. All applications for a Conservation Subdivision shall include a Subdivision Yield Plan prepared in accordance with the provisions of this section. The Subdivision Yield Plan is utilized to determine and calculate the base number of dwelling units for any given property to be developed as a Conservation Subdivision.

- a. **Subdivision Yield Plan.** Applicants shall prepare a Subdivision Yield Plan for the proposed project showing how the property within the project could be developed under a Conventional Subdivision layout using the dimensional standards set forth in Subsection c. The Subdivision Yield Plan is not intended to propose or permit the actual development of the property in accordance with the dimensional standards set forth herein but is prepared merely to determine the base number of dwelling units to be used in calculating the permitted number of dwelling units and lot size for the actual Conservation Subdivision. No subdivision may be developed in accordance with the dimensional standards set forth in Subsection c of a proposed Subdivision Yield Plan.
- b. **Realistic Layout.** The Subdivision Yield Plan must be drawn to scale and must exhibit a realistic layout reflecting a Conventional Subdivision layout that could reasonably be expected to be implemented in consideration of dimensional standards set forth herein and calculating and addressing the presence of non-buildable or infrastructure areas, including, but not limited to, rights-of-way, public improvement areas, wetlands, floodplains, steep slopes, and existing easements or encumbrances.
- c. **Dimensional Standards.** The Subdivision Yield Plan shall reflect the following dimensional standards:

Subdivision Yield Plan Dimensional Standards			
Zone	Lot Area	Lot Width	
		Interior	Corner
CS (Countryside)	2 Acre	100 ft.	110 ft.
A (Agriculture)	1 acre	100 ft.	110 ft.

- d. **Approval.** The Subdivision Yield Plan must be approved in writing by the Zoning Administrator for compliance with the standards and provisions of this Section prior to the submission of a Schematic Plan for a Conservation Subdivision.

SECTION 13-9 SENSITIVE AREA DESIGNATION PLAN

13-901. All applications for a Conservation Subdivision shall include a Sensitive Area Designation Plan prepared in accordance with the provisions in this section. The Sensitive Area Designation Plan shall identify all constrained and sensitive lands within the property boundaries and within four hundred (400) feet outside of the property boundaries, including, but not limited to, floodplains, wetlands and steep slopes. The Sensitive Area Designation Plan shall also clearly identify all natural or cultural resources present on the property and within four hundred (400) feet outside of the property, including, but not limited to, geographic features, including, but not limited to, meadows, grasslands, woodlands, streams, stream corridors, watercourses, farmland, wildlife corridors and/or habitat; historic buildings and/or sites; archeological sites; cultural features and green space.

SECTION 13-10 MASTER DEVELOPMENT PLAN

13-1001. When deemed necessary or desirable by the City, application and approval for a Conservation Subdivision may require the submission and approval by the City of a Master Development Plan and/or Development Agreement. Such Master Development Plan and/or Development Agreement may be required by the City at any stage of the subdivision approval process.

SECTION 13-11 DIMENSIONAL STANDARDS

13-1101.

- a. **Density.** The permitted density for development within a Conservation Subdivision shall be determined in accordance with the following chart, hereinafter referred to as the Development Incentive Chart. The percentage increases noted as the multiplier in the Chart are percentage increases from the base density identified in the approved Subdivision Yield Plan for the proposed development.

Development Incentive Chart				
Tier	Conservation Land	Incentive Multiplier	Typical Lot Area	Lot Size Minimum
One	Streams, Stream Corridors, and Floodplains	5%	Per base Zoning District	Base Zoning District minimum less open space % and Incentive %; see Zone HO-O for absolute minimum
Two	Streams, Corridors, Floodplains, and Additional Natural Areas	10%	Per Base Zoning District	Base Zoning District minimum less open space % and Incentive %; see Zone HO-O for absolute minimum
Three	Streams, Corridors, Floodplains, Additional Natural Areas, and additional usable open space (35% total)	15%	Per Base Zoning District	Base Zoning District minimum less 50%; see Zone HO-O for absolute minimum

- b. **Minimum Required Conservation Land.** All Conservation Subdivisions shall preserve at a minimum streams, stream corridors and floodplains. Additional incentives are provided with greater percentages of conservation land within the Conservation Subdivision as set forth in the Development Incentive Chart in Subsection a. The percentage of conservation land for any given Conservation Subdivision shall be calculated based upon the total acreage of property within the proposed subdivision, less areas containing streams and stream corridors, floodplains, other constrained and sensitive lands, and additional usable open space. Required conservation land may include any constrained or sensitive lands as defined herein, including land preserved for stream setbacks. Except as otherwise provided herein, conservation land shall not be included within any residential lot.
- c. **Lot Area.** The lot area and minimum lot size for lots within a Conservation Subdivision shall be determined in accordance with the Development Incentive Chart set forth in Subsection a. For Option Three Conservation Subdivisions, the minimum lot size shall be calculated by reducing the minimum lot size for the relevant zoning district by the proportion of land set aside for conservation, plus the appropriate incentive multiplier; except that in no case shall the minimum lot size be less than that allowed in an HO Housing Opportunity Overlay District, (see Article 12-404 of Zoning Regulations) including additional density incentives

allowed within that district. For Option One and Two Conservation Subdivisions the typical lot area is likely to be much closer in size to the established threshold for each zone because that lot size can be delivered by developers while still meeting the minimum conservation land requirements.

- d. **Lot Width at Building Line.** The minimum lot dimensions for main buildings within a Conservation Subdivision shall be calculated by reducing the minimum lot dimensions for the base zoning district by the proportion of land set aside for conservation, plus the appropriate incentive multiplier; except that in no case shall the minimum lot width be less than that allowed in an HO Housing Opportunity Overlay District (see Article 12-404 of Zoning Regulations).
- e. **Yard Regulations.** The builder or developer of a Conservation Subdivision is encouraged to consider variations in the principal building position and orientation, but shall observe the following minimum standards for buildings within a Conservation Subdivision. Minimum yard dimensions shall be calculated by reducing the yard dimensions for the base zoning district by the proportion of land set aside for conservation, plus the appropriate incentive multiplier; except that in no case shall the minimum yard dimensions be less than that allowed in an HO Housing Opportunity Overlay District (see Article 12-402 of Zoning Regulations). Exceptions to these minimum setback regulations may be approved by the City, in its sole discretion, during plat approval process when deemed appropriate and desirable under the circumstances.

(13-1101-a-b-c-d-e Revised 09-19-18)

SECTION 13-12 DESIGN STANDARDS

13-1201.

