

Chapter 35 – UNIFIED DEVELOPMENT ORDINANCE (UDO) 2

Article 35-8. ADMINISTRATIVE BODIES 2

 Division 35-810. PURPOSE AND APPLICABILITY 2

 Sec. 35-810-1, Purpose 2

 Sec. 35-810-2, Applicability..... 2

 Division 35-820. BODIES ESTABLISHED AND AUTHORIZED 3

 Sec. 35-820-1, City Commission 3

 Sec. 35-820-2, Manhattan Urban Area Planning Board (MUAPB)..... 3

 Sec. 35-820-3, Board of Zoning Appeals (BZA) 3

 Sec. 35-820-4, Historic Resources Board 4

 Sec. 35-820-5, Development Review Committee (DRC) 4

 Sec. 35-820-6, City Engineer 5

 Sec. 35-820-7, Zoning Administrator 5

 Sec. 35-820-8, Building Official 6

 Sec. 35-820-9, Floodplain Administrator 6

Article 35-9. PERMITS AND PROCEDURES 7

 Division 35-910. PURPOSE, APPLICABILITY, AND SUMMARY TABLE..... 9

 Sec. 35-910-1, Purpose 9

 Sec. 35-910-2, Summary of Review Authority and Procedures 9

 Sec. 35-910-3, Summary of Review Authority and Procedures 10

 Division 35-920. STANDARDIZED PROCEDURES..... 15

 Sec. 35-920-1, Pre-Application Conference 15

 Sec. 35-920-2, Neighborhood Meeting..... 17

 Sec. 35-920-3, Application Submittal and Completeness 17

 Sec. 35-920-4, Staff Review 19

 Sec. 35-920-5, Referral and Public Comments 20

 Sec. 35-920-6, Public Notice 21

 Sec. 35-920-7, Public Meetings and Hearings..... 24

 Sec. 35-920-8, Conditional Approval 26

 Sec. 35-920-9, Other Procedures 26

 Sec. 35-920-9A, Continuances, Withdrawals, and Modifications 26

 Sec. 35-920-9B, Successive Applications 27

 Sec. 35-920-9C, Inactive and Expired Applications..... 27

 Division 35-930. SPECIFIC APPLICATION STANDARDS AND PROCEDURES..... 28

 Sec. 35-930-1, Administrative Applications 29

 Sec. 35-930-2, Legislative Applications 36

 Sec. 35-930-3, Quasi-Judicial Applications..... 54

 Sec. 35-930-4, Subdivision Applications 63

 Division 35-940, Submittal 72

Chapter 35 – UNIFIED DEVELOPMENT ORDINANCE (UDO)

Article 35-8. ADMINISTRATIVE BODIES

Contents:

Article 35-8. ADMINISTRATIVE BODIES

Division 35-810. PURPOSE AND APPLICABILITY

Sec. 35-810-1, Purpose

Sec. 35-810-2, Applicability

Division 35-820. BODIES ESTABLISHED AND AUTHORIZED

Sec. 35-820-1, City Commission

Sec. 35-820-2, Manhattan Urban Area Planning Board (MUAPB)

Sec. 35-820-3, Board of Zoning Appeals

Sec. 35-820-4, Historic Resources Board

Sec. 35-820-5, Development Review Committee (DRC)

Sec. 35-820-6, City Engineer

Sec. 35-820-7, Zoning Administrator

Sec. 35-820-8, Building Official

Sec. 35-820-9, Floodplain Administrator

Division 35-810. PURPOSE AND APPLICABILITY

Sec. 35-810-1, Purpose

The purpose of this Article is to describe the powers and duties of the administrative bodies who have responsibilities for taking final action, making recommendations, and administering the provisions of this UDO. [Article 35-9, Permits and Procedures](#), describes the specific procedural requirements for each type of development application.

Effective on: 4/18/2018

Sec. 35-810-2, Applicability

- A. **Board, Commission, and Committee Rules of Procedure.** In addition to acting in accordance with the review procedures established in this UDO, any Commission, Board, or Committee described in this Article may operate according to their own adopted rules of procedure or bylaws, if applicable. Any such rules of procedure or bylaws function in addition to, not in place of, the review procedures established in this UDO. In the event of a conflict, the provisions of this UDO prevail.
- B. **City Staff Duties.** For the purposes of this UDO, the broad term "City staff" applies to the City Engineer, Zoning Administrator, Building Official, Floodplain Administrator, and their designees. The administrative titles that are described in [Division 35-820, Bodies Established and Authorized](#), do not create new City staff positions. Such titles are intended only to describe administrative duties and are assigned to City staff by the City Manager, who may reassign such duties from time to time. Nothing in this UDO prevents reorganization of departments or retitling of City staff.

- C. **Additional Roles and Responsibilities.** Where powers and duties are not listed in this Article but are set out elsewhere in the City's Code of Ordinances, such powers and duties are in addition to those described in this Article.
- D. **Responsible Party.** Where referenced in this UDO, the responsible Governing Body, (City Community Development or County Planning and Development) Department, Attorney, or Zoning Administrator refers to the appropriate body or staff of the County or City.

Effective on: 4/18/2018

Division 35-820. BODIES ESTABLISHED AND AUTHORIZED

Sec. 35-820-1, City Commission

- A. **Established.** The City Commission ("the Commission" in this UDO) is established in the City's Code of Ordinances.
- B. **Powers and Duties.** In addition to the powers and duties set out in the Code of Ordinances, the Commission has review and approval responsibilities on the applications denoted in Sec. [35-910-3, Summary of Review Authority and Procedures](#).

Effective on: 4/18/2018

Sec. 35-820-2, Manhattan Urban Area Planning Board (MUAPB)

- A. **Established.** The Manhattan Urban Area Planning Board (the "MUAPB" in this UDO) is established in the Code of Ordinances.
- B. **Powers and Duties.** In addition to the powers and duties set out in the Code of Ordinances, the MUAPB has the following authorities:
 - 1. *Review Responsibilities.* The MUAPB has review responsibilities on the applications denoted in Sec. [35-910-3, Summary of Review Authority and Procedures](#), including those administrative applications that are forwarded by the Zoning Administrator or the applicant by appeal.
 - 2. *Other Responsibilities.* In addition, within the Manhattan Urban Area, the MUAPB will:
 - a. Conduct Public Hearings to:
 - 1. Review and adopt any amendments to this UDO.
 - 2. Review, approve, conditionally approve, or deny all Preliminary and Final Plats in accordance with the provisions of this UDO; and
 - b. Sign and transmit all Final Plats upon approval to the responsible Governing Body;
 - c. Make such decisions and actions as necessary to insure the integrity of and adherence to this UDO; and
 - d. Compile a list with the reason(s) for denial of any plat it has reviewed and provide a copy, along with the plat, to the subdivider and responsible Zoning Administrator.

Effective on: 4/18/2018

Sec. 35-820-3, Board of Zoning Appeals (BZA)

- A. **Established.** This Section establishes a Board of Zoning Appeals (the "BZA" in this UDO) pursuant to State law.
- B. **Powers and Duties.** The BZA has review responsibilities on the applications denoted in Sec. [35-910-3, Summary of Review Authority and Procedures](#).
- C. **Membership.** The BZA consists of five members all of whom must be residents of the City of Manhattan and must serve without compensation. A member must not hold any other public office in the City. The Mayor must appoint members of the BZA with the consent of the Commission. The members first appointed must serve respectively for

the following terms or until their respective successors are appointed and qualify; one for one year, two for two years, and two for three years. Each member succeeding the first five members, except those appointed to fill an unexpired term, must serve for a term of three years. The Mayor must fill vacancies on the BZA for the unexpired term of the member whose office has become vacant in the same manner as is provided for the appointment of such member.

- D. **Chairperson, Vice-Chairperson, and Secretary.** The BZA must annually elect one of its members as chairperson. The BZA may also select from among its members a vice-chairperson and such other offices as the BZA considers necessary. The BZA must appoint, as secretary, the Zoning Administrator, who will maintain records and keep minutes of all proceedings before the BZA.
- E. **Removal.** The members of the BZA must serve at the pleasure of the Commission, and a majority vote of the Commission may remove any member at any time and for any reason.
- F. **Meetings.** The BZA must hold all of its meetings at the call of the chairperson and at such other times as the Zoning Administrator or chairperson may determine.
- G. **Hearings and Rules.** The presentation of all evidence in BZA public hearings must be open to the public; however, any deliberation may, upon a majority vote of the members present, be conducted in closed session. Any person may appear and testify at a hearing, either in person or by a duly authorized agent or attorney. The chairperson, or in his/her absence, the vice-chairperson, may administer oaths and may compel the attendance of witnesses. The Zoning Administrator will keep minutes of BZA proceedings showing evidence presented, its findings of fact, its decisions, and the vote of each member upon each question, or if absent or failing to vote, indicating such fact. Records of all official actions of the BZA will be filed in the Office of the Zoning Administrator and will be open to public inspection during reasonable business hours. The BZA must adopt and make available to the public its own rules of procedure provided they are not in conflict with the provisions of this UDO or applicable Kansas statutes.
- H. **Judicial Review of Decisions of the BZA.** All decisions and findings of the BZA are subject to judicial review in the manner provided by applicable Kansas statutes.

Effective on: 4/18/2018

Sec. 35-820-4, Historic Resources Board

- A. **Established.** The Historic Resources Board is established in the City's Code of Ordinances.
- B. **Powers and Duties.** In addition to the powers and duties set out in the Code of Ordinances, the Historic Resources Board has review and decision responsibilities on the applications denoted in Sec. 35-910-3, *Summary of Review Authority and Procedures*.

Effective on: 4/18/2018

Sec. 35-820-5, Development Review Committee (DRC)

- A. **Established.** This Section establishes an advisory body known as the Development Review Committee (hereinafter, "DRC"), which is formed for the purposes of:
 1. *Recommendations.* Formulating recommendations to administrative bodies that take final action on development applications;
 2. *Coordination.* Coordinating and reconciling review comments between multiple City departments, local and state agencies, and utilities;
 3. *Applicant Revisions.* Allowing the applicant an opportunity to address concerns and revise submittals prior to an administrative body's final action; and
 4. *Timely Review.* Providing coordinated, cohesive, and timely review of development applications.
- B. **Powers and Duties.** The DRC has review responsibilities on the applications denoted in Sec. 35-910-3, *Summary of Review Authority and Procedures*.
- C. **Chairperson.** The Zoning Administrator serves as chairperson of the DRC.

- D. **Membership.** The DRC is comprised of qualified professional staff from each of the departments, local and state agencies, and utilities that have an interest in the development review process. The DRC members must have the requisite experience to evaluate development applications from multiple perspectives, including areas such as building, electrical, fire, and life safety codes; engineering; land use planning; transportation; urban design; landscaping and tree preservation; and historic preservation. From time to time, the Zoning Administrator may request assistance from additional staff members to assist the DRC as proposals warrant additional expertise.
- E. **Meetings.**
 - 1. *Convening of Meetings.* Meetings of the DRC are convened at the request of the Zoning Administrator and may be regularly scheduled.
 - 2. *Written Comments.* Each member of the DRC is responsible for providing written comments and recommendations within the timeframe established by the Zoning Administrator, or by applicable state statutes.
 - 3. *Distribution of Comments.* Upon receipt, the Zoning Administrator will provide a report that summarizes the DRC comments and recommendations to the applicant upon initial review of the application and with each revision that the applicant provides. The Zoning Administrator will provide the final comments and recommendations to the administrative body that is next in the sequence of review as set out in Sec. 35-910-3, *Summary of Review Authority and Procedures.*
 - 4. *Commenting Deadline.* If a DRC member does not comment on a development application within the timeframe established by the Zoning Administrator will be considered as having no comments on the application.

Effective on: 4/18/2018

Sec. 35-820-6, City Engineer

- A. **Appointment.** The City Manager will appoint a City Engineer.
- B. **Powers and Duties.** In addition to the powers and duties set out in the Code of Ordinances, the City Engineer has review responsibilities on the applications denoted in Sec. 35-910-3, *Summary of Review Authority and Procedures.*
- C. **Other Responsibilities.** The City Engineer may establish and from time to time, amend the City's Design Criteria and Standard Specifications.

Effective on: 4/18/2018

Sec. 35-820-7, Zoning Administrator

- A. **Appointment.** The City Manager will appoint a Zoning Administrator who will also serve as the Floodplain Administrator.
- B. **Powers and Duties.** The Zoning Administrator has review responsibilities on the applications denoted in Sec. 35-910-3, *Summary of Review Authority and Procedures.*
- C. **Other Responsibilities.** The Zoning Administrator will:
 - 1. *Record Keeping.* Maintain permanent, complete, and current records with respect to this UDO, the Official Zoning Map, MUAPB, BZA, Historic Resources Board, and other applicable documents, along with physical or digital copies for distribution to the public.
 - 2. *Coordinate Pre-Application Conferences.* Provide adequate information and assistance in Pre-Application Conferences as needed by the applicant. (see Sec. 35-920-1, *Pre-Application Conference*)
 - 3. *Coordinate Public Notice.* Publish and mail notice of Public Hearings in accordance with the provisions in Sec. 35-920-6, *Public Notice.*
 - 4. *Coordinate Development Review.* Receive, file, and distribute to the DRC and other appropriate administrative bodies and agencies all submitted development applications and materials.

5. *Interdepartmental Interpretations.* Aside from providing applicants with interpretations of this UDO, make such other determinations and decisions concerning this UDO as other departments, the MUAPB, BZA, Historic Resources Board, or Commission may require.
 6. *Inspections.* Conduct inspections of buildings, structures, and uses of land to determine compliance with the provisions of this UDO.
 7. *Assistance to Legislative Appointed Bodies.* Provide such clerical, technical, and consultative assistance as may be required by the MUAPB, BZA, Historic Resources Board, Commission, and other boards, commissions, and officials in the exercise of their duties relating to this UDO.
 8. *Maintain the Manhattan Register of Historic Places.* Maintain the Manhattan Register of Historic Places, which includes historic structures, sites, and districts designated as significant pursuant to Chapter 17.5, *Historic Resources*, of the Code of Ordinances.
- D. **Enforcement.** The Zoning Administrator, or his/her designee, will enforce this UDO, including:
1. Reviewing applicable building permits, sign permits, and occupancy certificates for compliance;
 2. Conducting inspections of buildings, structures, and uses of land to determine compliance;
 3. Receiving, filing, and forwarding to the BZA the records in all appeals and all applications for conditional uses, exceptions, and variances;
 4. Maintaining permanent and current zoning records, including but not limited to, all zoning maps, amendments, limited and conditional uses, exceptions, variances, waivers, appeals and their hearing recordings, as applicable;
 5. Maintaining for distribution to the public, for a fee to defray the cost of printing, a supply of copies of the zoning map or maps, the compiled zoning text, and the rules of the BZA; and
 6. Providing clerical, technical, and consultative assistance as may be required by the MUAPB, BZA, Commission, and other boards, commissions, and officials in the exercise of their duties relating to this UDO.

Effective on: 4/18/2018

Sec. 35-820-8, Building Official

- A. **Appointment.** The City Manager will appoint a Building Official.
- B. **Powers and Duties.** In addition to the powers and duties set out in the Code of Ordinances, the Building Official has review and decision responsibilities on the applications denoted in Sec. 35-910-3, *Summary of Review Authority and Procedures*.

Effective on: 4/18/2018

Sec. 35-820-9, Floodplain Administrator

- A. **Appointment.** The Floodplain Administrator will administer, enforce, and implement the provisions of this UDO related to flood damage prevention, flood hazard reduction, and the issuance of floodplain development permits. The Zoning Administrator, or designee, will serve as the Floodplain Administrator.
- B. **Powers and Duties.** The Floodplain Administrator has review responsibilities on the applications denoted in Sec. 35-910-3, *Summary of Review Authority and Procedures*.
- C. **Other Responsibilities.** The Floodplain Administrator will:
 1. Notify adjacent communities and the Kansas Department of Agriculture Division of Water Resources prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA;
 2. Maintain a copy of the written findings of fact, written decisions and notices issued by the BZA for any Floodplain Variance, and report such approved Floodplain Variances in its annual or biennial report submitted to FEMA;
 3. Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished;

4. Verify the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures through the permit applicant's submission of Elevation Certificates and record and maintain records of these certificates;
5. Require certification of flood-proofing submitted by a permit applicant from a registered professional engineer or architect when an applicant flood-proofs a particular structure;
6. Verify the actual elevations (in relation to mean sea level) to which the new or substantially improved structures have been flood-proofed through the permit applicant's submission of Flood-Proofing Certificates, and record and maintain records of these certificates;
7. Notify the person responsible for creating or maintaining a violation, indicate the nature of the violation, and order the action necessary to correct it if the Floodplain Administrator finds a violation of this UDO that empowers him or her to enforce;
8. Review subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
9. Determine the start of construction date when necessary; and
10. Adopt, issue, and amend from time to time the Floodplain Regulation Technical Guidance documents, as needed.

Effective on: 4/18/2018

Article 35-9. PERMITS AND PROCEDURES

Contents:

Article 35-9. PERMITS AND PROCEDURES

Division 35-910. PURPOSE, APPLICABILITY, AND SUMMARY TABLE

Sec. 35-910-1, Purpose

Sec. 35-910-2, Applicability

Sec. 35-910-3, Summary of Applications and Review Authority

Division 35-920. STANDARDIZED PROCEDURES

Sec. 35-920-1, Pre-Application Conference

Sec. 35-920-2, Neighborhood Meeting

Sec. 35-920-3, Application Submittal and Completeness

Sec. 35-920-4, Staff Review

Sec. 35-920-5, Referral and Public Comments

Sec. 35-920-6, Public Notice

Sec. 35-920-7, Public Meetings and Hearings

Sec. 35-920-8, Conditional Approval

Sec. 35-920-9, Other Procedures

Division 35-930. SPECIFIC APPLICATIONS

Sec. 35-930-1, Administrative Applications

Sec. 35-930-2, Legislative Applications

Sec. 35-930-3, Quasi-Judicial Applications

Sec. 35-930-4, Subdivision Applications

Division 35-940 SUBMITTAL

Division 35-910. PURPOSE, APPLICABILITY, AND SUMMARY TABLE

Sec. 35-910-1, Purpose

The purpose of this Article is to consolidate and standardize the City's development application review and approval procedures.

Effective on: 4/18/2018

Sec. 35-910-2, Summary of Review Authority and Procedures

- A. **Generally.** All procedures for obtaining authorization, approval, or a permit pursuant to this Code, and for appealing decisions of administrative bodies and boards or commissions are set out in this Article.
- B. **Applications and Procedures.** Each application required by this UDO is spelled out in [Sec. 35-910-3, Summary of Applications and Review Authority](#), which are organized as follows:
1. *Administrative applications* are those reviewed by the Zoning Administrator and the DRC and may be approved by the Zoning Administrator subject to the criteria for the application type and the standards of this UDO.

2. *Legislative applications* are those reviewed by the Zoning Administrator and/or the DRC and either recommended or decided by the MUAPB or decided by the Commission. Depending on the application type, some approvals or permits are handled through a public meeting while others require a public hearing and notice set out in [Sec. 35-920-6, Public Notice](#).
 3. *Quasi-Judicial applications* are those reviewed by the Zoning Administrator and decided by the BZA. These applications include appeals, exceptions, variances, and conditional use permits.
 4. *Subdivision applications* are those reviewed for conformance with [Article 35-5, General Subdivision Design Standards](#), and other applicable standards of this UDO. These applications include Preliminary and Final Plats, Concurrent Plats and Replats, lot splits and boundary adjustments, and public improvement acceptance.
- C. **Submittal Standards.** The application forms and contents required for submittal are set out in [Division 35-940, Submittal](#), or available at the responsible Planning Department.

Effective on: 4/18/2018

Sec. 35-910-3, Summary of Review Authority and Procedures

- A. **Generally.** Set out in this Section is the submittal timing, period of validity (in calendar days), the administrative bodies, boards, or commissions responsible for recommending and taking final action, whether public notice is required, the procedures applicable to the authorization, approval, or permit type, and cross references to associated standards. The recommending and decisions bodies are further described in [Article 35-8, Administrative Bodies](#).

Table 35-910-3-1 Summary of Administrative Applications and Procedures							
Development Application (Reference)	Submittal Timing	Period of Validity (Calendar Days)	Review Responsibilities		Public Notice	Applicable Procedures	Cross Reference(s)
			Recommending Authority	Final Action			
ADMINISTRATIVE APPLICATIONS: Development proposals that require final actions in which City staff apply the standards in this UDO. Administrative applications typically require objective analysis by City staff and may involve the exercise of very limited discretion.							
Access Agreement Sec. 35-930-1A	Prior to Final Plat, Site Plan, or Development Plan approval, or a building permit	None	City Engineer and Zoning Administrator	City Attorney	No	Sec. 35-920-3 and Sec. 35-920-4	Sec. 35-510-5
Airport Compatible Use Permit Subsec. 35-930-1B	In the O-A district, prior to: 1) a new use being established or erected; 2) an existing use or structure being changed, altered, replaced, or repaired; or 3) planting or replacing a tree.	90 days from permit issuance	Zoning Administrator, in coordination with the Airport Director and Airport Advisory Board		No	Sec. 35-920-3 and Sec. 35-920-4	Sec. 35-220-1
Building Permit Subsec. 35-930-1C	Prior to erecting, altering, replacing, relocating, rebuilding, repairing, or restoring a principal or accessory building or structure	180 days from permit issuance	Zoning Administrator for UDO Compliance Building Official		No	Sec. 35-920-3 and Sec. 35-920-4	Sec. 35-820-8
Established Neighborhood Improvement (Sec. 35-410-1)	Prior to a new use being established or erected or an existing use or structure being changed, altered, replaced, repaired, or restored	180 days from permit issuance	Zoning Administrator and Building Official		No	Sec. 35-920-3 - Sec. 35-920-4	Sec. 35-410-1
Floodplain Development Permit Subsec. 35-930-1E	Prior to initiating or continuing any development or substantial improvement within a regulatory floodplain as shown on a Flood Insurance Rate Map (FIRM)	90 days from permit issuance	Floodplain Administrator, in coordination with the City Engineer and Building Official		No	Sec. 35-920-3 and Sec. 35-920-4	Article 35-6 Sec. 35-820-9
Interpretation Subsec. 35-930-1F	Within 10 days following receipt of a written request	None	Zoning Administrator		No	Sec. 35-920-3 and Sec. 35-920-4	--

Table 35-910-3-1
Summary of Administrative Applications and Procedures

Development Application (Reference)	Submittal Timing	Period of Validity (Calendar Days)	Review Responsibilities		Public Notice	Applicable Procedures	Cross Reference(s)
			Recommending Authority	Final Action			
Land Clearing Permit Subsec. 35-930-1G	Prior to: 1) any site grading, excavating, removal or stockpiling soil, filling, or land disturbing activity involving a volume of earthwork greater than 10 cubic yards; or 2) removing three or more trees with greater than six inch diameter at breast height (DBH)	180 days from permit issuance	Responsible Engineer, in coordination with the responsible Zoning Administrator		No	Sec. 35-920-3 and Sec. 35-920-4	Sec. 35-720-2 Sec. 35-720-3
Development Application (Reference)	Submittal Timing	Period of Validity (Calendar Days)	Review Responsibilities		Public Notice	Applicable Procedures	Cross Reference(s)
Limited Use Approval Subsec. 35-930-1H	Prior to: 1) establishment of a new limited use; 2) a change in use to a limited use; or 3) the expansion of a limited use that does not already have a limited use permit	180 days from written approval	Zoning Administrator, or MUAPB on recommendation of the Zoning Administrator or by appeal of the applicant		No	Sec. 35-920-3 and Sec. 35-920-4	Sec. 35-230-2 Sec. 35-230-3 Sec. 35-240-3
Minor Modifications Subsec. 35-930-1I	Modification of a site plan, preliminary or final development plan, master development plan, or master sign plan	None	Zoning Administrator		No	Sec. 35-920-3 and Sec. 35-920-4	Subsec. 35-930-2F thru Subsec. 35-930-2K
Occupancy Certificate Subsec. 35-930-1J	Prior to occupying a structure	90 days from certificate issuance	Zoning Administrator and Building Official		No	Sec. 35-920-3 and Sec. 35-920-4	--
Sign Permit Subsec. 35-930-1K	Prior to constructing, installing, placing, relocating, or modifying a sign's dimensions or illumination	180 days from the date of permit issuance	Zoning Administrator and Building Official		No	Sec. 35-920-3 and Sec. 35-920-4	Division 35-730
Telecommunication Structure Subsec. 35-930-1L	Prior to altering, replacing, relocating, rebuilding, repairing, or restoring an existing telecommunication structure in a nonresidential district	180 days from written approval	Zoning Administrator		No	Sec. 35-920-3 and Sec. 35-920-4	Subsec. 35-240-3C
Temporary Limited Use Permit Subsec. 35-930-1M	Prior to establishment of a Temporary Use as listed in Sec. 35-260-2	None	Zoning Administrator and Building Official		No	Sec. 35-920-3 and Sec. 35-920-4	Division 35-260

Table 35-910-3-2
Summary of Legislative Applications and Procedures

Development Application (Reference)	Submittal Timing	Period of Validity (Calendar Days)	Review Responsibilities		Public Notice	Applicable Procedures	Cross Reference(s)
			Recommending Authority	Final Action			
LEGISLATIVE APPLICATIONS: Development proposals that require final actions that establish or change the way the use, design, or development of land will occur on a site-specific, City-wide, or intermediate scale. Elected and legislatively appointed administrative bodies take final action based on general considerations of fostering and preserving the public health, safety and general welfare, including the City's fiscal well-being. Such final actions are characterized by exercise of broad discretion.							
Accessory Dwelling Unit (ADU) Sec. 35-930-2A	Prior to issuance of a building permit in established neighborhoods, where allowed	180 days from building permit application	Zoning Administrator and DRC	MUAPB, or the Commission on recommendation or appeal	Yes Sec. 35-920-6	Sec. 35-920-1 thru Sec. 35-920-8	Sec. 35-230-2 Sec. 35-250-2 Sec. 35-710-3

**Table 35-910-3-2
Summary of Legislative Applications and Procedures**

Development Application (Reference)	Submittal Timing	Period of Validity (Calendar Days)	Review Responsibilities		Public Notice	Applicable Procedures	Cross Reference(s)
			Recommending Authority	Final Action			
Certificate of Appropriateness Subsec. 35-930-2B	Prior to demolition, alteration, or construction of any historic structure, site, or property within a historic district	Two years from written approval	Zoning Administrator	HRB	No	Sec. 35-920-1 thru Sec. 35-920-4 and Sec. 35-920-7 and Sec. 35-920-8	Subsec. 35-930-2D
Comprehensive Plan Amendment Subsec. 35-930-2C	Prior to or concurrent with a UDO amendment, as needed	Five years	Zoning Administrator and MUAPB	Commission	Yes Sec. 35-920-6	Sec. 35-920-4 thru Sec. 35-920-7	--
Designation of Significant Historic Structures, Sites, and Districts Subsec. 35-930-2D	Prior to establishing a significant historic structure, site, or district and following a certification of owner consent	None	Zoning Administrator and HRB	Commission	Yes Sec. 35-920-6	Sec. 35-920-3 thru Sec. 35-920-8	Subsec. 35-930-2B
Floodplain Management Subsec. 35-930-2E	As required by FEMA, Kansas Department of Agriculture, or other regulatory agency	None	Floodplain Administrator	MUAPB and Commission	Yes Sec. 35-920-6	Sec. 35-920-4 thru Sec. 35-920-7	--
Master Development Plan Subsec. 35-930-2F	Prior to establishing a mixed-use development or concurrent with a rezoning application	Two years from written approval	DRC, Zoning Administrator, and MUAPB	Commission	Yes Sec. 35-920-6	Sec. 35-920-1 thru Sec. 35-920-8	Sec. 35-420-5
Master Sign Plan Subsec. 35-930-2G	Concurrent with approval of a Site Plan, Master Development Plan, or Preliminary or Final Development Plan	Concurrent with Site or Development Plan	Zoning Administrator and DRC	MUAPB	None	Sec. 35-920-1 thru Sec. 35-920-8	Sec. 35-220-4 Division 35-730
Development Application (Reference)	Submittal Timing	Period of Validity (Calendar Days)	Review Responsibilities		Public Notice	Applicable Procedures	Cross Reference(s)
			Recommending Authority	Final Action			
Major Modifications Subsec. 35-930-2H	Major modification of a site plan, preliminary or final development plan, master development plan, or master sign plan	None	Zoning Administrator and DRC	MUAPB	Yes Sec. 35-920-6	Sec. 35-920-3 thru Sec. 35-920-8	Sec. 35-220-4 Division 35-410
PD Floating Zone Subsec. 35-930-2J	Prior to submittal of a Preliminary or Final Development Plan	Two years from the date of Preliminary Development Plan approval	Zoning Administrator, DRC, and MUAPB	Commission	Yes Sec. 35-920-8	Sec. 35-920-1 thru Sec. 35-920-8	Sec. 35-220-4
		One year from the date of Final Development Plan approval	Zoning Administrator and DRC	MUAPB	No		