- a. **Individual Lots.** Individual lots in Conservation Subdivisions shall be laid out pursuant to the dimensional standards set forth herein. Except as otherwise provided for herein, individual residential lots shall not encroach upon or contain any of the required minimum designated conservation land for the subdivision or any constrained or sensitive lands, as defined herein.
- b. **Buffer from Road.** All new dwellings shall be arranged and located a minimum of eighty (80) feet from all external roads with a functional classification higher than a local street.
- c. **Views of Housing.** Views of housing from exterior roads and abutting properties shall be minimized by the use of changes in topography, existing vegetation, or additional landscaping.
- d. **Access.** Lots shall be accessed from interior streets, rather than from roads bordering the tract.
- e. **Abut Conservation Lands.** At least half of the lots shall directly abut conservation land or face conservation land across a street.
- f. **Conservation Lands.** Standards pertaining to the quantity, quality, configuration, use, permanent protection, ownership, and maintenance of the conservation land within a Conservation Subdivision shall be complied with as provided herein.

- g. **Constrained and Sensitive Lands.** Restrictions and regulations regarding the preservation, protection, ownership, and maintenance of constrained and sensitive lands within a Conservation Subdivision shall be complied with as provided herein.

SECTION 13-13 USE REGULATIONS

13-1301.

- a. **Subdivision.** Subject to use and development restrictions of constrained and sensitive lands as set forth herein, land within Conservation Subdivisions may be used for the following purposes:

1. Permitted Uses. Any uses permitted in the relevant zone.
2. Conservation Land. Conservation land, subject to the use and development restrictions of conservation land as set forth herein.
3. Accessory Uses. Any permitted accessory uses as provided in the relevant zoning regulations.

- b. **Conservation Land.** Conservation land may be used for the following purposes:

1. **Permitted Uses.** The following uses are permitted in conservation land areas, provided that buildings, structures, and impervious areas are located outside of floodplains or identified 100-year conveyances and comply with stream setbacks, except as noted below:

(13-1301-b-1 Revised 09-19-18)

- a. Conservation of open land in its natural state; e.g., meadow, grassland, woodlands, farmland, etc.
- b. Paved and unpaved greenway trails, bicycle and pedestrian trails, walking paths and wildlife observation areas; paved trails in the floodplain are acceptable.

(13-1301-b-1-b Revised 09-19-18)

- c. Pastureland.
- d. Equestrian facilities.
- e. Utility easements for underground drainage, access, sewer or water lines, or other public purposes.
- f. Above-ground utility and street rights-of-way may traverse conservation land if permitted under City ordinances; provided, areas encumbered by such facilities and/or rights-of-way shall not be counted towards the minimum required conservation land for the Subdivision. Exceptions may be approved by the City, in its sole discretion, during plat approval process when deemed appropriate and desirable under the circumstances.

(13-1301-b-1-f Revised 09-19-18)

2. **Conditional Uses.** The following uses shall be considered as conditional in conservation land areas, provided that buildings, structures, and impervious areas

are located outside of floodplains or identified 100-year conveyances and comply with stream setbacks

(13-1301-2 Revised 09-19-18)

- (a) Agricultural and horticultural uses, including raising crops or livestock and associated buildings that support an active, viable agricultural or horticultural operation, excluding livestock operations. Livestock must be located outside the floodplain; direct livestock access to streams shall be prevented.

(13-1301-2-a Revised 09-19-18)

- (b) Wholesale nurseries and associated buildings that are specifically needed to support active, viable horticulture operations.

- (c) Neighborhood open space uses such as commons, picnic areas, and similar low-impact passive recreational uses specifically excluding motorized off-road vehicles, rifle ranges, and other uses similar in character and potential impact. Trails and walking paths may be located in the floodplain with appropriate separation from streambanks and must comply with floodplain management and stream setback requirements.

(13-1301-2-c Revised 09-19-18)

- (d) Active non-commercial recreational areas, such as playing fields, playgrounds, and courts. Buildings and structures must be located outside the floodplain and must comply with stream setbacks.

(13-1301-2-d Revised 09-19-18)

- (e) Golf courses, not including miniature golf.

- (f) Water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integral part of the conservation land.

3. Prohibited Uses. Except as otherwise approved and permitted by the City as a permitted or conditional use in conjunction with the Conservation Subdivision approval, except as otherwise regulated and allowed under the Ottawa City Code, the following uses are prohibited in conservation land areas:

- a. Any residential, commercial or industrial activity;
- b. Any development, construction or location of any man-made modifications or improvements such as buildings, structures, roads, parking lots, or other improvements.
- c. Any filling, dredging, excavating, mining, drilling, or exploration for and extraction of oil, gas, minerals or other resources from the property;
- d. Any dumping or storing of ashes, trash, garbage or junk;
- e. Burning of any materials, except as necessary for agricultural, drainage and fire protection purposes;

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- f. The use of motor vehicles, including snowmobiles, all-terrain vehicles, motorcycles and other recreational vehicles, except as may be necessary to maintain and operate the property and/or utility facilities within the property;
 - g. Hunting or trapping for any purpose other than predatory or problem animal control;
 - h. Advertising of any kind or nature and any billboards or signs; provided, directory and information signs may be displayed describing the easement and prohibited or authorized use of the same;
 - i. Any cutting of trees or vegetation, except as necessary for fire protection, thinning, elimination of diseased growth, control of non-native plant species, maintenance of landscaped areas, and similar protective measures or those activities relating to permitted agricultural uses;
 - j. The change, disturbance, alteration, or impairment of significant natural ecological features and values of the property or destruction of other significant conservation interests on the property;
 - k. The division or subdivision of the property;
 - l. Changing the topography of the property by placing on it any soil, dredging spoils, land fill, or other materials, except as necessary to conduct specific permitted purposes; and
 - m. All other uses and practices inconsistent with and detrimental to the stated objectives and purposes of the easement.
- c. **Constrained and Sensitive Lands.** No development or residential uses shall be permitted within constrained and sensitive lands. Livestock, buildings and structures must be located outside the floodplain and must comply with stream setbacks. Direct livestock access to streams must be prevented.