Table 35-910-3-2
Summary of Legislative Applications and Procedures

Development Application (Reference)	Submittal Timing	Period of Validity (Calendar Days)	Review Responsibilities		Public Notice	Applicable Procedures	Cross Reference(s)
			Recommending Authority	Final Action			
Site Plan Subsec. 35-930-2K	Prior to new development, redevelopment, or substantial improvement or expansion of development in the RH, RC, BC, CN, CC, BP, CA, CD, MU, O-EN, O-EV, O-GC, O-MBP, and O-UF districts	One year from written approval	Zoning Administrator and DRC	MUAPB, appealed to Commission	No	Sec. 35-920-1 thru Sec. 35-920-8	Division 35-410 Sec. 35-410-1 Division 35-420
	For a manufactured home park (MHP): Concurrent with an application for rezoning; or prior to altering or expanding an existing MHP	One year from written approval	Zoning Administrator and DRC	MUAPB, appealed to Commission	No	Sec. 35-920-1 thru Sec. 35-920-8	Sec. 35-410-2
Development Application (Reference)	Submittal Timing	Period of Validity (Calendar Days)	Review Responsibilities		Public Notice	Applicable Procedures	Cross Reference(s)
			Recommending Authority	Final Action			
State or Municipally-Owned and Operated Public Utilities and Facilities Subsec. 35-930-2L	Prior to construction or expansion of a state or municipal utility or facility	None	Zoning Administrator and MUAPB	Commission	Yes Sec. 35-920-6	Sec. 35-920-3 thru Sec. 35-920-8	--
Temporary Conditional Use Permit Subsec. 35-930-2M	Prior to establishing a temporary use listed in Sec. 35-260-2	90 days from permit issuance	Zoning Administrator	MUAPB	No	Sec. 35-920-3 thru Sec. 35-920-8	Sec. 35-260-4
UDO Text Amendment Subsec. 35-930-2N	On petition of the Zoning Administrator, MUAPB, or Commission	None	Zoning Administrator and MUAPB	Commission	Yes Sec. 35-920-6	Sec. 35-920-4 thru Sec. 35-920-7	--
Zoning Map Amendment (Rezoning) Subsec. 35-930-2O	Changing the zoning or a parcel from one district to another or expansion of a nonconforming use prohibited in the current zoning district	None	Zoning Administrator and MUAPB	Commission	Yes Sec. 35-920-6	Sec. 35-920-1 thru Sec. 35-920-8	Sec. 35-210-2

Table 35-910-3-2
Summary of Quasi-Judicial Applications and Procedures

Development Application (Reference)	Submittal Timing	Period of Validity (Calendar Days)	Review Responsibilities		Public Notice	Applicable Procedures	Cross Reference(s)
			Recommending Authority	Final Action			
<p>QUASI-JUDICIAL APPLICATIONS: Development proposals that require final actions that establish the way design or development will occur on specific sites. City staff or legislatively appointed administrative bodies take final action based on findings of fact and analysis of how specific provisions of this UDO and the Comprehensive Plan apply to the site. Such final actions are characterized by exercise of discretion.</p>							
Appeal of an Administrative Decision Subsec. 35-930-3A	After a decision by the City Engineer, Zoning Administrator, Building Official, or Floodplain Administrator on a matter addressed in this UDO	None	None	BZA	Yes Sec. 35-920-6	Sec. 35-920-3 thru Sec. 35-920-8	--

Table 35-910-3-2 Summary of Quasi-Judicial Applications and Procedures							
Development Application (Reference)	Submittal Timing	Period of Validity (Calendar Days)	Review Responsibilities		Public Notice	Applicable Procedures	Cross Reference(s)
			Recommending Authority	Final Action			
Appeal of a Sign Permit Subsec. 35-930-3A	Within 10 business days of the denial or revocation of a sign permit	None	City Manager		No	Sec. 35-920-3 thru Sec. 35-920-8	Division 35-730
Appeal of a Site Plan, Master Development Plan, or PD Preliminary or Final Development Plan Subsec. 35-930-3A	Within 30 days of the date of denial by the MUAPB	None	Commission		No	Sec. 35-920-3 thru Sec. 35-920-8	Subsec. 35-930-2F thru Subsec. 35-930-2K
Conditional Use Permit (including for a nonconforming use) Subsec. 35-930-3D	Prior to establishing a new or changing an existing conditional use, modifying a nonconforming use, or expanding a use requiring a conditional use permit	180 days from permit issuance	Zoning Administrator	BZA	Yes Sec. 35-920-6	Sec. 35-920-1 thru Sec. 35-920-8	Division 35-240
Exceptions Subsec. 35-930-3D	Concurrent with a Preliminary Plat and prior to submission of a Final Plat	180 days from permit issuance	Zoning Administrator	BZA	Sec. 35-920-6	Sec. 35-920-3 thru Sec. 35-920-8	Subsec. 35-930-4E
Exceptions to Floodplain Regulations Subsec. 35-930-3E	Concurrent with a Preliminary Plat and prior to submission of a Final Plat	None	Floodplain Administrator		No	Sec. 35-920-3 thru Sec. 35-920-8	Subsec. 35-930-4E
Telecommunication Structure Subsec. 35-930-3F	Prior to altering, replacing, relocating, rebuilding, repairing, or restoring an existing or erecting a new telecommunication facility in a residential district or Planned Development Floating Zone.	180 days from written approval	Zoning Administrator	BZA	Yes Sec. 35-920-6	Sec. 35-920-3 thru Sec. 35-920-8	Subsec. 35-240-3C
Variance Subsec. 35-930-3G	Prior to or concurrent with submittal of a Site Plan or Sign Permit	180 days from written approval	Zoning Administrator	BZA	Yes Sec. 35-920-6	Sec. 35-920-3 thru Sec. 35-920-8	Sec. 35-730-8 Subsec. 35-930-2K

Table 35-910-3-2 Summary of Subdivision Applications and Procedures							
Development Application (Reference)	Submittal Timing	Period of Validity (Calendar Days)	Review Responsibilities		Public Notice	Applicable Procedures	Cross Reference(s)
			Recommending Authority	Final Action			
SUBDIVISION APPLICATIONS: Development proposals that require final actions related to dividing larger tracts of land into smaller lots. City staff or legislatively appointed administrative bodies take final action based on regulations in this UDO and on technical requirements of various City departments, local and state agencies, and utilities. Such final actions are characterized by limited discretion.							
Concurrent Plat Subsec. 35-930-4A	None	One year from written approval	Zoning Administrator and DRC	MUAPB and responsible Commission	Sec. 35-920-6	Sec. 35-920-3 thru Sec. 35-920-8	Article 35-5

**Table 35-910-3-2
Summary of Subdivision Applications and Procedures**

Development Application (Reference)	Submittal Timing	Period of Validity (Calendar Days)	Review Responsibilities		Public Notice	Applicable Procedures	Cross Reference(s)
			Recommending Authority	Final Action			
Preliminary Plat Subsec. 35-930-4E	Prior to approval of a Final Plat	Two years from written approval	Zoning Administrator and DRC	MUAPB	Yes Sec. 35-920-6	Sec. 35-920-1 thru Sec. 35-920-8	Article 35-5
Final Plat or Replat Subsec. 35-930-4B	Following approval of a Preliminary Plat and prior to a Public Improvement Acceptance	One year from written approval	Zoning Administrator and DRC	Responsible Commission	Sec. 35-920-6	Sec. 35-920-3 thru Sec. 35-920-8	Article 35-5
Lot Split and Boundary Line Adjustment Subsec. 35-930-4C	Prior to conveying a portion of a single parcel or adjusting a lot line on a recorded plat	None	Responsible Zoning Administrator in coordination with the Responsible Engineer		No	Sec. 35-920-3 and Sec. 35-920-4	Article 35-5
Public Improvement Acceptance Subsec. 35-930-4D	Concurrent with or after approval of a Final Plat and prior to recording	None	Responsible Zoning Administrator and Responsible Engineer	Responsible Commission	No	Sec. 35-920-3 and Sec. 35-920-4	Article 35-5
Subdivision Variance Subsec. 35-930-4G	Concurrent with a Preliminary or Final Plat application	None	Responsible Zoning Administrator and Responsible Engineer	MUAPB	No	Sec. 35-920-3 thru Sec. 35-920-8	Article 35-5

Effective on: 4/18/2018

Division 35-920. STANDARDIZED PROCEDURES

Sec. 35-920-1, Pre-Application Conference

- A. **Generally.** The purpose of a pre-application conference is to familiarize the applicant with the development review and approval processes, provide for an exchange of information, advise the applicant as to the key planning and zoning considerations, and to determine the information required to accompany an application.
- B. **Applicability.**
1. *Required Conference.* This Section applies to applicants who propose to file any of the following applications:
 - a. An Administrative Application for:
 1. An Established Neighborhood Improvement in the O-EN district; or
 2. Altering, replacing, relocating, rebuilding, repairing, or restoring an existing Telecommunication Structure in a nonresidential district.
 - b. A Legislative Application for a(n):
 1. Accessory Dwelling Unit (ADU) in an established neighborhood, where permitted;
 2. Certificate of Appropriateness prior to demolition, alteration, or construction of any historic structure, site, or property within a historic district;
 3. Master Development Plan for a proposed mixed-use development;
 4. Master Sign Plan;
 5. Planned Development (PD) Floating Zone, including a Preliminary Development Plan; or
 6. Site Plan for:

- a. A manufactured home park; or
- b. Development, redevelopment, or substantial improvement in the CA, CD, RC, or MF districts.
- c. A Quasi-Judicial Application for a Conditional Use Permit (CUP).
- d. A Subdivision Application for a Preliminary Plat.
 - 1. In the judgment of the responsible Department, any factor of a proposed subdivision necessitating review and comment by a body other than the MUAPB must occur prior to a Preliminary Plat application. In this instance, the subdivider must submit all necessary information to such body for review and comment.
 - 2. If no action on a Preliminary Plat or a Lot Split or Boundary Line Adjustment is filed within six months of the pre-application conference, the subdivider must hold another conference, unless an extension is granted by the responsible Department.
- 2. *Requested Conference.* For each of the other application types, an informal meeting may be scheduled at the discretion of the applicant and responsible Zoning Administrator.

C. Conference.

- 1. *Participants.* Attendance at the conference will include, but is not limited to, the applicant or an appointed designee, the Zoning Administrator, and representatives of the Development Review Committee (DRC).
- 2. *Information to be Provided.* The pre-application conference is an informal review of the proposed project. The applicant must bring (or submit prior to) the conference sufficient supporting materials.
 - a. *Generally.*
 - 1. The address and general location of the project;
 - 2. The proposed uses and building types (in general terms);
 - 3. The proposed arrangement of buildings, parking, access points, open spaces, and drainage facilities;
 - 4. The relationship to existing development; and
 - 5. The presence of natural resources, steep slopes, streams and riparian areas, wetlands, floodplains, and floodways on the parcel(s) proposed for development.
 - b. *Telecommunication Facility.*
 - 1. A preliminary site plan showing the property lines and setbacks of the proposed telecommunication structure(s) and existing zoning and land uses on the site;
 - 2. A drawing or sketch of the proposed telecommunication structure(s); and,
 - 3. The name, address and phone number of the applicant and the consultant that prepared the site plan and other documents.
 - c. *All Other Applications.*
 - 1. A Sketch Plat, prepared in accordance with the requirements established by the Zoning Administrator;
 - 2. Information in the form of drawings and/or legal descriptions identifying all unplatted land contiguous to the proposed development, and which is in the same ownership;
 - 3. Information regarding any benefit districts, to which the proposed tract is subject, and which have been created by the City; and
 - 4. A rough draft of the plan regarding special assessments, required by [Subsec. 35-930-4E, Preliminary Plat](#).

3. Action.

- a. *Staff Report.* The Zoning Administrator will prepare and provide to the applicant a memorandum of the comments received from the DRC. No official recommendation or action on a proposed development will occur at the pre-application conference.
- b. *Period of Validity.* A pre-application conference is effective for six months. If the applicant has not filed an application within six months of the conference, the applicant must participate in another conference, unless the Zoning Administrator waives such requirement.

Effective on: 4/18/2018

Sec. 35-920-2, Neighborhood Meeting

- A. **Generally.** The neighborhood meeting process is conducted to inform nearby residents of a proposed project and seeks to resolve any concerns that may have a material impact on the value and enjoyment for owners of surrounding properties.
- B. **Applicability.** This Section applies to applicants who propose an application for a master development plan or preliminary development plan. While not mandatory, applicants are encouraged to conduct a neighborhood meeting to identify and resolve issues prior to application.
- C. **Meeting.**
 - 1. *Purpose.* After the pre-application conference and prior to application submittal, the applicant may invite the property owners who are subject to the mailed notification requirements in [Subsec. 35-920-9C, Public Notice](#), to the neighborhood meeting. The meeting agenda is to:
 - a. Present the proposed project;
 - b. Identify any concerns anticipated by neighborhood residents and owners;
 - c. Weigh alternative proposals; and
 - d. If necessary, make adjustments to the proposed development.
 - 2. *Attendance.* Along with the application, the applicant must submit a narrative describing the methods of notifying the applicable property owners about the proposed project, a list of notified property owners, where and when the meeting took place, suggestions by those in attendance, issues raised and compromises reached, any points of consensus, and other information the applicant considers relevant.

Effective on: 4/18/2018

Sec. 35-920-3, Application Submittal and Completeness

- A. **Generally.** Every application for an approval or permit required by this UDO must be submitted on a form approved by the Zoning Administrator and must include the corresponding application fee that is established by the Commission, as amended from time to time.
- B. **Authorization to Initiate an Application.** Shown in Table 35-920-3-1, *Application Authorization*, is the administrative bodies who are authorized to initiate each of the application types.

Table 35-920-3-1 Application Authorization			
Application Type	City Commission or MUAPB	Property Owner or Agent	Aggrieved Party or Agent
Administrative Applications		◆	
Legislative Applications	◆	◆	

**Table 35-920-3-1
Application Authorization**

Application Type	City Commission or MUAPB	Property Owner or Agent	Aggrieved Party or Agent
Quasi-Judicial Applications			◆
Subdivision Applications		◆	
Table Notes: ◆ Entity may file application			

- B. Applicable Agency Submittal.** All development applications must be filed by an applicant or applicant's agent or representative with the Zoning Administrator, except:
- Urban Service Area.* If the property subject to the application is in the **Urban Service Area**, the applicant must file the application with the Zoning Administrator as well as the Riley County Planning Director, who will coordinate the review of the application; or
 - Urban Area.* If the property subject to the application is in the **Urban Area**, the applicant must file the application with the Riley County Planning Director.
- C. Forms, Fees, Refunds, and Deadlines.**
- Submittal.* An applicant must file any application in a format and in numbers established by the Zoning Administrator, or the Riley County Planning Director as applicable, along with the corresponding application fee established by the Commission, as amended from time to time.
 - Detail.* Application forms must include the specific information required to process each type of application. Such submitted information must be of sufficient detail to allow proper review in accordance with the standards and procedures of this UDO.
 - Refunds.* Fees for a denied, expired, or revoked application will not be refunded.
 - Deadline.* The Zoning Administrator may establish periodic application submittal deadlines. Periods for review established in [Sec. 35-920-5, Referral and Public Comments](#), commence on the forthcoming deadline nearest to the submittal of the application.
- D. Application Completeness.** If an application is deemed "complete" the Zoning Administrator will distribute the application to all applicable administrative bodies and utilities for review and recommendation or final action.
- Complete Applications.* To be deemed "complete", all application materials must be:
 - Consistent.* Internally consistent and submitted as required by this UDO, by the associated application forms, and by the established deadline;
 - Certified.* Prepared by qualified professionals (where such qualifications are required), and signed and certified, as required; and
 - Detailed.* Technically sufficient (e.g., legal descriptions, calls and distances on surveys describe closed polygons within acceptable tolerances, calculations performed according to the methodologies in this UDO, etc.) to demonstrate compliance with all applicable standards of this UDO.
 - Incomplete Applications.* An application will be deemed "incomplete" if it does not meet the requirements to be considered "complete".
 - Notification.* If an application is deemed "incomplete," the Zoning Administrator will notify the applicant within 15 business days after the date of submittal and will provide a written explanation regarding the materials that must be submitted, or revisions that must be made, to continue processing the application.
 - Revised Submittal.* The applicant must file the materials or revisions that are required to make the application complete within 20 business days of the date on the written notice.

- c. **Failure to Revise Submittal.** If an applicant fails to file the required materials within 20 business days, or fails to submit a complete application after two rounds of review, then the application will be deemed “withdrawn”, the Zoning Administrator will retain the application fee, and the application will be made available for the applicant to retrieve.

- E. **False or Inaccurate Information.** The MUAPB or Commission may revoke approval of an application if it determines that the applicant knowingly provided information or documentation that was false, misleading, deceptive, or inaccurate. The MUAPB or Commission will provide the applicant and the appropriate administrative bodies an opportunity to be heard at a public meeting prior to rendering its decision.

Effective on: 4/18/2018

Sec. 35-920-4, Staff Review

- A. **Generally.** Upon determination that an application is complete, the Zoning Administrator will cause the application to be reviewed for technical compliance with all applicable requirements of this UDO, as follows:

- 1. Appropriate City staff will review the application; and
- 2. The application will be promptly referred to applicable agencies and individuals for review and comment pursuant to [Sec. 35-920-5, Referral and Public Comments](#).

- B. **Recommended Revisions.**

- 1. The Zoning Administrator will provide comments from City staff (staff comments), the DRC, where applicable, and/or City consultants to the applicant. The staff comments will provide staff and/or consultant input and address or include comments by agencies. The applicant must revise and resubmit the application with appropriate changes.
- 2. Upon receipt of the resubmittal, the Zoning Administrator may refer the application to agencies again if the changes substantially affect the interests of the agency in ways not anticipated by the agency's original comments (or lack thereof) or require the agency's technical expertise for appropriate review.
- 3. The resubmittal will not require an application fee unless:
 - a. The revisions are inappropriate or incomplete; and
 - b. Repeated failure to address comments requires more than three rounds of revisions.

- C. **Administrative Recommendation or Decision.** Promptly after submittal of a complete application that addresses the comments and recommendations provided pursuant to Paragraph B., above (or, after finding that no revisions will be required):

- 1. *Administrative Applications.* If the application is for an Administrative Approval or permit (see [Sec. 35-910-3, Summary of Applications and Review Authority](#)), then the Zoning Administrator will approve, conditionally approve, or deny the application, as appropriate.
- 2. *Legislative, Quasi-Judicial, and Subdivision Applications.* If the application required public meeting or hearing approval, then the Zoning Administrator and other applicable review bodies will make and forward a recommendation to the next body who will consider it for further recommendation or approval as set out in [Table 35-910-3-2, Summary of Legislative Applications](#); [Table 35-910-3-3, Summary of Quasi-Judicial Applications](#); or [Table 35-910-3-4, Summary of Subdivision Applications](#). The recommendation will reflect agency comments and public comments.

- D. **Meeting Logistics.**

- 1. If the application is for a public meeting or hearing approval or permit, then the Zoning Administrator will set the application on the agenda of the next body that will consider the application.
- 2. Generally, the application will be heard during the next regular meeting of the body which meets the following three conditions:

- a. There is sufficient time to meet the public notice requirements of [Sec. 35-920-6, Public Notice](#);
 - b. There is available room on the agenda; and
 - c. There is sufficient time for the City, County (as applicable), and agencies to review the project.
3. The Zoning Administrator will coordinate to fix reasonable times for meetings or hearings. Said bodies are authorized to convene special meetings to hear applications.
 4. The Zoning Administrator will notify the applicant regarding the time and place of the public meeting or hearing(s).

Effective on: 4/18/2018

Sec. 35-920-5, Referral and Public Comments

- A. **Generally.** Applications may be referred for additional review by agencies or consultants and may be reviewed by the public according to the procedures set out in this Section.
- B. **Distribution.** Upon determination that an application is complete, the Zoning Administrator will distribute the application so that the following occurs:
 1. *City Staff.* City staff will review the application and take final action or make a recommendation based on compliance with all relevant provisions of this UDO, the City Code, and technical requirements of various City departments;
 2. *Agencies and Utilities.* Local and state agencies and public utility providers review the application and make recommendations based on their requirements; and
 3. *General Public.* Applications that require a public hearing prior to final action are made available for public comment in accordance with Paragraph E, *Public Comment*, below.
- C. **Administrative Applications.** The Zoning Administrator, Building Official, or Floodplain Administrator will take final action on an Administrative Application within **20** business days of the application submittal deadline. If such approval or permit is denied, the administrative official will provide the applicant with a written denial, specifically stating the grounds of the decision.
- D. **Legislative, Quasi-Judicial, and Subdivision Applications.**
 1. *City Staff, Local and State Agency, and Utility Review.* Administrative bodies with review authority must review and provide written comments on the application to the Zoning Administrator within **20** business days of the application submittal deadline. Failure of any agency to respond are deemed a recommendation for approval of the application. Specific agencies include:
 - a. Riley and Pottawatomie Counties;
 - b. Riley County Health Department;
 - c. Local Township Boards; and
 - d. Public utility providers.
 2. *Extension.* The Zoning Administrator may grant an extension of up to, but not exceeding, **20** business days, with the consent of the applicant.
 3. *Written Comments to Applicant.* Within **five** business days, the Zoning Administrator will provide written comments to the applicant.
 4. *Recommended Revisions.* Based on the written comments, the applicant must revise and resubmit the application and plans within the time limit established in [Subsec. 35-920-9C, Inactive and Expired Applications](#). Upon receipt, the Zoning Administrator will refer the revised application to the original reviewers that required revisions.

5. **Staff Report.** The Zoning Administrator will prepare a report prior to the public meeting or hearing. A copy of this report will be available to the applicant. Such report may contain written determinations based on the review criteria for each respective application.
 6. **Forwarding Application.** When the applicant has addressed all written comments to the satisfaction of the administrative bodies involved in the review, the Zoning Administrator will forward the application, along with a staff report, to the next required body for recommendation or final action. A body that receives the application must take into account the recommendation of the previous administrative bodies prior to making a recommendation or taking final action. The recommendation or final action may only take place following public notice, if required in [Sec. 35-920-6, Public Notice](#), and in accordance with [Sec. 35-920-7, Public Meeting and Hearings](#).
- D. **Public Comment.** The public comment period begins on the date of mailed, posted, or published notice, whichever comes first, and ends five business days prior to the public hearing. In no way does this prevent the public from commenting on the application at the public hearing.

Effective on: 4/18/2018

Sec. 35-920-6, Public Notice

- A. **Generally.** If required, public notice must be provided in accordance with the requirements of this Section.
- B. **Required Notice.** Set out in Table 35-920-6, *Required Notice*, is the notices required for each type of application or procedure. Approvals and procedures that are not listed do not require notice unless required by statute. A good-faith failure to mail notice to any person entitled in this Section will not be grounds for upsetting any action taken.

Table 35-920-6 Required Notice			
Type of Application	Written	Publication	Posted
Legislative Applications			
Accessory Dwelling Unit (ADU) (Subsec. 35-930-2A) ⁴	◆		◆
Comprehensive Plan Amendment (Subsec. 35-930-2C)		◆	
Designation of Historic Structure, Site, or District (Subsec. 35-930-2D)	◆	◆	◆
Floodplain Management (Subsec. 35-930-2E)	◆	◆	
Master Development Plan (Subsec. 35-930-2F)	◆	◆	◆
Major Modifications (Subsec. 35-930-2H)	◆	◆	
PD Floating Zone Preliminary Development Plan (Subsec. 35-930-2J)		◆	
State/Municipally-Owned/Operated Public Utilities/Facilities (Subsec. 35-930-2L)	◆	◆	
UDO Text Amendment (Subsec. 35-930-2N)		◆	
Zoning Map Amendment (Subsec. 35-930-2O) When five or more property owners of record owning 10 or more contiguous or noncontiguous lots, tracts, or parcels of the same zoning classification initiate a rezoning of their property from a less restrictive to a more restrictive zoning classification. When the City initiates a rezoning from a less restrictive to a more restrictive zoning classification of 10 or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification having five or more owners of record.	◆ ◆	◆	◆ ◆
Type of Application	Written	Publication	Posted
Quasi-Judicial Applications			
Appeals (Subsec. 35-930-3A)	◆	◆	◆
Conditional Use Permit, including for a nonconforming use (Subsec. 35-930-3B)	◆	◆	◆
Exceptions (Subsec. 35-930-3D)	◆	◆	◆

**Table 35-920-6
Required Notice**

Type of Application	Written	Publication	Posted
Variance (Subsec. 35-930-3G)	♦	♦	♦
Subdivision Applications			
Final Plat and Replat ⁵ (Subsec. 35-930-4A)	♦	♦	♦
Lot Split or Boundary Adjustment (Subsec. 35-930-4F)			
Concurrent Plat (Subsec. 35-930-4A)			
Preliminary Plat ⁶ (Subsec. 35-930-4E)	♦	♦	♦
Public Improvement Acceptance (Subsec. 35-930-4D)			

TABLE NOTES:

- Publication Notice.** Notice of such public hearing shall be published at least once in the official city newspaper at least 20 days prior to the date of the hearing.
- Written Notice.** Written notice shall be mailed at least 20 days immediately preceding the date of the public hearing to all owners of record of real property within the area to be altered and to all owners of record of real property located within at least 200 feet of the area proposed to be altered for regulations of a city and and 1,000 feet in the unincorporated area when the area to be altered is adjacent to the City limits.
- Posted Notice.** A sign furnished by the City must be placed on the subject property to inform the public of a public hearing, which must be maintained by the applicant for at least 20 days immediately preceding the date of the public hearing.
- Applicable to parcels in an established neighborhood, where allowed. (See [Sec. 35-230-2, Residential Districts and Uses](#))
- Notice is only required if the Zoning Administrator finds that the Final Plat does not substantially comply with the Preliminary Plat, yet it complies with this UDO, in which case the subdivider may request that the application be scheduled for the MUAPB to determine conformance. The subdivider may also request that the application for approval of the Final Plat be considered as an application for approval of a Preliminary/Final Plat in one action.
- Applicable to parcels in the City and Urban Service Area.

- D. **Computation of Time.** In computing the time periods for providing notice pursuant to this Section, the day of mailing, publication, or posting will not be counted, but the day of the public hearing will be counted.
- E. **Setting Hearing.** For all matters properly brought before the BZA, HRB, or the MUAPB for which a public hearing is required by this UDO, the administrative body charged with conducting the public hearing will, upon receipt of a completed application, select a reasonable time and place for such hearing.
- F. **Published Notice.**
- Responsibility.* The Zoning Administrator will arrange for notice of a required public hearing to be published in one issue of an official City newspaper.
 - Location.* If the hearing concerns specific property, the notice must provide a legal description or general street location sufficient to identify the property under consideration and a general vicinity map of the property.
 - Content.* The notice must include the date, time, and place of the hearing; a description of the contents of the matter to be heard; and the address or location of the property involved and to be discussed at the public hearing.
- G. **Mailed Notice.**
- Responsibility.* The applicant must mail notices to all owners of record of properties, or portions of properties, located within at least 200 feet of the subject property. If the subject property is located adjacent to the City limits, the area of notification is extended to 1,000 feet into the unincorporated area.
 - Type of Mailing.* The applicant must send the notice by certified mail, return receipt requested, and the notice must be in letter form.
 - Additional Required Content.* Same as for Published Notice, above.