(13-1301-c Revised 09-19-18)

SECTION 13-14 CONSERVATION LAND DESIGN STANDARDS

13-1401. Designated conservation land within a Conservation Subdivision shall meet the following standards:

- a. **Significant Areas and Features.** Conservation land should include the most unique and sensitive resources and locally significant features of the property within the Subdivision such as meadows, grasslands, woodlands, streams, stream corridors, berms, watercourses, farmlands, wildlife habitats, historic buildings and/or sites, archeological sites, cultural features, green space, scenic views, etc.
- b. **Contiguous Land.** Conservation lands within a development shall be contiguous to provide for large and integrated open space areas within the Subdivision. Non-contiguous parcels of conservation lands may be approved by the City during plat approval process upon a finding that such exception is necessary and/or desirable based upon consideration of the size of the project, the size of the conservation parcels, the types of features and resources included within the conservation lands, and other relevant considerations. Long thin strips of conservation land (less than one hundred (100) feet wide) are prohibited, unless approved by the City during plat approval process upon a finding that such configuration of the conservation land is necessary and/or desirable to connect other significant areas, to protect linear resources such as streams or trails, or to provide a buffer.
- c. **Open Space Network Connection.** Whenever feasible, conservation land within a Conservation Subdivision shall be designed and laid out as part of a larger continuous and integrated open space system to ensure that an interconnected network of open space will be provided throughout the City.
- d. **Visibility.** Conservation land shall be located and designed within the Conservation Subdivision to add to the visual amenities of neighborhoods and to the surrounding area by maximizing the visibility of internal open space. Such enhanced visibility of conservation land may be accomplished through design and location of such open space as terminals at the ends of streets or along single-loaded street segments, particularly along the outside edges of street curves, and by maximizing the visibility of external open space as perimeter greenbelt conservation land.
- e. **Resource Uses.** A substantial amount of the minimum required conservation land may be devoted to active resource uses such as agriculture, horticulture, or equestrian uses; provided, at least twenty percent (20%) of the minimum required conservation land remains available for the common use and enjoyment of the subdivision residents or the public.
- f. **Recreational Uses.** A substantial amount of the minimum required conservation land may be comprised of active recreation facilities such as playing fields, golf courses, tennis courts, etc., exclusive of parking lots; provided, at least twenty percent (20%) of the minimum required conservation land remains available for common use and enjoyment of the subdivision residents or the public.
- g. **Buffering.** Conservation land shall be designed to provide buffers and to protect scenic views as seen from existing roadways and from public parks. Where the proposed development abuts a public park, open space, wildlife sanctuary or preserve, a natural greenway buffer at least fifty (50) feet wide shall be provided within the development along its common boundary with said land, within which no new structures shall be constructed, nor

shall any clearing of trees be permitted (except as may be necessary for street or trail construction or fire safety). Where this buffer is unwooded, the City may require vegetative screening to be planted at developer's sole cost and expense.

- h. **Pedestrian Access.** Developer shall provide adequate pedestrian access to conservation land which is open to public or resident use.
- i. **Maintenance Access.** Developer shall provide sufficient maintenance access to all conservation land and constrained and sensitive lands within the Conservation Subdivision.
- j. **Landscaping.** All conservation land that is not wooded, farmed or maintained as conservation, grassland, or other approved open space, shall be landscaped at developer's sole cost and expense in accordance with landscaping requirements for subdivisions.

SECTION 13-15 PERMANENT PROTECTION OF CONSERVATION LANDS

13-1501.

- a. **Conservation Easement.** All conservation land shall be permanently restricted from future development by a conservation easement or other method of protection and preservation acceptable to the City. Under no circumstances shall any development be permitted in the conservation land at any time, except for those permitted or conditional uses listed herein and approved in conjunction with the Conservation Subdivision. All conservation easements, or other acceptable method of protection and preservation of the conservation land within a Conservation Subdivision, shall be approved by the City and recorded prior to or concurrent with the recording of the final plat for the Conservation Subdivision.
- b. **Terms and Conditions.** All conservation easements, or other acceptable method of protection and preservation of the conservation land within a Conservation Subdivision, shall be in substantially the same form as the standard conservation easement form provided by the City and shall include, at a minimum, the following terms and/or conditions:
 - 1. legal description of the easement;
 - 2. description of the current use and condition of the property;
 - 3. permanent duration of easement;
 - 4. permitted and conditional uses;
 - 5. prohibited development and/or uses;
 - 6. maintenance responsibilities and duties; and
 - 7. enforcement rights and procedures.
- c. **Grantee.** Unless otherwise approved by the City, the grantee of a conservation easement shall consist of one of the following acceptable entities which entity shall be qualified to maintain and enforce such conservation easement: land trust, conservation organization or governmental entity. The City may, but shall not be required to, accept, as grantee, a Conservation Easement encumbering conservation lands within a Conservation Subdivision,

provided there is no cost of acquisition to the City for the easement and sufficient access to and maintenance responsibilities regarding the conservation land are provided.

SECTION 13-16 OWNERSHIP OF CONSERVATION LANDS

13-1601.

- a. **Undivided Ownership.** Unless otherwise approved by the City and subject to the provisions of this Article, the underlying fee ownership of the conservation land shall remain in single ownership and may be owned and maintained by one of the following entities: homeowners' association, land trust, conservation organization, governmental entity, or private individual.
- b. Property subject to a conservation easement, or other acceptable method of protection and preservation, shall not be subdivided.
- c. **Owners' Association.** Conservation land may be held in common ownership by a condominium homeowners' or other acceptable owners' association, subject to all of the provisions for owners' associations set forth in State regulations and the City's subdivision regulations. In addition, the following regulations shall be met:
 1. A description of the organization of the proposed association, including its bylaws, and all documents governing ownership, maintenance, and use restrictions for conservation land, including restrictive covenants for the subdivision, shall be submitted by the developer with the preliminary plat application.
 2. The proposed association shall be established prior to or concurrent with the recording of the final plat for the subdivision.
 3. Membership in the association shall be mandatory for all purchasers of property within the subdivision and their successors in title.
 4. The association shall be responsible for maintenance and insurance of conservation land.
 5. The bylaws of the association and restrictive covenants for the subdivision shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in dues.
 6. Written notice of any proposed transfer of conservation land by the association or the assumption of maintenance for the conservation land must be given to all members of the association and to the City no less than thirty (30) days prior to such event.

SECTION 13-17 MAINTENANCE OF CONSERVATION LANDS

13-1701.

- a. **Costs.** Unless otherwise agreed to by the City, the cost and responsibility of maintaining conservation land shall be borne by the owner of the underlying fee of the conservation land.