4. *Required List and Receipts.* The applicant must provide the Zoning Administrator with a list of property owners who received the notice and the returned receipts from the certified mailing prior to the public hearing.
5. *Required Affidavit.* The applicant must file an affidavit with the Zoning Administrator verifying that the notices were sent to all owners of record of properties, or portions of properties, located within the specified distance(s) of the property for which mailed notice was required.

E. Posted Notice.

1. *Responsibility.* The applicant must place and maintain a sign on the subject property.
2. *Placement of Sign.* The applicant must firmly attach the sign to a stake and place it within five feet of the street right-of-way line in a central position on the subject property, so that the sign is free of any visual obstructions. If the subject property is located on a corner, the applicant must place one sign to face each of the streets abutting the property. If the subject property does not have an area in which to place a sign, the applicant may post the sign in a window of a building on the subject property in such manner that it is free of visual obstructions. The Zoning Administrator may waive the requirement to post a sign, in cases where a lot, tract or parcel of land is not accessible to public view.
3. *Required Affidavit.* The applicant must file an affidavit with the Zoning Administrator verifying that the sign has been maintained and posted as required.
4. *Sign Removal.* Upon conclusion of the public hearing, the applicant must remove the sign within five business days.

F. Protest Petition.

1. *Applicability.*
 - a. Except for a UDO Text Amendment and for properties described in Paragraphs b. and c., below, this Subsection applies to applications that require final action from the Commission after a public hearing.
 - b. This subsection does not apply when five or more property owners of record of 10 or more lots, tracts, or parcels in the same zoning district jointly file an application.
 - c. Only owners of record of the properties proposed to be rezoned are eligible to initiate a protest petition if all of the following circumstances apply:
 1. That application is City-initiated;
 2. The application proposes a rezoning from a less restrictive to a more restrictive zoning district or from a more to a less dense zoning district; and
 3. The application applies to 10 or more lots, tracts, or parcels in the same zoning district having five or more owners of record.
2. *Time Limit and Super Majority.* Regardless of whether or not the MUAPB recommends approval, conditional approval, or denial of the application, if a valid protest petition against the application is filed in the office of the City Clerk within 14 business days after the date of the conclusion of the public hearing, the City Commission may only approve the request by at least a three-quarter (3/4) vote of all the members of the Commission.
3. *Owner Signatures.* In order to be valid, a petition must be signed by all owners of record of 20 percent or more of any real property proposed to be rezoned, or by all owners of record of 20 percent or more of the total real property within the area required to be notified of the public hearing, excluding public rights-of-way and property excluded pursuant to Paragraph 4 of this Subsection. Owners of record means any person or entity who is reflected as the most recent owner or owners of property as documented in any of the following:
 - a. Riley County Register of Deeds or District Court; or
 - b. Pottawatomie County Register of Deeds or District Court.
4. *Exclusion.* For the purpose of determining if a protest petition is valid, if the owner of the specific property subject to the rezoning is the applicant, or the owner of the specific property subject to the rezoning does not oppose,

in writing, such application, such property also is excluded when calculating the “total real property within the area required to be notified” as that phrase is used in Paragraph 3 of this Subsection.

Effective on: 4/18/2018

Sec. 35-920-7, Public Meetings and Hearings

- A. **Generally.** All meetings of appointed boards, commissions, and committees must be open to the public except as otherwise provided by the Kansas Open Meetings Act (K.S.A. 75-4317 et seq).
- B. **Rules of Procedure.** The conduct of public meetings and hearings must be in accordance with the adopted rules of procedure for each applicable administrative body. All other matters will be governed by this UDO pertaining to, and the rules promulgated by, the body conducting the hearing.
- C. **Joint Meetings.** Any public hearing required by this UDO or the laws of the State of Kansas may be held jointly with any public hearing required to be held by any other board or commission, except the BZAs. Such joint meetings may be held after public notice as required by law.
- D. **Public Meetings and Hearings.** The provisions of this Subsection apply equally to public meetings and hearings, except for those relating specifically and only to public hearings.
1. The following general procedures shall be reflected in the adopted rules of procedure.
 - a. Any person may appear at a public hearing, submit evidence, and be heard.
 - b. If a speaker represents an organization, the body conducting the hearing may request written evidence of that person’s authority to speak on behalf of the group in regard to the matter under consideration.
 - c. Persons appearing at a public hearing must identify themselves and state their address and similar information about any organization they represent.
 - d. Citizens, applicants, and the City have the right to present expert witnesses.
 - e. The chairperson may impose a reasonable time limit on speakers and may limit testimony that is irrelevant or redundant.
 2. *Pre-Hearing Examination.* At any time following the giving of notice, any person may examine the application and all other documents pertaining to the matter subject to notice. Such person(s) may also request copies upon paying a fee set by the City Commission.
 3. *Written Statements.* Prior to or during a hearing, any person may submit a written statement in support of or opposition to the application, which will be made part of the public record.
 4. *Representation.* Persons appearing before a board or commission may appear in person or through a representative who must provide proof of his/her authority upon request.
 5. *Quorum.* The number of members of a board or commission that is required in order to constitute a quorum is set out in the Code of Ordinances.
 6. *Ex Parte Communication.* The hearing body and each of its members assigned to conduct a hearing or make a decision must neither:
 - a. Use nor rely upon any communication, reports, staff memorandum, or other materials prepared in connection with the particular case unless made a part of the record; nor
 - b. Inspect the site by pre-arrangement with any party to the proceedings or his or her representative unless other parties known to have an interest in the matter are given an opportunity to be present. The conduct of inspections in which interested parties are involved in any way must be noted in the record.

7. *Review Criteria.* An administrative body that makes a recommendation or takes final action on an application must consider the review criteria for each specific application in [Division 35-930, Specific Applications](#). In approving, conditionally approving, or denying an application, the administrative body holding the public meeting or hearing must state on the record their reasons for such action, as they pertain to the review criteria for the application in question. In addition, such bodies may incorporate, as their reasons, any information contained in the report of the Zoning Administrator. The failure of the administrative body to specifically address the review criteria of an application raises the presumption that their reasons, as to the matter, are as contained in the staff report.
8. *Recommendations.* When the MUAPB holds a public hearing and makes a recommendation to the Commission, the following provisions apply:
 - a. *Failure to Recommend.* If the MUAPB fails to make a recommendation by a majority vote, the Commission shall deem the MUAPB to have made a recommendation of denial.
 - b. *Commission Actions.* Upon receipt of a recommendation from the MUAPB, the Commission may:
 1. Adopt such recommendation by ordinance; or
 2. Override the MUAPB's recommendation by a two-thirds majority vote of the membership of the Governing Body; or
 3. Return the recommendation to the MUAPB with a statement specifying the basis for the Commission's failure to approve, conditionally approve, or deny the application.
 - c. *Reconsideration.* If the Commission returns the MUAPB's recommendation, after reconsideration, the MUAPB may resubmit its original recommendation with its reasons or submit a new and amended recommendation. If the MUAPB fails to deliver its recommendation to the Commission following the MUAPB's next regular meeting after receipt of the Commission's report, the Commission may consider such inaction as a resubmission of the original recommendation and proceed accordingly.
 - d. *Commission Final Action.* Upon receipt of the reconsideration, the Commission, by simple majority, may approve, conditionally approve, or deny the application by ordinance, or it may take no further action on the application. In all cases the Commission must consider the MUAPB's recommendation and address the review criteria for the specific application, even if they take no further action on the application.
9. *Decisions.*
 - a. Except where this UDO or State Statutes provide otherwise, official action requires the favorable vote of a majority of a quorum present.
 - b. The concurring vote of a majority of the members of the BZA present and voting is necessary to reverse any order, requirements, decision, or determination or any administrative official, consistent with [Sec. 35-820-3, Board of Zoning Appeals](#).
 - c. Except when voice votes are authorized, a vote must be conducted in a manner that the public may know the vote of each person entitled to vote.
10. *Time Limitations for Decisions.*
 - a. *Legislative Applications.* The Zoning Administrator will schedule a public hearing with the first administrative body on an application within 60 calendar days of receipt of a complete application; however, the administrative body may vote to postpone the hearing for just cause.
 - b. *Quasi-Judicial Applications.* The administrative body will select a reasonable time and place for a public hearing. A final decision will occur upon the majority vote on the application for which a public hearing was held.

c. *Subdivision Applications.*

1. *Preliminary Plat.* Upon receipt of a complete application, the responsible Planning Department shall schedule the application for public hearing before the MUAPB, which will be scheduled no sooner than 30 calendar days subsequent to the receipt of the complete application. After the hearing date has been established, the responsible Planning Department will proceed with the publication of a notice.
2. *Final Plat.* The MUAPB will determine if the Final Plat substantially conforms with the Preliminary Plat, within 60 calendar days after the first meeting of the MUAPB following the date of submission of the Final Plat. If a determination is not made within 60 days, the Final Plat will be deemed "approved", unless the subdivider has agreed, in writing, to an extension of the 60-day period.
3. *Governing Body Action.* The responsible Governing Body must accept or refuse the dedication of land for public purposes within 30 calendar days after the first regularly scheduled meeting, following the date of submission of the Final Plat. The responsible Governing Body may defer action for an additional 30 calendar days to allow for modifications in order to comply with the requirements established by said Body.

11. *Findings Provided to Applicant.* If an administrative body approves with conditions or denies an application at a public meeting or hearing, then it will provide the applicant with a physical or electronic copy of its findings and recommendation or final action, as applicable.

Effective on: 4/18/2018

Sec. 35-920-8, Conditional Approval

- A. **Conditional Approval Allowed.** An administrative body allowed to approve an application in this Article may establish conditions of approval based on the review criteria set forth in [Division 35-930, Specific Applications](#), and to protect the public health and safety by mitigating any adverse impacts arising from the approval.
- B. **Required Modifications as a Result of Conditional Approval.** Applications requiring modifications as a condition of approval must be returned to the Zoning Administrator for review within 30 calendar days of conditional approval or the application will be considered "withdrawn". The Zoning Administrator may grant a maximum 30 calendar day extension upon written request of the applicant. No subsequent approvals may take place until the the required modifications are complete

Effective on: 4/18/2018

Sec. 35-920-9, Other Procedures

Sec. 35-920-9A, Continuances, Withdrawals, and Modifications

- A. **Continuances.** An applicant may request and the applicable administrative body may approve or deny the request for continuance of a public hearing required in this UDO. If granted, the applicant must pay all applicable costs associated with the rescheduling of the proceeding. The administrative body must choose one of the following options:
 1. *Continue.* Continue the hearing at a certain new date and time announced in open session; or
 2. *Close.* Close the hearing and require the applicant to re-notify the public of any future hearing.
- B. **Withdrawal.** An applicant may withdraw an application, either:
 1. *Prior to a Hearing.* In writing, prior to a public hearing at which the application is to be considered; or
 2. *During a Hearing.* On the record, during a public hearing at which the application is to be considered, provided the withdrawal occurs before the administrative body makes a recommendation or takes final action on the application.

C. Modification of Application at Public Meeting or Hearing.

1. *Modification.* An applicant may agree to modify an application, including the plans and specifications submitted, in response to questions or comments by persons appearing at a public meeting or hearing or to suggestions or recommendations by the administrative body holding the meeting or hearing.
2. *No Further Action.* Unless such modifications are so substantial that the administrative body determines that it cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised application materials, the administrative body may make a recommendation or take final action on the application with a condition that the formalized approval will not be effective until the applicant submits materials reflecting the agreed upon changes to the Zoning Administrator. An administrative body will not accept any subsequent required application and will make no further approvals until the applicant submits the required modifications.
3. *Referral.* Where deemed appropriate by the affected final action body, modifications may be referred back to the recommending body for review, prior to further consideration.

Effective on: 4/18/2018

Sec. 35-920-9B, Successive Applications

- A. **Generally.** An administrative body will not to hear successive applications for the same approval or permit after a substantially similar application is denied.
- B. **Time Required Between Substantially Similar Applications.** If an application is denied, a substantially similar application will not be accepted for:
 1. Six months from the date of denial in the case of Administrative Applications; and
 2. Twelve months from the date of denial for all other applications.
- C. **Exceptions to Successive Application Restrictions.** The Zoning Administrator may allow an exception if one of the following is found:
 1. The new application is not substantially similar; or
 2. There has been a material change of circumstances that justifies consideration of a substantially similar application.

Effective on: 4/18/2018

Sec. 35-920-9C, Inactive and Expired Applications

- A. **Generally.** This Section extinguishes applications that become stale due to inaction by the applicant.
- B. **Expiration of Inactive Applications.**
 1. *Time Limit.* When an action by an applicant is required for processing an application (for example, revisions are requested after administrative review), the application becomes void six months after the date the action is requested if:
 - a. The applicant fails to take action; or
 - b. The applicant fails to request an extension of time pursuant to [Subsec. 35-920-9D](#), *Extension of Time*.
 2. *No Refund.* Applicants whose inactive applications expire will not receive a refund.
- C. **Effect of Expiration.** Applications that automatically expire become null and void without further notice or activity by the Zoning Administrator. The Zoning Administrator will treat as a new submittal any application for a property associated with an expired application, subject to requirements in effect at the time of the most recent filing.

Effective on: 4/18/2018

Subsec. 35-920-9D, Extension of Time

- A. **Generally.** An administrative body may extend the period of validity of approved applications that expire according to Sec. 35-910-3, *Summary of Applications and Review Authority*, by written request from the applicant.
- B. **Extension of Time.**
 - 1. *One-Time Extension.* The Zoning Administrator may extend the time for expiration for a period up six months upon written request of the applicant before the end of the period.
 - 2. *Automatic Expiration.* An application automatically expires after the period of extension.
- C. **Timing of Application for Extension.** An administrative body will not extend expired approvals. A applicant must submit a written request for extension not later than 30 calendar days prior to the expiration of the approval. The responsible administrative body will not grant an extension based on an untimely request except when justified by extraordinary circumstances.
- D. **Administrative Extension.** The Zoning Administrator, City Engineer, Building Official, or Floodplain Administrator may grant one extension, for good cause shown, of any approval for a period not to exceed the lesser of the period of validity or 12 months.
- E. **Non-Administrative Extension.**
 - 1. *Public Meeting Required.* Unless otherwise provided in the approval, the MUAPB or BZA must grant or deny an extension of the period of validity at a meeting open to the public for:
 - a. Extensions of administrative applications for terms that are longer than those the Zoning Administrator, City Engineer, Building Official, or Floodplain Administrator may grant pursuant to Paragraph E., above;
 - b. Second and subsequent extensions of administrative applications; and
 - c. Non-administrative applications.
 - 2. *Who Takes Action.* The administrative body that granted the original approval must take action on the extension request.
 - 3. *Review Criteria.* The applicable administrative body may grant the request after the hearing if the applicant demonstrates that:
 - a. There is good and reasonable cause for the request; and
 - b. There are reasonable assurances that the applicant will perform the work authorized by the approval within the extended term.

Effective on: 4/18/2018

Division 35-930. SPECIFIC APPLICATION STANDARDS AND PROCEDURES

- A. **Organization of Division.** The different administrative authorizations, applications, and permits outlined in Sec. 35-910-3, *Summary of Applications and Review Authority*, are organized into the following categories:
 - 1. *Administrative;*
 - 2. *Legislative;*
 - 3. *Quasi-Judicial;* and
 - 4. *Subdivision.*
- B. **Application Standards and Procedures.** The standards that correspond to each of the administrative authorizations (only as applicable), applications, and permits are set out in the Sections of this Division. The standards include:
 - 1. *Generally.* This is a statement as to the purpose for the applicable standards.
 - 2. *Applicability.* The standards of each respective Subsection are only applicable to certain districts, uses, development types, or processes, which are specified in these Subsections.

3. *Review Criteria.* The criteria to be used by the administrative body, including those authorized to make recommendations and final decisions, are listed for each authorization, application, and permit. These criteria may be cited in the recommendation and motion to approve, conditionally approve, or deny an application.
4. *Scope of Approval.* Upon reaching a decision, these Subsections inform the applicant of the next steps, whether there is a subsequent stage of approval, or initiating or completing a process or project.
5. *Applicable Procedures.* The procedures for all application types are spelled out in [Division 35-920, Standardized Development Procedures](#).

Sec. 35-930-1, Administrative Applications

Subsec. 35-930-1A, Access Agreement

- A. **Generally.** An access agreement between properties will be reviewed in a timely manner for compliance with [Sec. 35-510-5, Access](#), and other applicable provisions of this UDO.
- B. **Applicability.** An access agreement may be required when access is shared by adjacent properties, whether under single or separate ownership. The obligation to provide and maintain the cross-access runs with the land.
- C. **Review Criteria.** An access agreement must be acceptable to the responsible Attorney, approved by the responsible Zoning Administrator, and recorded in the public records of the responsible county at the applicant's expense.
- D. **Scope of Approval.** Upon acceptance and filing, the recorded book and page number of the access agreement must be referenced on any subsequent approved site or development plans or subdivision plats of the property. If there is an existing shared access for which there is no recorded legal documentation, the shared access must continue and an access agreement must be executed and recorded prior to approval of any site or development plan or subdivision plat, in a form acceptable to the responsible Attorney.
- E. **Procedures.** The procedure applicable to acceptance of an access agreement is [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Subsec. 35-930-1B, Airport Compatible Use Permit

- A. **Generally.** An access agreement between properties will be reviewed in a timely manner for compliance with [Sec. 35-510-5, Access](#), and other applicable provisions of this UDO.
- B. **Applicability.**
 1. *Permit Required.* Except as provided in this Subsection, no structure may be erected or otherwise established, and no existing use or structure may be changed, altered, replaced, or repaired, and no tree may be planted or replaced in any airport zone unless an Airport Compatible Use Permit has been applied for and granted.
 2. *No Permit Required.* An Airport Compatible Use Permit is not required:
 - a. In the area lying within the limits of the horizontal zone and conical zone, no permit is required for any tree or structure having less than 75 feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.
 - b. In areas lying within the limits of the approach zones but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit is required for any tree or structure having less than 75 feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.
 - c. In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit is required for any tree or structure having less than 75 feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

C. Review Criteria.

1. *Application.* Each application for a permit must indicate the purpose for which the permit is desired and must contain in complete form all information requested on the application to determine whether the resulting use, structure, or tree would conform to this UDO and all other applicable regulations.
2. *Criteria.* The Zoning Administrator, in coordination with the Airport Director and Airport Advisory Board, must consider the provisions of this Subsection, and all other applicable standards and regulations, when approving, conditionally approving, or denying an Airport Compatible Use Permit.

D. Scope of Approval.

1. *Permit Issuance.* Issuing a permit requires consistency with the provisions of this Subsection, or if a use is inconsistent, an exception must be approved in accordance with [Subsec. 35-930-3D, Exceptions](#).
2. *Height Limitations.* Nothing in this Subsection may be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limitations established by this UDO.
3. *Legally Nonconforming Structures and Trees.* No permit may be granted that would allow the establishment or creation of an obstruction, or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this UDO, as amended, or than it is when the application for a permit is made.
4. *Obstruction Marking and Lighting.* Any permit granted may be conditionally approved to require the owner of a structure or tree in question to permit the City to install, operate, and maintain such obstruction markings and lights as may be necessary.

E. Procedures. The procedure applicable to acceptance of an access agreement is [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Subsec. 35-930-1C Building Permit

- A. **Generally.** Applications for building permits will be reviewed in a timely manner for compliance with this UDO.
- B. **Applicability.** A building permit application is required for any construction, reconstruction, rehabilitation, addition, placement, or other substantial repair or improvement.
- C. **Review Criteria.** No building permit may be issued unless and until it has been approved by the Zoning Administrator as being in compliance with this UDO.
- D. **Scope of Approval.** Upon issuance of a Building Permit, an applicant may initiate or continue development or substantial improvement in accordance with the standards and procedures of this UDO and in accordance with the permit terms. Any building permit issued in conflict with this UDO is null and void.
- E. **Procedures.** The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Subsec. 35-930-1D Established Neighborhood Improvement

- A. **Generally.** There are special standards for changes to buildings and structures that occur within the Established Neighborhood Overlay (O-EN) District (formerly the TNO district). The overlay district and its purposes are set out in [Sec. 35-220-2, Established Neighborhood \(O-EN\) Overlay District](#), with the applicable design standards found in [Sec. 35-410-1, Established Neighborhood Design](#).
- B. **Applicability.**
 1. *Map Designation.* This overlay district applies to the established neighborhoods designated as "O-EN" on the Zoning Map.

2. **Qualification.** To qualify, the neighborhood(s) must be:
 - a. Deemed "vested" according to [Sec. 35-110-6, Vesting](#); and
 - b. Developed with buildings and structures that were lawfully permitted at their time of development.
3. **Lots and Buildings.** The provisions of this Subsection are applicable to the:
 - a. Development of vacant lots, whether vacant on or after the effective date of this UDO;
 - b. Redevelopment or substantial improvement of existing buildings; and
 - c. Expansion or modification of principal and accessory buildings.
- C. **Review Criteria.** Building or structure construction, reconstruction, rehabilitation, modification, or expansion that meet the qualifications of Paragraph B., above, and conform to the standards in [Sec. 35-410-1, Established Neighborhood Design](#), may be approved by the Zoning Administrator.
- D. **Scope of Approval.** Upon approval of an established neighborhood improvement, the applicant may proceed with requests for other required permits, as applicable.
- E. **Procedures.** The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Subsec. 35-930-1E, Floodplain Development Permit

- A. **Generally.** A Floodplain Development Permit application must be filed with and on a form provided by the Floodplain Administrator.
- B. **Applicability.** An application is required for any development or substantial improvement that is to occur within a floodplain, as shown on the Official Floodplain Map.
- C. **Review Criteria.** Refer to [Sec. 35-620-1, Development in Community Special Flood Hazard Area](#).
- D. **Scope of Approval.** Upon issuance of a Floodplain Development Permit, an applicant may initiate or continue development or substantial improvement in accordance with the standards and procedures of this UDO and in accordance with the permit terms.
- E. **Procedures.** The procedures applicable to this permit approval include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Subsec. 35-930-1F, Interpretation

- A. **Generally.** Subject to the procedures, standards, and limitations of this Subsection, the Zoning Administrator may render interpretations of any provision of this UDO, or any rule or regulation issued pursuant to it, including interpretations as to whether a use that is not listed in the tables in [Division 35-230, District Standards and Land Uses](#), is a subcategory of or substantially similar to a permitted, limited, or conditional use. All questions of interpretation and enforcement must be first presented to the Zoning Administrator and must be subsequently presented to the BZA on appeal from the decision of the Zoning Administrator. The recourse from the decision of the BZA is to the courts as provided by law.
- B. **Applicability.**
 1. **General Application.** This Subsection applies to any request to interpret a provision of this UDO.
 2. **Unwarranted Interpretations.** The Zoning Administrator will not affirmatively evaluate the development potential of individual properties or resolve other such detailed inquiries about specific properties or issues without a pending application.

- C. **Review Criteria.** The interpretation will be based on the following:
1. The materials or scenario posed by the applicant;
 2. The plain and ordinary meaning of the terms that are subject to the application for an interpretation as set out in Webster’s Third New International Dictionary or other current and authoritative dictionaries;
 3. The purpose statement for the applicable Section that is subject to interpretation;
 4. Any other provision of the Comprehensive Plan, Code of Ordinances, or State or Federal law that is related to the same subject matter;
 5. Any technical meanings of the words used in the provision subject to interpretation;
 6. Other interpretations rendered by the City relating to the same or related provisions of this UDO;
 7. The consequences of the interpretation;
 8. The legislative history;
 9. The problem or issue that is addressed by the provision subject to interpretation; and
 10. Sources outside the UDO provisions that provide a related source for the definition, such as technical or professional literature.
- D. **Scope of Approval.**
1. *Official Interpretation.* Within 30 calendar days after the application is filed, the Zoning Administrator will make a good faith effort to interpret the provision that is the subject of the application. The Zoning Administrator will respond to the applicant in writing and will keep a copy of the response in a record of interpretations. The Zoning Administrator may consult the City Attorney or other officials, departments, or agencies in drafting the interpretation.
 2. *Legal Advice.* The City will not provide legal advice to applicants or property owners. Private parties, including purchasers, lenders, title insurers, and others are advised to seek legal opinions from their attorneys with respect to potential applications of this UDO. No interpretation provided by the Zoning Administrator pursuant to this Subsection may be construed as legal advice.
- E. **Procedures.** The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Subsec. 35-930-1G, Land Clearing Permit

- A. **Generally.** For the purpose of protecting significant stands of trees and to mitigate stormwater runoff and land erosion, land may not be clear cut in preparation for development.
- B. **Applicability.** A Land Clearing Permit must be requested and issued before removing any vegetative cover, excavating, filling, or generally disturbing the land of a volume greater than 100 cubic yards.
- C. **Review Criteria.** A Land Clearing Permit may be issued provided the applicant:
1. Notifies the responsible Zoning Administrator at least five days before beginning any land disturbing activity;
 2. Installs and maintains all erosion control measures;
 3. Maintains all road drainage systems, storm water drainage systems, and other facilities;
 4. Removes sediment resulting from land disturbing activities from adjacent surfaces and/or drainage courses;
 5. Allows the responsible Zoning Administrator to enter the site to verify compliance or to perform any work necessary to bring the site into compliance with approved permit; and
 6. Submits a revised Land Clearing Permit for approval if the nature of the project changes from that proposed under the approved permit.

- D. **Scope of Approval.** A permit may be issued if the responsible Zoning Administrator finds that:
1. All applicable requirements of this Subsection and UDO have been met; and
 2. If any state or federal approvals are required, said approvals have been granted.
- E. **Procedures.** The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Subsec. 35-930-1H Limited Use Approval

- A. **Generally.** Limited Use Approval is an administrative procedure whereby the Zoning Administrator verifies that an application for a proposed use complies with the criteria set out in [Sec. 35-240-3, Standards for Limited and Conditional Uses](#). Authorization of a limited use may be issued simultaneously with building or other required permits.
- B. **Applicability.** An application is required for establishment of a new limited use, a change to a limited use, or the expansion of a limited use that has not been approved.
- C. **Review Criteria.**
1. *Where Applicable.* Refer to [Sec. 35-230-2, Residential Districts and Land Uses](#), and [Sec. 35-230-3, Nonresidential Districts and Land Uses](#).
 2. *Required Standards.* Refer to [Sec. 35-240-3, Standards for Limited and Conditional Uses](#).
- D. **Scope of Approval.** Upon authorization of a limited use, the applicant may proceed with requests for other required permits, as applicable.
- E. **Procedures.** The procedures applicable to this authorization include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Subsec. 35-930-1I Minor Modifications

- A. **Generally.** The Zoning Administrator may hear and review applications for and authorize minor modifications from the requirements of this UDO in compliance with this Subsection.
- B. **Applicability.** Minor modifications are applicable to a site plan, master development plan, preliminary or final development plan, or master sign plan.
- C. **Review Criteria.** Generally, a proposed minor modification must:
1. Be consistent with the purposes of this UDO and, if applicable, the purposes of the approved development, and will:
 - a. Promote the efficient development and preservation of the entire development;
 - b. Be necessary because of changed or changing conditions in or around the property and the nature of such conditions;
 - c. Result in a relative gain to the public health, safety, convenience, or general welfare;
 - d. Not be requested solely to confer a special benefit upon any person;
 - e. Have an insignificant effect on the character or impact of the development; and
 - f. Not result in a change in the use of land, in the intensity of land uses, or, except as provided in Paragraph 2, below, an increase in residential density.
 2. Specifically, minor modifications consist of the following:
 - a. An increase in the net residential density of less than 5 percent;
 - b. An increase in gross floor area of a residential building of less than 10 percent;

- c. An increase in lot coverage of a residential building of less than 10 percent;
- d. An increase in floor area of a nonresidential use by less than 10 percent;
- e. An increase in open space, or
- f. A negligible relocation of open space that would not change the character of the development;
- g. A negligible change to the site plan, grading plan, traffic circulation plan, or drainage plan as determined by the Zoning Administrator or City Engineer;
- h. Corrections of minor drafting errors;
- i. Negligible changes to the configuration of structures; and
- j. Reconfiguration of parking, loading, and stacking areas resulting in no net loss of spaces.