- b. **Plan.** The developer shall submit a maintenance plan providing for and addressing the means for permanent maintenance of the conservation land within the proposed Conservation Subdivision with the preliminary plat application for the subdivision. The maintenance plan shall provide the following:
1. The plan shall define ownership.
 2. The plan shall establish necessary regular and periodic operation and maintenance responsibilities for the various kinds of open space (e.g., lawns, playing fields, pasture, wetlands, stream corridors, hillsides, cropland, woodlands, etc.).
 3. The plan shall estimate staffing needs, insurance requirements, and associated costs, and define the means for funding the maintenance of the conservation land and operation of any common facilities on an on-going basis. Such funding plan shall include the means for funding long-term capital improvements as well as regular yearly operating and maintenance costs.
 4. At the City's discretion, the applicant may be required to escrow sufficient funds for the maintenance and operation costs of common facilities for up to one year.
- c. **Approval.** The maintenance plan must be approved by the City prior to or concurrent with final plat approval for the subdivision. The maintenance plan shall be recorded against the property and shall include provisions for the City's corrective action rights as set forth herein. Any changes or amendments to the maintenance plan shall be approved by the City.
- d. **Failure to Maintain.** In the event that the organization established to maintain the conservation land and the common facilities, or any successor organization thereto, fails to maintain all or any portion thereof in reasonable order and condition, the City may assume responsibility as a right but not an obligation, for maintenance, in which case any escrow funds may be fortified and any permits may be revoked or suspended.
- e. **Corrective Action.** The City may enter the premises and take corrective action, including extended maintenance. The costs of such corrective action may be charged to the property owner and may include administrative costs and penalties. Such costs shall become a lien on said properties. Notice of such lien shall be filed by the City in the Franklin County Register of Deeds' office. The maintenance plan and all other documents creating or establishing any association or conservation organization for the property shall reference the City's corrective action authority and shall be recorded against the property.

ARTICLE 14

SOIL EROSION AND SEDIMENT CONTROL

Sections:

14-1	Purpose
14-2	Definitions
14-3	Permits
14-4	Review and Approval
14-5	Erosion and Sediment Control
14-6	Design Requirements
14-7	Inspection

SECTION 14-1 PURPOSE

14-101. Purpose During the construction process, soil is highly vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches and the dredging of lakes. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat.

The purpose of this Article is to safeguard persons, protect property, and prevent damage to the environment. These regulations will also promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth. These regulations supplement relevant federal and state laws on the same subject. Where two regulations apply the regulation establishing the higher or more restrictive standard shall control.

SECTION 14-2 DEFINITIONS

14-201. Refer to Ottawa Municipal Code Chapter 15, Article III, Section 15-110.
(14-201 Revised 11-16-11; 09-19-18)

SECTION 14-3 PERMITS

14-301.

a. No person shall be granted a land disturbance permit for a land-disturbing activity without the approval of an Erosion and Sediment Control Plan and/or associated Stormwater Pollution Prevention Plan (SWP3), if required below or by the Zoning Administrator. Refer to Fig. 1.
(14-301-a Revised 11-16-11)

b. A land disturbance permit is not required for the following activities:
(14-301-b Revised 11-16-11)

1. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.

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- 2. Existing nursery and agricultural operations conducted as a permitted or accessory use.
- c. Each application shall bear the name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant together with the name of the applicant’s principal contact at such firm and shall be accompanied by a filing fee.
- d. Each applicant shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the Erosion and Sediment Control Plan, and in accordance with all applicable state and federal laws.
- e. The applicant will be required to file with the Zoning Administrator a performance bond, letter of credit, or other improvement security in an amount deemed sufficient by the Zoning Administrator to cover all costs of improvements, landscaping, maintenance of improvements, and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site.

Amount of Land Disturbed	BMPs	LDP	SWP3 (15-107)	Add. Notes
< 1 acre	Yes	Yes	-	Erosion and Sediment Control Plan (illustrating/describing BMPs). Submit Site Map/Plan showing BMPs, SWP3 template notes, still have to complete a Stormwater Management Study (unless waived).
≥ 1 acre	Yes	Yes	Yes	SWP3 and NOI filed with the State.

(14-301-e Revised 11-16-11)

SECTION 14-4 REVIEW AND APPROVAL

14-401.

- a. The Zoning Administrator will review each application for a site development permit to determine its conformance with the provisions of this Article. Within 30 days after receiving an application, the Zoning Administrator shall, in writing:
 - 1. Approve the permit application;
 - 2. Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this Article, and issue the permit subject to these conditions; or
 - 3. Disapprove the permit application, indicating the reason(s) and procedure for submitting a revised application and/or submission.
- b. Failure of the Zoning Administrator to act on an original or revised application within 30 days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by mutual agreement. Pending preparation and approval of a

revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Zoning Administrator.

SECTION 14-5 EROSION AND SEDIMENT CONTROL PLAN

14-501.

- a. The Erosion and Sediment Control Plan shall include the following:
 1. A natural resources map identifying soils, forest cover, and resources.
 2. A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.
 3. All erosion and sediment control measures necessary to meet the objectives of this Article throughout all phases of construction and after completion of development of the site. Depending upon the complexity of the project, the drafting of intermediate plans may be required at the close of each season.
 4. Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures.
 5. Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.
- b. Modifications to the plan shall be processed and approved or disapproved in the same manner as section 14-4, and shall include:
 1. Major amendments of the erosion and sediment control plan.
 2. Field modifications of a minor nature.

SECTION 14-6 DESIGN REQUIREMENTS

- a. Grading, erosion control practices and sediment control practices shall be adequate to prevent transportation of sediment from the site to the satisfaction of the City Engineer. Cut and fill slopes shall be no greater than 3:1, except as approved by the City Engineer to meet other community or environmental objectives.
(14-6-a Revised 11-16-11)
- b. Clearing and grading of natural resources, such as forests and wetlands, shall not be permitted, except as approved by the City Engineer. Clearing techniques that retain natural vegetation and drainage patterns shall be upon approval of the City Engineer.
- c. Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.

- d. Phasing shall be required on all sites disturbing greater than 30 acres, with the size of each phase to be established at plan review and as approved by the City Engineer.
- e. Erosion control requirements shall include the following:
1. Soil stabilization shall be completed within fourteen (14) days of clearing or inactivity in construction.
(14-6-e-1 Revised 11-16-11)
 2. If seeding or another vegetative erosion control method is used, it shall become established within two (2) weeks or the Zoning Administrator may require the site to be reseeded or a nonvegetative option employed.
 3. Special techniques for steep slopes or in drainage ways shall be used to ensure stabilization.
 4. Soil stockpiles must be stabilized or covered at the end of each workday.
 5. The entire site must be stabilized, using a heavy mulch layer or another method that does not require germination to control erosion, at the close of the construction season.
 6. Techniques shall be employed to prevent the blowing of dust or sediment from the site.
 7. Techniques that divert upland runoff past disturbed slopes shall be employed.
 8. Sediment control requirements shall include:
 - (a) Settling basins, sediment traps, or tanks and perimeter controls.
 - (b) Settling basins that are designed in a manner that allows adaptation to provide long term stormwater management.
 - (c) Protection for adjacent properties by the use of a vegetated buffer strip in combination with perimeter controls.
 9. Construction site access requirements shall include:
 - (a) A temporary access road provided at all sites.
 - (b) Other measures required by the City Engineer in order to ensure that sediment is not tracked into public streets by construction vehicles or washed into stormwater drains.