D. Scope of Approval.

- 1. *Approval.* Upon approval, an applicant may proceed in filing an application for the next step in the development process or continue development or substantial improvement in accordance with the standards and procedures of this UDO.
- 2. *Denial.* If the Zoning Administrator does not approve a minor modification, the applicant may appeal the decision to the MUAPB for a final decision.

E. Procedures. The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Subsec. 35-930-1J Occupancy Certificate

- A. Generally.** Applications for an occupancy certificate will be reviewed in a timely manner for compliance with this UDO.
- B. Applicability.** An occupancy certificate is required prior to occupying any building or structure for which a building permit was issued.
- C. Review Criteria.** If any other code adopted by the City requires that an occupancy certificate be issued, the certificate may not be issued unless and until it has been approved by the Zoning Administrator as being in compliance with this UDO.
- D. Scope of Approval.** Upon issuance of an Occupancy Certificate, an applicant may occupy the building for which the certificate was issued. Any occupancy certificate issued in conflict with this UDO is null and void.
- E. Procedures.** The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Subsec. 35-930-1K Sign Permit

- A. Generally.** A sign permit is required for all permitted signs set out in [Sec. 35-730-10, On-Premise District Regulations](#), and [Sec. 35-730-11, Off-Premise Signs](#), other than those listed in [Sec. 35-730-1, Purpose and Applicability](#).
- B. Applicability.**
 - 1. *When Required.* A sign permit is required to construct, install, place, relocate, maintain, or modify a sign's dimensions or illumination characteristics, to attach any sign, or authorize another person to construct, install, place, relocate, maintain, or modify a sign's dimensions or illumination characteristics, or to attach any sign without a valid sign permit. All signs must be constructed, installed, placed, relocated, maintained, modified, or attached in compliance with terms and conditions of the applicable sign permit.

2. *When Not Required.* A sign permit is not required for the following signs; however, such signs must comply with all of the other regulations imposed by this Division:
 - a. Permitted signs that are six square feet or less in area, located in an RE, RL, RM, RH, or RC district.
 - b. All temporary signs, except for portable signs.
3. *Sign Contractor.* No permanent sign requiring a sign permit may be installed, constructed, relocated, modified, or expanded, except by a licensed sign contractor.
4. *Sign Permit Application and Fee.* Each application for a sign permit must be on the written form provided by the City and accompanied by the sign permit fee as specified in the Code of Ordinances.

C. Review Criteria.

1. *Sign Permit Issuance.* A sign permit will be issued when a complete application and sign permit fee have been submitted, and the proposed sign(s) are demonstrated to comply with this UDO and other applicable City codes, ordinances, and regulations.
2. *Inspection of Signs.* As a condition of issuing a sign permit, the Zoning Administrator, or designee, will inspect the sign(s) for compliance with its permit.

D. Scope of Approval.

1. *Issued and In Effect.* Sign permits will be deemed issued and in effect for all signs:
 - a. Existing within the City as of the effective date of this UDO, except for signs for which no permit is required.
 - b. Annexed into the City after the effective date of this UDO, except for signs for which no permit is required. Permits for existing signs will be issued without a fee. This provision may not be construed to relieve any person from the obligation to obtain a sign permit. The issuance and existence of a sign permit may not validate any failure to comply with the provisions of this UDO, or any other applicable City codes, ordinances, or regulations.
2. *Expiration.* A sign permit expires if:
 - a. The sign has not been completely constructed, installed, placed, changed, relocated, or attached within 180 days from the date of the sign permit;
 - b. The sign is removed or abandoned; or
 - c. The use associated with the sign is abandoned.
3. *Denial or Revocation.* The Zoning Administrator may deny or revoke a sign permit for any of the following reasons:
 - a. Failure to submit a complete application and/or the sign permit fee;
 - b. Fraud, misrepresentation, or a false statement in the sign application;
 - c. Failure to permit the City access to inspect the sign for compliance; or
 - d. Failure of the sign to comply.
4. *Sign Permit Fee Refund.* The sign permit fee will not be refunded if a sign permit expires or is denied or revoked.
5. *Notice of Denial or Revocation of a Sign Permit.*
 - a. *Denial.* The Zoning Administrator will send a written notice of denial through the U.S. Mail, to the applicant at the address provided on the application form.
 - b. *Revocation.* The Zoning Administrator will send a written notice of the revocation of a sign permit, through the U.S. Mail, to the sign permit holder at the address provided on the application and to the property owner's address as listed in the register of deeds for the county in which the sign is located.
 - c. *Notice.* Any notice will, at a minimum, state the reason(s) for the denial or revocation and notify the addressee of the right to appeal the denial or revocation pursuant to [Subsec. 35-930-3A, Appeals](#).

- E. **Procedures.** The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Subsec. 35-930-1L Telecommunication Structure Approval

- A. **Generally.** This UDO regulates the placement, construction, and modification of telecommunication structures. There are different types of approval processes required depending on whether the structure is located in a residential, nonresidential, or another zoning district.
- B. **Applicability.** A telecommunication structure requires an administrative permit if it is erected upon any parcel of land, or upon any antenna support structure, where it is a permitted use as set out in [Sec. 35-230-3, Nonresidential Districts and Uses](#).
- C. **Review Criteria.** The Zoning Administrator will review the application within a reasonable time period after a complete application is filed, taking into account the nature and scope of the request. The applicant must show in sufficient detail that the proposed telecommunication structure complies with all applicable design and structural requirements set out in [Sec. 35-240-3, Standards for Limited and Conditional Uses](#). The failure to provide adequate information may result in the denial of an administrative permit.
- D. **Scope of Approval.**
1. *Approval.* Upon approval, an applicant may proceed in filing other applicable applications or permits, or may proceed with the placement, construction, or modification of the structure as applicable.
 2. *Denial.* If an administrative permit is denied, the applicant may appeal the decision to the BZA.
 3. *Written Findings Required.* The Zoning Administrator will create a written record of the review proceedings, and all decisions will be supported in writing with the reasons for approval or denial.
- E. **Procedures.** The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Subsec. 35-930-1M Temporary Limited Use Permit

- A. **Generally.** Temporary uses are land uses of limited duration or uses involving minimal investment in structures and which, if discontinued, would permit rapid and inexpensive conversion to another use.
- B. **Applicability.** The types of temporary uses and the zoning districts where they're allowed are set out in [Sec. 35-260-2, Districts Permitting Temporary Uses](#).
- C. **Review Criteria.** Refer to [Sec. 35-260-3, Frequency and Duration](#), and [Sec. 35-260-4, Temporary Use Standards](#).
- D. **Scope of Approval.**
1. Upon approval, an applicant for a Temporary Limited Use Permit may proceed in filing other applicable applications or permits, or may proceed with the limited use setup and operation in accordance with the permit terms.
 2. The issuance of a permit for a temporary use does not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize applications for any other permits or approvals.
- E. **Procedures.** The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Sec. 35-930-2, Legislative Applications

Subsec. 35-930-2A Accessory Dwelling Unit

A. **Generally.**

B. **Applicability.** An accessory dwelling unit (ADU) may be allowed in the RM and O-EN districts provided:

1. Demonstrated compliance with the permitted locations, minimum lot sizes, and other applicable standards of [Sec. 35-250-2, Accessory Residential Uses](#);
2. Presentation of a Zoning Verification Certificate issued by the City to the owner of the property for which an ADU is proposed; and
3. Submission of an original affidavit, signed by the owner, and sealed by a notary public legally certifying that the principal dwelling on the subject property will be continuously occupied by the owner and applicant for the ADU during the full term of its use.

C. **Review Criteria.** The application must be accompanied by a site plan specifying the following:

1. Whether the ADU is an integrated or independent unit;
 - a. If it is an integrated unit:
 1. The means and location of entry to the unit;
 2. Certification that the address of the principal dwelling will be the only address for receipt of mail and other deliveries;
 3. The square footage of the accessory dwelling unit and its percentage of the gross floor area of the principal dwelling;
 4. Whether the unit includes separate kitchen and bath facilities; and
 5. Whether the unit will be accommodated within the existing principal dwelling, with or without exterior changes.
 - b. If it is proposed to be an independent unit:
 1. The location of the unit on the lot and relative to each lot line and the principal dwelling;
 2. That the independent unit is the only accessory building on the lot;
 3. The total floor area of the proposed unit and its percentage of the gross floor area of the principal dwelling as well as the rear yard;
 4. The means and location of entry to the unit; and
 5. Certification that the address of the principal dwelling will be the only address for receipt of mail and other deliveries.
2. An on-lot parking plan demonstrating the locations of no less than three vehicles on a paved surface.
3. The plan for on-lot stormwater collection and micro-storage, together with the means for mitigating runoff on abutting and adjacent properties.
4. The plan for preserving, planting, or replanting street trees.

D. **Scope of Approval.** The Zoning Administrator and DRC will review the application within a reasonable time period, taking into account the nature and scope of the request. The applicant must show in sufficient detail that the proposed ADU complies with the requirements and limitations of [Sec. 35-250-2, Accessory Residential Uses](#), along with the above site design standards. Upon the completion of review, the Zoning Administrator will recommend and the MUAPB will approve, conditionally approve, or deny the ADU. At the discretion of the MUAPB, or on appeal of the applicant, the application may be forwarded to the Commission for final action.

- E. **Procedures.** The procedures applicable to this approval include [Sec. 35-920-1, Pre-Application Conference](#), through [Sec. 35-920-8, Conditional Approval](#).

Effective on: 4/18/2018

Subsec. 35-930-2B Certificate of Appropriateness

- A. **Generally.** To insure development, redevelopment, and substantial improvement of a historic structure or site, or within a designated historic district are in harmony with the architectural and historic character of the historic district or the era of the property, a Certificate of Appropriateness is required to implement the purposes set out in Chapter 17.5, *Historic Resources*, of the Code of Ordinances.
- B. **Applicability.**
1. *Historic Sites and Districts.* A Certificate of Appropriateness is required for the following types of construction, alteration, or demolition:
 - a. Demolition requiring a permit;
 - b. Alterations of features or materials identified as significant in the ordinance designating the historic district; or
 - c. Construction of new structures.
 2. *Historic Structures.* A Certificate of Appropriateness is required for the following types of construction, alteration, or demolition:
 - a. Demolition requiring a permit;
 - b. Alterations of exterior features or materials identified as significant in the ordinance designating the historic structure;
 - c. Construction of additions;
 - d. Construction of new structures;
 - e. Alterations of the building site; or
 - f. Alteration of spaces, features, and finishes within designated interiors.
- C. **Review Criteria.** The HRB must base its approval, conditional approval, or denial on the following:
1. *Applicable Requirements.* That application complies with all applicable requirements of this UDO and the ordinance designating the historic structure, site, or district.
 2. *Historic Use or Minimal Change.* The property is used as it was historically or will be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
 3. *Historic Character of Property.* The historic character of a property is retained and preserved. The applicant has avoided proposing removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize the property.
 4. *Historic Integrity.* The property is recognized as a physical record of its time, place, and use. The applicant has not proposed undertaking changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties.
 5. *Changes.* The applicant has proposed to retain and preserve changes to a property that have already occurred.
 6. *Distinctive Features.* The applicant has proposed to preserve distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the property.
 7. *Repair and Replacement.* The applicant has proposed to repair rather than replace deteriorated historic features. Where the severity of deterioration requires replacement of a distinctive feature, the new feature matches the old in design, color, texture, and, where possible, materials. The applicant has substantially documented the replacement of missing features.

- 8. *Gentlest Means.* The applicant has undertaken chemical or physical treatments, if appropriate, using the gentlest means possible, without using treatments that cause damage to historic materials.
- 9. *New Additions or Alterations.*
 - a. The applicant has proposed new additions, exterior alterations, or related new construction that does not destroy historic materials, features, and spatial relationships that characterize the property.
 - b. The applicant has differentiated the new work from the old with a design that is compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
 - c. The applicant has undertaken new additions and adjacent or related new construction in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.
- D. **Scope of Approval.** Upon, but not before, approval and issuance of a Certificate of Appropriateness, all appropriate officials may issue building and other permits for development, construction, and other work on the property; provided, however, that no such permits may be issued unless the appropriate official is first satisfied that the applicable requirements of this UDO or any ordinances of the City have been met.
- E. **Procedures.** The procedures applicable to issuance of a Certificate of Appropriateness include [Sec. 35-920-1, Pre-Application Conference](#), through [Sec. 35-920-4, Administrative Review](#), and [Sec. 35-920-7, Public Meetings and Hearings](#), through [Sec. 35-920-8, Conditional Approval](#).

Effective on: 4/18/2018

Subsec. 35-930-2C Comprehensive Plan Amendment

- A. **Generally.** A Comprehensive Plan Amendment may be warranted when a zoning map amendment or an annexation and request for zoning is proposed which is not reflected or is in conflict with the Comprehensive Plan.
- B. **Applicability.**
 - 1. The Commission or MUAPB may pass a resolution to initiate the process to amend the Comprehensive Plan, including any surveys or studies required by state law.
 - 2. A property owner may file a plan amendment along with an application for a Zoning Map Amendment. The MUAPB and Commission may, in their discretion, consider the Zoning Map Amendment application concurrent with the plan amendment application.
- C. **Review Criteria.** The Commission must base its approval, conditional approval, or denial on the following relevant factors:
 - 1. *Future Land Map Amendment.*
 - a. The proposed map amendment is compatible with existing or planned land uses on adjacent properties.
 - b. Adequate public utilities, facilities, and/or services are available or may be extended in a cost-effective and efficient manner to serve the development for the type and scope suggested by the proposed amendment.
 - c. The proposed map amendment is warranted by changing conditions in the area, or it corrects an error in fact concerning the property's future land use classification at the time of the original plan adoption.
 - d. The proposed map amendment is warranted by changing conditions or a current need.
 - e. If the proposed map amendment is approved, there will be an adequate supply of land permitted in the category being changed.
 - 2. *Text Amendment.* The amendment:
 - a. Furthers the goals, objectives, and policies of the Comprehensive Plan;
 - b. Advances a legitimate public need; and

- c. Is warranted by changing conditions or a current need.
- 3. *Plan Boundary Amendment.* The proposed boundary amendment:
 - a. Provides for a logical and desirable extension of the **Manhattan Urban Area**;
 - b. Is warranted by changing conditions or a current need;
 - c. Is compatible with and supported by the County plans concerning the proposed land use; and
 - d. Adequate urban public facilities, utilities, and/or services are available or may be extended in a cost-effective and efficient manner to serve the development for the type and scope suggested by the proposed amendment.
- D. **Scope of Approval.** A Plan Amendment does not authorize development. Any development that occurs after the Plan Amendment is adopted is subject to all applicable requirements of this UDO.
- E. **Procedures.** The procedures applicable for adopting an update to the Comprehensive Plan, including the Future Land Use and Transportation Plans, include [Sec. 35-920-4, Administrative Review](#), through [Sec. 35-920-7, Public Meetings and Hearings](#).

Effective on: 4/18/2018

Subsec. 35-930-2D, Designation of Significant Historic Structures, Sites, and Districts

- A. **Generally.** Designation of a historic structure, site, or district prompts the application of different standards and procedures relative to this UDO. The applicable procedures are outlined in [Table 35-910-3-1, Summary of Administrative Applications and Procedures](#), as well as [Table 35-910-3-2, Summary of Legislative Applications and Procedures](#).
- B. **Applicability.** Designation of a historic structure, site, or district may only occur with property owner consent, as follows:
 - 1. *Certification of Owner Consent for Designation.* The Zoning Administrator will, within 10 business days of receipt of a nomination for designation of a historic structure, site or district, certify that the nomination provides adequate evidence that the owner(s) of record of the nominated property or those properties within a historic district have provided the required consent for designation.
 - 2. *Consent.* The following entities may file a nomination of a historic district for designation in the Manhattan Register of Historic Places provided that the owners of 51 percent or more of the area in the proposed historic district have provided written consent for designation:
 - a. A member of the Historic Resources Board (HRB);
 - b. A property owner within the proposed historic district;
 - c. The MUAPB or Commission; or
 - d. Any other person or organization.
- C. **Review Criteria.** The HRB must base its recommendation, approval, approval with conditions, or denial on the following relevant factors:
 - 1. *Generally.* The structure, site, or district has sufficient integrity of location, design, materials, workmanship, or association to make it worthy of preservation or restoration and possesses significant historical, archeological and/or architectural qualities.
 - 2. *Purpose.* The proposed district is in accordance with [Sec. 17.5-1, Statement of Purpose](#), in Chapter 17.5 of the Code of Ordinances.
 - 3. *Character, Interest, or Value.* The proposed district has character, interest, or value as part of the development, heritage, or cultural characteristics of the community, county, state, or country.
 - 4. *Significant Event.* The proposed district was the site of a significant local, county, state, or national event.

5. *Significant Person.* The proposed district is identified with a person or persons who significantly contributed to the community, county, state, or country.
 6. *Architectural Style.* The proposed district embodies distinguishing characteristics of an architectural style valuable for the study of a period, type, method of construction, or use of materials.
 7. *Design Professional.* The proposed district's identification as the work of a master builder, designer, architect, or landscape architect whose individual work has influenced the development of the community, county, state, or country.
 8. *Significance or Innovation.* The proposed district embodies elements of design, detailing, materials, or craftsmanship that render it architecturally significant or innovative.
 9. *Visual Feature.* The proposed district has a unique location or singular physical characteristics that make it an established or familiar visual feature.
 10. *Utilitarian Structure.* The proposed district possesses character as a particularly fine or unique example of a utilitarian structure, including, but not limited to farmhouses, gas stations, or other commercial structures, with a high level of integrity or architectural significance.
 11. *Prehistoric or Historic Source.* The proposed district has yielded or is likely to yield important historical or prehistorical information.
- D. **Scope of Approval.** No designation of a historic structure, site, or district will become effective unless and until the Historic Resources Board has conducted a public hearing, deliberated the merits of designation, and submitted its report and recommendations to the Commission, who also has held a public hearing and a final yea and nay vote has been taken on the designation by the Commission.
1. *Recommendations.* Within 30 calendar days after the close of the public hearing, the HRB will submit a recommendation to the Commission regarding demonstration of the above review criteria for the nomination of a historic structure, site, or district.
 2. *Designation by Ordinance.* If the Commission approves the application, it will do so by ordinance, which will be provided by regular mail to the owner(s) of record of the historic structure, site, or to the owners of record of all property within a nominated historic district. The failure of the City Clerk to provide a copy of the designation ordinance to the owners of record does not nullify the designation ordinance. The designation ordinance must prescribe:
 - a. The significant architectural features;
 - b. Height and area regulations;
 - c. Setbacks;
 - d. Minimum dwelling size;
 - e. Floor of construction, alteration, demolition, and removal that shall be reviewed for appropriateness;
 - f. The design guidelines for applying the criteria for review;
 - g. Sign regulations; and
 - h. Parking regulations.
 3. *Recording of Ordinance.* After the designation ordinance is effective, the City Clerk will file a notice with the Register of Deeds of the County in which the structure, site, or district is located, setting forth the description of the real estate upon which the same is located, the fact that the property has been designated historic and the nature and extent of the designation.
 4. *Interim Control.* The Building Official may not issue a Building Permit for the alteration, construction, demolition, or removal of a nominated historic structure, site, or any property within a nominated historic district from the date the applicant files a complete application until the Commission takes final action unless such alteration, removal, or demolition is authorized by formal resolution of the Commission. The Building Official will not deny

any Building Permit application that complies with other ordinances if more than 180 days have passed since an applicant has filed a complete application for the subject property.

- 5. *Application to Amend or Rescind.* An applicant may file an application to amend or rescind a designation described in this Subsection; however, the Zoning Administrator will not accept such application solely due to a change in owners' consent.
- E. **Procedures.** The procedures applicable to designating a significant historic resource include [Sec. 35-920-3, Application Submittal and Completeness](#), (if initiated by a property owner or owners) through [Sec. 35-920-8, Conditional Approval](#).

Effective on: 4/18/2018

Subsec. 35-930-2E, Floodplain Management

- A. **Generally.** The City coordinated with state and federal agencies in the implementation of the floodplain management regulations. This Subsection provides for this coordination should a public hearing be called.
- B. **Applicability.** In the event FEMA, the Kansas Department of Agriculture, or any other regulatory agency having jurisdiction over matters covered by [Article 35-6, Environmental Standards](#), requires the City to conduct a public hearing related to such matters, this Subsection specifies the method by which such hearing is to be conducted.
- C. **Review Criteria.** In arranging for a public hearing, the methods of notice must be conducted as set out in [Sec. 35-920-6, Public Notice](#). The Floodplain Administrator may request the MUAPB to review the matter prior to the public hearing if the hearing is to be conducted by the Commission.
- D. **Scope of Approval.** Not Applicable.
- E. **Procedures.** The procedures applicable for conducting a public hearing on matters related to floodplain management include [Sec. 35-920-4, Administrative Review](#), through [Sec. 35-920-7, Public Meetings and Hearings](#).

Effective on: 4/18/2018

Subsec. 35-930-2F Master Development Plan

- A. **Generally.** A Master Development Plan provides a site layout for property developed within the Mixed Use (MU) district, which is a first step toward development approval. It is to provide the applicant an opportunity to submit a master plan showing the nature and character of land proposed for development. This plan will be of sufficient detail to assure quality development but done so in a manner that is more efficient than that required of a Planned Development (PD) Floating Zone.
- B. **Applicability.** Submittal, review, and approval of a master development plan is a prerequisite for submission of any other plan or permit approval for a mixed-use development. Approval of the Master Development Plan will establish:
 - 1. The context of the proposed development relative to adjoining and adjacent development and the proposal for transitioning and buffering such uses;
 - 2. The locations and types of residential, nonresidential, and public or institutional land uses and their scale and design relationships and methods of compatibility;
 - 3. Minimum and maximum gross densities, block sizes, lot patterns, and heights of residential uses;
 - 4. Maximum floor area ratios, building coverage, and heights of nonresidential uses;
 - 5. The proposed parking and circulation plans;
 - 6. The patterns, functional classifications, and cross-sections of streets within and adjacent to the development, along with the network of pedestrian and bicycle improvements;
 - 7. General locations, means of continuity and connectivity, and the extent of parkland to be dedicated for public purpose and private open spaces and amenities;

8. Areas of environmental sensitivity to be protected and preserved, including floodplains and riparian areas, wetlands and water bodies, steep slopes, and other such areas; and
 9. Phases of development.
- C. **Review Criteria.** The MUAPB must base its recommendation and the Commission must approval, conditionally approves, or deny the Master Development Plan on the following relevant factors:
1. *Mix of Housing Types and Uses.* The mixed-use development contains at least three different housing types and the residential-nonresidential ratios as met as set out in [Sec. 35-420-5, Mixed-Use](#).
 2. *Site Layout.* The subject property is laid out in an efficient manner relative to the natural and built environments and designed to achieve the aims of a compact, highly walkable village;
 3. *Building Form.* The placement, arrangement, and relationships of buildings relative to streets, pedestrian and civic spaces, and one another create an urban environment;
 4. *Quality Design.* The design of buildings and hardscape and landscape areas help to establish visual interest, aesthetic appeal, and a unique identity for the mixed-use development, including as key considerations human-scale amenities, integration of civic spaces for public interaction, and protection from the environmental elements.
 5. *Walkability.* The connections within and between buildings, civic spaces, parking areas and to the surrounding development; the presence of amenities and other pedestrian improvements; and the proximity of origins and destinations both internal and external to the development are such that walking and bicycling are safe and viable modes of transportation.
 6. *Undeveloped Space.* Together with the developed areas, the undeveloped spaces devoted to natural resource preservation, buffering of uses, and for passive and active use are connected and continuous throughout the mixed-use development.
 7. *Complete Streets and Parking.* The streets are designed for multi-modal purposes, including as access and transit ways, for on-street parking, and safe use of pedestrians and bicyclists, and the parking is well-distributed and designed to preserve an urban streetscape and contributes to a compact, urban village.
 8. *Phasing.* The development is phased in a manner that assures an adequate mixture of residential and nonresidential land uses and allows for transition from the early phases to maturity relating to the intensity of uses and parking.
- D. **Scope of Approval.** The Master Development Plan is the basis for approval of individual site plans and preliminary and final plats, as well as to gain approval or conditional approval through the public hearing process. Once the master plan is approved, all subsequent plans and permits must clearly demonstrate consistency and conformance with the adopted plan; otherwise requiring either minor or major modifications to the plan.
- E. **Procedures.** The procedures for approval of a Master Development Plan include [Sec. 35-920-1, Pre-Application Conference](#), through [Sec. 35-920-8, Conditional Approval](#).

Effective on: 4/18/2018

Subsec. 35-930-2G, Master Sign Plan

- A. **Generally.** Approval of a Master Sign Plan allows prompt administrative approval of signs that are pre-approved by the MUAPB and in accordance with the standards, criteria, and requirements of this Subsection and as set out in [Division 35-730, Signs](#).
- B. **Applicability.**
 1. *Districts and Development Types.* The Master Sign Plan is applicable to development, redevelopment, and substantial improvements in the following locations:
 - a. Master planned development in the RE, RC, RM, and RH districts;

- b. Mid-rise development in the RC district;
 - c. Mixed use development in the MU district;
 - d. Development in the CA and CD districts in accordance with a district master plan;
 - e. Development in the CC district provided:
 1. A minimum site area of 10 acres;
 2. There are multiple land uses or buildings;
 3. There are shared points of access along two or more collector or arterial streets; or
 4. It is an integrated development that functions as a single entity, such as a village center.
2. *Quality Sign Standards.* Development where the quality and design of signs exceed the standards provided in [Division 35-730, Signs](#), which may be demonstrated by:
- a. Sign construction of brick or natural stone;
 - b. Consistent sizes, styles, and colors across the development;
 - c. Use of landscaping around the sign base;
 - d. Use of channel lettering;
 - e. Fewer incidental signs;
 - f. Greater spacing between signs along street frontages;
 - g. Fewer total number of signs; or
 - h. Signs of reduced height and area.
3. *Prohibited Signs and Sign Elements.* Prohibited sign types and elements are not eligible for inclusion in a Master Sign Plan (see [Sec. 35-730-9, Prohibited Signs](#)).
- C. **Review Criteria.** The MUAPB must base its approval, conditional approval, or denial on the following relevant factors:
1. *Consistent Material.* Signs of a similar type and function within the development have a consistent building material.
 2. *Architectural Theme.* All signs in the development are architecturally integrated into or complimentary to the design of the buildings and character of the site and use similar and coordinated design features and colors.
 3. *Quality Aesthetic.* Demonstration that the master sign plan will improve the aesthetics of the development and will not have adverse impacts on the use, enjoyment, or value of property in adjacent or nearby districts.
 4. *Height, Area, Number and Location of Signs.*
 - a. The overall size of the parcel proposed for development and the scale of the use or uses located or anticipated to be located there (larger land areas and scales of use tend to favor larger signs and/or more signs);
 - b. Relationship between the building setback and sign location (additional signage may be appropriate for buildings with less visibility, particularly where buffering is providing as an aesthetic and/or environmental benefit to the City);
 - c. Frontage (larger frontages may justify more or larger signs, particularly if the size of the frontage tends to prevent sign clutter from multiple adjacent parcels);
 - d. Access and visibility to the site;

- e. Intended traffic circulation pattern and the need for way-finding;
 - f. Hierarchy of signage;
 - g. Relationship between the site and adjacent uses;
 - h. The desired function of the site (e.g., the CA and CD districts should include signage that is more pedestrian-oriented); and
 - i. Consistency with the objectives and design policies of the Comprehensive Plan, as well as:
 - 1. Aggieville Community Vision;
 - 2. Downtown Tomorrow Plan;
 - 3. Eureka Valley - Highway K-18 Corridor Plan;
 - 4. Gateway to Manhattan Plan;
 - 5. M-FRO - Multi-Family Redevelopment Overlay District User's Guide;
 - 6. Poyntz Avenue Corridor District Plan; and
 - 7. Other applicable corridor or sub-area plans.
5. *Elimination of Nonconforming Signs.* If there are existing signs within the parcel proposed for development, they are brought into conformance with the standards of the approved master sign plan.
- C. **Scope of Approval.** Upon approval, sign designs and sign elements are pre-approved thereby allowing for