SECTION 14-7 INSPECTION

- a. The Zoning Administrator or designated agent shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the Erosion and Sediment Control Plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the Zoning Administrator shall be maintained at the site during the progress of the work. To

obtain inspections, the permittee shall notify the Zoning Administrator at least two (2) working days before the following:

1. Start of construction
2. Installation of sediment and erosion measures
3. Completion of final grading
4. Close of the construction season
5. Completion of soil stabilization
6. Completion of final landscaping

(14-7-a Revised 11-16-11)

- b. The permittee or his/her agent shall make regular inspections, as required by Chapter 15, Article III, Section 15-307 of the Ottawa Municipal Code.

(14-7-b Revised 11-16-11; 09-19-18)

ARTICLE 15

STREAM BUFFER

Sections:

15-1	Findings
15-2	Purpose
15-3	General Provisions
15-4	Administration
15-5	Provisions for Stream Buffer
15-6	Stream Buffer Variance Procedures
15-7	Penalties for Violation
15-8	Definitions

SECTION 15-1 FINDINGS

Ottawa's network of streams and rivers form the backbone of its drainage system and provide many other critical benefits for the city's environmental health and quality of life. The importance of this natural "green infrastructure" system has become even more evident through multiple rounds of stormwater master planning and implementation of stormwater management projects; preparation of the city's Comprehensive Plan; and as the city works collaboratively with community stakeholders to protect and improve water quality through its Municipal Separate Storm Sewer System (MS4) program in accordance with the Clean Water Act. Critical benefits provided by streams and particularly the vegetated riparian (stream) corridors through which they run, include but are not limited to the following.

15-101. Water quality. Natural streams, creeks, and rivers provide important water quality benefits as they collect and convey stormwater runoff from the city's landscape. Riparian corridor vegetation slows runoff that flows over stream banks, reducing runoff velocities and volumes by infiltrating water into the ground, preventing erosion, and filtering pollutants from the remaining runoff that enters the stream. Vegetated streambanks also resist erosion from stream flow by slowing flow velocities and reinforcing bank stability, reducing the amount of sediment entering the stream from bank erosion and failures. Natural vegetation and stream bed materials create turbulence that aerates stream flows, increasing dissolved oxygen, supporting healthy aquatic life, and preventing nuisance conditions from stagnant water and anaerobic bacteria. Riparian vegetation provides shade that reduces water temperature for aquatic life and improves dissolved oxygen capacity.

15-102. Flood Protection. Floodplains and riparian corridors protect life, property and infrastructure by more safely conveying flood waters. Streambank and riparian vegetation slows flow velocities, reducing flash flood potential in downstream areas. Adequate, unobstructed and vegetated floodplains provide capacity for higher flows when streams overflow their banks; and infiltrate a portion of the flows into the ground. Adequate, undeveloped stream buffers also separate occupied and unoccupied structures and infrastructure from flood hazards.

15-103. Stream Degradation. Extensive stream assessments and research conducted in Eastern Kansas and nationally clearly demonstrate that adequate, healthy vegetated riparian corridors and floodplains reduce and prevent stream degradation and improve overall stream health and quality. By reducing runoff velocities and volumes, and reinforcing streambanks, healthy stream corridors prevent incision (down cutting) of stream beds and lateral bank erosion and advancement.

15-104. Wildlife Habitat. Streams and riparian corridors provide critical habitat and resources for wildlife, as well as a connected network that allows safe and unimpeded movement. This network is

most valuable when it is complete and unfragmented, allowing migration through the larger riparian system and connected upland habitat areas.

15-104. Open Space and Recreation. Streams and riparian corridors provide undeveloped open space and natural areas throughout the community, improving neighborhood aesthetics, allowing the enjoyment of nature, and providing greenways for recreational amenities like bicycle and pedestrian trails. These benefits increase property values in nearby neighborhoods and districts and create healthier environments.

15-105. Comprehensive Plan. For these reasons the Ottawa Comprehensive Plan (Chapter 4, Rev. 11-16-11) calls for a holistic, watershed approach to stormwater management that preserves and enhances water quality, while protecting and restoring natural systems. A key recommendation is to develop and adopt a stream buffer ordinance, noting that:

Headwater streams are often severely degraded by urbanization and intense agricultural practices. As a consequence, many communities have adopted stream buffer requirements as part of an overall urban watershed protection strategy—a practice the City of Ottawa should follow for the watershed of the Marais des Cygnes River and its tributaries and creeks. Urban stream buffers are an integral element of any local stream protection program. By adopting some of these rather simple performance criteria, communities can make their stream buffers more than just a line on a map. Better design and planning also ensure that communities realize the full environmental and social benefits of stream buffers.

SECTION 15-2 PURPOSE

15-201. Based on the findings described in Section 20-101 through 105, this Chapter is intended for the following purposes.

- a. Improving Water Quality.
- b. Protecting Life and Property.
- c. Protecting Infrastructure.
- d. Providing Open Space Amenities.
- e. Providing Greenway Trail Opportunities.
- f. Protecting Environmental Quality.
- g. Providing Certainty and Flexibility.
- h. Increasing public knowledge and understanding of protecting water resources.

SECTION 15-3 GENERAL PROVISIONS

15-301. Scope and Applicability.

- a. Upon adoption the stream buffer regulations of this chapter will apply to all applications for approval of preliminary plans, development plans, any other plans provided for in the zoning

ordinance, preliminary plats, final plats and amendments to such plans or plats except as follows:

1. If the City Planning Commission has not recommended approval of a final plat for a unified development plan, preliminary plan, development plan or preliminary plat that was approved before October 3, 2018, the regulations of this chapter will not apply to any phases of the pre-adoption approved plan as long as the City Commission recommends approval of the first final plat within one year of the date that the Director of Community Development sends certified mail notice of this requirement to the subject property owner.
 2. If the City Commission has recommended approval of a final plat for a pre-adoption approved plan before October 3, 2018, the regulations of this chapter will not apply to any phases of the pre-adoption approved plan as long as the City Planning Commission recommends approval of the next final plat for the pre-adoption approved plan by October 3, 2018.
 3. If the requirements of (1) through (2) have been met, the regulations of this chapter will not apply to any phases of the unified development plan, preliminary plan, development plan or preliminary plat as long as the City Planning Commission recommends approval of each subsequent final plat within 3 years of the date that City Planning Commission recommended approval of the immediately preceding final plat.
 4. The regulations of this chapter will not apply to amended development plans or amended preliminary plats if no significant changes are made. A significant change is any change that: (1) adds additional land area to the approved plan; (2) changes the overall land use in a way that would increase stormwater runoff volumes and rates; (3) increases the number of lots by 10% or more (as compared to the number of lots included in the originally approved plan/plat); or (4) increases the developed area by 10% or more (as compared to the originally approved plan/plat).
 5. The regulations of this chapter will not apply to amended development plans or amended preliminary plats if the proposed changes to the development plan or preliminary plat are not located in an area on the development plan or preliminary plat where the buffer requirements would normally apply. If the proposed changes are located in an area where the stream buffer requirements would normally apply, then the amendment of that area on the plan/plat must comply with the regulations of this chapter for the amended area only.
- b. The Director of Community Development is authorized to approve an extension of the time frames established above for a maximum of one year. Extension requests must be submitted in writing and include an explanation and justification for the request.
- c. For the purposes of this section, unified development means a development consisting of one or more zoning or subdivision applications that were approved by City Commission on or about the same date on contiguous property through the same applicant. Additionally, for purposes of this section, commercial and residential plans approved collectively as one unified development (although approved through separate ordinances and plans) will be construed to be a single approved preliminary plan or phase.

- d. The stream buffer regulations of this chapter will apply to all public infrastructure projects for which preliminary or final plans have not yet been approved by the City Commission.

15-302. Lands to Which Ordinance Applies.

- a. The stream buffer standards of this chapter apply to all streams identified on the Natural Resources Map.
- b. The City Stormwater Coordinator/GIS Technician is authorized to maintain and periodically update the Natural Resources Map to ensure its accuracy. Map updates that add stream reaches or otherwise have the affect of expanding the land area affected by the stream buffer regulations of this chapter must be noticed in the same manner as zoning map amendments.

15-303. Lands to Which Ordinance Does Not Apply.

- a. The stream buffer regulations of this chapter are not intended to prohibit maintenance of existing City-owned facilities within the stream buffer.
- b. Streams and rivers already protected by municipal levees at the time of adoption, such as the Marais des Cygnes River.
- c. Storm sewer systems, human-made channels (except those designed to function as natural streams), and roadside ditches are not considered streams (except where natural streams are aligned with a roadway).

15-304. Abrogation and Greater Restrictions. It is not intended by this Article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article imposes greater restrictions, the provisions of this Article shall prevail. All other City laws inconsistent with this Article are hereby repealed to the extent of the inconsistency only.

15-305. Interpretation. In their interpretation and application, the provisions of this Article shall be held to be minimum requirements, shall be liberally construed in favor of the Governing Body, and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.

SECTION 15-4 ADMINISTRATION

- a. Administration. The Director of Community Development shall be responsible for administration of this Chapter.
- b. Review for Compliance. Review for compliance with these standards will be conducted in conjunction with platting or preliminary or final plan review, as described in Section 20-403.

15-401. Buffer Plan.

- a. A stream buffer plan must be provided when the stream buffer standards apply. The plan must delineate the buffer zones and the proposed development site in relation to:
 - 1. The FEMA- or City-designated floodplain or the estimated 1% flood conveyance, as determined by a qualified engineer using City-approved methods;

2. Wetlands within or adjacent to the floodplain or required stream buffer;
- b. A preliminary buffer plan must be submitted for City review with preliminary plats and preliminary plans, and with any other plans provided for in the zoning ordinance. The preliminary buffer plan must include a plan at a scale no smaller than 1"=100' showing at a minimum:
1. Existing topography with at least 2-foot contour intervals;
 2. Approximate stream locations based on approved City geographic information system mapping or City-approved mapping from state and federal agencies;
 3. Approximate boundary of the FEMA- or City-designated floodplain based on City approved geographic information system mapping or federal mapping;
 4. Approximate 1% flood conveyance limits where no regulatory floodplain is identified as determined by a qualified engineer using City-approved methods;
 5. Approximate and/or potential wetland locations from a field survey, or the U.S. Fish and Wildlife Service National Wetlands Inventory or other publicly available data source (subject to formal delineation and Jurisdictional Determination by the U.S. Army Corps of Engineers prior to submittal of final buffer plan);
 6. The location of proposed structures or activities;
 7. Identification of required stream buffer zones based on City-approved geographic information system mapping or a site topographic survey and a survey of mature riparian vegetation;
- c. The final buffer plan must be submitted for City review with or be included in final plats and final plans. (The requirements for final plans are in the zoning ordinance.) The final buffer plan must include a plan at a scale not smaller than 1"=100" showing at a minimum:
1. Existing topography with at least 2-foot contour intervals;
 2. Field delineated, marked, and surveyed streams and wetlands;
 3. Existing sub-drainage areas of the site;
 4. The location of proposed structures or activities;
 5. The location of field delineated and surveyed stream buffer zones;

15-403. Buffer Plan Approval.

- a. Preliminary Buffer Plans shall be submitted with Preliminary and final Plats and Preliminary Site Plans for review and approval. Final Buffer Plans shall be submitted with Final Site Plans for review and approval.

- b. The Stormwater Coordinator/GIS Technician shall review Preliminary and Final Buffer Plans, and provide recommendations for approval, conditional approval, rejection; as well as needed revisions.

SECTION 15-5 PROVISIONS FOR STREAM BUFFER

15-501. General Standards.

- a. Buffer Zones.
1. Streamside Zone. 25 feet from top-of-bank in all cases.
 2. Middle Zone.
 - FEMA 100-year/1% floodplain where mapped.
 - Engineer-determined 100-year/1% conveyance for smaller streams and tributary areas.
 - Plus any contiguous wetlands under Clean Water Act Section 404, where applicable.
 3. Outer Zone. 25 feet from edge of Middle Zone in all cases.
- b. Allowed Uses of Buffer Zones.
1. Streamside Zone.
 - Stormwater outfalls.
 - Road, trail, bridge, and utility crossings only; perpendicular to the stream channel.
 - Vegetation management and trash removal.
 2. Middle Zone.
 - All uses allowed in the Streamside Zone.
 - Paved and unpaved trails.
 - Stormwater drainage channels.
 - Utility corridors.
 - Conditional Uses: Post-construction stormwater best management practices with approval of the City Engineer, and provided that the BMP is appropriate and resilient for a floodplain setting and is designed to withstand the anticipated conditions.
 3. Outer Zone.
 - All uses allowed in the Streamside and Middle Zones.
 - Stormwater Best Management Practices.
 4. All Zones.
 - Infrastructure maintenance and repair.
 - Streambank stabilization.
 - Noxious weed and invasive species management.
 - Emergency actions for health & safety.
 - Public open space for habitat and outdoor recreation provided it complies with the above criteria.

- c. Prohibited Activities and Uses. Anything not specifically allowed above is prohibited. Furthermore, streams may not be enclosed or otherwise altered from a natural state except as provided for by Section 20-6, and in accordance with all other applicable state and federal laws and regulations.
- d. Flexibility. The provisions of this Chapter are intended to coincide with other provisions of the Subdivision Regulations and Zoning Regulations, to create a streamlined system that provides multiple community benefits while maximizing developer flexibility. Specific provisions include the following.
 - 1. Dedication and Reservation of Public Sites and Open Space (Subdivision Regulations Article 5). Floodplains and sensitive lands must be protected under Article 5, and count toward the total open space requirement. Privately owned open space, such as permanent open space created by a stream buffer that is accessible for recreation, also counts toward the total open space requirement.
 - 2. Conservation Development Standards (Subdivision Regulation, Article 13). Article 13, Section 13-401 designates a stream buffer as Tier One Conservation Developments, and Section 13-1101 provides for a 5% net density bonus in Tier One Conservation Developments. Protecting additional natural and sensitive areas may increase the net density bonus to as great as 15%.
 - 3. Non-residential Developments. Non-residential development sites that include stream buffer areas are allowed up to a 25-percent reduction in minimum required parking and up to a 25-percent increase in allowable building height over the base zoning requirements. In addition, parking areas may be sited in the Outer and Middle Zones provided that they are constructed with a pervious pavement surface, subject to approval by the City Engineer; and provided that the surface pavement is maintained such that sediments are removed, and infiltration capacity is continuously maintained.

15-502. Specific Standards.

- a. Vegetation. Disturbed stream buffer areas shall be revegetated with native vegetation appropriate for Eastern Kansas floodplains and riparian corridors.
- b. Ownership and Responsibility for Stream Buffer.
 - 1. Stream buffer must be formally designated as permanent open space in common ownership and maintenance, such as by a Homeowners Association (HOA) or commercial property owner/manager; placed in a conservation easement or deeded to a land trust, park department, or other land management agency; or deeded to the City only if the City agrees to take ownership. Owners (including easement holders and land management agencies) must allow municipal bicycle/pedestrian trail connections through the permanent open space.
 - 2. Where an HOA or commercial owner maintains the permanent open space, legal and financial provisions must be provided for perpetual maintenance of the permanent open space in the event that the original owner is dissolved or transfers ownership to another entity.

3. Alternatively, the City may agree to take ownership in all cases in lieu of a conservation easement or deed to a land management agency. See also Subdivision Regulation Article 5 – Dedication and Preservation of Public Sites and Open Space.
 4. Maintenance, the owner is responsible for all maintenance, including inspection and enforcement of the buffer provisions and use restrictions, maintenance of vegetation and removal of invasive species, and other reasonable maintenance as appropriate. Maintenance activities must comply with all other state and federal regulations and should minimize the use of chemical pesticides. The owner must submit a buffer maintenance plan that defines the required maintenance activities and schedule; and which clearly identifies the party or entity responsible for maintenance. Should the responsible entity cease to exist (such as a homeowner's association or corporation), the maintenance plan must state that responsibility for its implementation would fall to the current owners.
- c. Boundary Markers.
1. Boundary markers must be put in place clearly marking required stream buffer before, during and after construction.
 2. Boundary markers must be installed at the intersection of private lot lines with the outer edge of the permanent open space before receiving final City approval of plans for clearing, grading, or sediment and erosion control.
 3. Construction fencing must be placed at the outer edge of the permanent open space in the outer zone to delineate the buffer. This fencing must be maintained throughout the construction process.
 4. Permanent signs must be placed at the edge of the permanent open space after construction to denote the buffer as follows:
 - a. For single-lot developments, signs must be posted every 100 feet along the boundary of the permanent open space.
 - b. For multiple lots located along a buffer, signs must be located at the intersection of every other lot line along the boundary of the permanent open space, or at 100-foot intervals, whichever is less.
 5. The sign face shall be two square feet in area.
 6. Required signs must read: "Protected Stream Buffer - No clearing, grading, construction or disturbance of vegetation permitted. Routine maintenance and trash removal are allowed. Ordinance 4004-18 with the sign message located approximately 4 feet above the ground. No other message shall be on the sign.
 7. Signs must be maintained and remain legible at all times.
- d. Inspections. Required stream buffer must be accessible to the directors of Community Development Department and Public Works and their designees to facilitate inspection, construction, maintenance and other activities related to the stream and public infrastructure in the buffer area.

SECTION 15-6 STREAM BUFFER VARIANCE PROCEDURES**15-601. Flexibility.**

- a. The stream buffer regulations of this chapter have the effect of limiting development near streams identified on the Natural Resources Map.
- b. To help offset potential adverse impacts on development yields for property near stream corridors, property owners are encouraged to use the open space development and conservation subdivision development options of Article 13 of the subdivision regulations.

15-602. Stream Buffer Variance Criteria. Variances to any of the standards of this chapter may be approved by the City Commission, after review and recommendation of the City Planning Commission, subject to all applicable city, state and federal regulations, and subject to the provisions of this section. When exceptions are approved, applicants must mitigate impacts in accordance with the mitigation standards in 20-4-c-6, below. Notice will be provided of the hearings held by the City Planning Commission and the City Commission on the exception request in accordance with adopted code.

- a. The City Commission may approve a variance if it finds that a property that is subject to this chapter is of such size or shape or is subject to or is affected by such topographical conditions, or is to be devoted to such uses that full compliance with this chapter is impossible or impractical and that the exception is necessary so that substantial justice may be done and the public interest secured. In order to approve an exception request, the City Commission must also determine that adequate measures will be put in place to protect the integrity of the stream buffer that includes appropriate mitigation of disturbed natural resources.
- b. Variances must be identified on the preliminary plat or preliminary plan.
- c. To recommend or approve a variance, the City Planning Commission and City Commission must determine that all of the following conditions exist:
 1. That there are special circumstances or conditions affecting the property;
 2. That the exception is necessary for reasonable and acceptable development of the property in question and is not a greater exception than is required to allow reasonable and acceptable development of the subject property; and
 3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the vicinity in which the subject property is situated.
- d. Applicants for a variance must submit a stream buffer exception application and mitigation plan, including any planned mitigation measures, to the Community Development Department. The exception application and/or mitigation plan must include the following:
 1. A written description of the requested variance and the special circumstances or conditions affecting the property that warrant an exception under (1) through (3) above;

2. A description of all measures taken to avoid or otherwise minimize encroachment into the buffer zone;
 3. Proposed mitigation for any encroachment; and
 4. A preliminary buffer plan, as required by 20-401 that clearly displays the location and total acreage of proposed clearing and grading, and the percentage of outer zone area proposed to be cleared. The buffer plan must also include the limits and total acreage of proposed mitigation, and ratio of proposed mitigation to cleared area.
- e. The department must review the plan for compliance with the stream buffer regulations of this chapter and recommend that the exception request be approved, approved with conditions, or denied. An exception may be recommended for approval when the Community Development Department director determines that an exception is warranted, under the provisions of this section, and when the integrity of the stream corridor will be protected through avoidance, minimization and appropriate mitigation measures.
- f. Utilities may encroach into the streamside zone only when available system connection points physically preclude an alignment farther from the edge of stream, or, in the case of sanitary and storm sewers, when the controlling elevations provide insufficient head for normal system function. Streambanks and natural resource areas affected by allowed encroachments must be stabilized in accordance with the City's standards, specifications and design criteria.

15-603. Conditions for Approving Stream Buffer Variances. Disturbed natural resources must also be mitigated. Mitigation may be provided on the property or in another location, provided that it complies with the following criteria. Revegetation or restoration of any portion of the original disturbance counts toward the required mitigation.

- a. Mitigation of outer zone vegetation that is contiguous to the remaining outer zone vegetation must be provided at a ratio of 1 unit of mitigation area to 1 unit of existing outer zone area.
- b. Mitigation of outer zone vegetation that is not contiguous to the remaining outer zone vegetation but is along the same stream must be provided at a ratio of 1.5 to 1.
- c. Mitigation of outer zone vegetation that is not located along the same stream must be provided at a ratio of 2.0 to 1.
- d. Encroachment into the middle or streamside zones or alteration of the stream channel must be mitigated at a ratio of 3 to 1.
- e. The Community Development Department Director may approve mitigation at City designated locations in lieu of locations owned or controlled by the applicant.

15-604. Further Appeals. Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal such decision to the District Court as provided in K.S.A. 12-759 and 12-760.

SECTION 15-7 PENALTIES FOR VIOLATION

15-701. Violation of the provisions of this Article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of

variances) shall constitute a misdemeanor. Any person who violates this Article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. See Also City Code Chapter 14, Article 1, Section 14-104 for MS4 enforcement. Nothing herein contained shall prevent the City or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION 15-8 DEFINITIONS

The following definitions apply to the provisions of this chapter:

- a. **Best Management Practices (BMP).** Products, techniques, or methods that have been shown to be the most reliable and effective way to minimize adverse impacts on natural resources, particularly stormwater quality.
- b. **Clearing.** Any act that removes vegetative cover, structures or surface material, including, but not limited to, topsoil, root mat, or surface layer removal.
- c. **Common Open Space.** An outdoor area designated and intended for the common use and enjoyment of residents or occupants of the development or other members of the controlling association.
- d. **Ephemeral Stream.** A stream that flows only in direct response to precipitation, and whose channel is at all times above the water table.
- e. **Encroachment.** A temporary or permanent activity (such as clearing vegetation or constructing a permanent improvement) that occurs within a stream buffer zone that is expressly prohibited within that zone by this Chapter. Mitigation activities are not considered encroachment.
- f. **Erosion.** Process by which the ground surface is worn away by the action of wind, water, ice, gravity, or artificial means, and/or land disturbance.
- g. **Intermittent Stream.** A stream which flows only at certain times of the year when it receives water from springs or from some surface source such as melting snow.
- h. **Invasive Species.** A species that is non-native to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.
- i. **Manual of Best Management Practices for Stormwater Quality.** Stormwater BMP planning and design reference approved by the American Public Works Association and the Mid-America Regional Council in August 2012, or the most current version adopted by the City.
- j. **Native Vegetation.** Plants indigenous to northeastern Kansas and appropriate for the location and the natural conditions at the location, as defined by the Kansas Forest Service, Kansas Native Plant Society, or other accepted regional references, agencies, and research institutions.

- k. **Natural Hazard Areas:** Areas that potentially pose a significant hazard to people or property, such as drainageways, wetlands, and lands whose slope and/or soils make them particularly susceptible to subsidence or erosion when disturbed by development activities.
- l. **Natural Stream.** A body of water meeting the definition of a “stream” (m, below) that is not human-made; or which if human-made is intended to restore an altered stream channel or replicate a natural stream for habitat or other purposes.
- m. **Perennial Stream.** A stream which flows continuously.
- n. **Riparian Vegetation.** Vegetation native to Eastern Kansas that exists within and is adapted to land adjacent to a water body (stream, river, lake).
- o. **Slope.** The ratio of vertical distance over horizontal distance.
- p. **Stream.** A body of running water moving over the earth’s surface and flowing at least part of the year. Storm sewer systems, human-made channels (except those designed to function as natural streams), and roadside ditches are not considered streams (except where natural streams are aligned with a roadway).
- q. **Stream Buffer.** Vegetated area, including trees, shrubs, and herbaceous vegetation, that exists or is established to protect a stream system, lake, or reservoir.
- r. **Stream Channel.** The streambed and its banks.
- s. **Stream Corridor.** The stream channel and adjacent floodplains and wetlands.
- t. **Top of Bank.** The limits of the stream when the discharge is equal to the 50% storm flow based on rural conditions land use. Rural conditions land use flows can be estimated from U.S. Geological Survey regression equations.
- u. **Unified Development.** A development consisting of one or more zoning or subdivision applications that were approved by City Commission on or about the same date on contiguous property through the same applicant.
- v. **Wetlands.** Areas that are saturated or inundated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions.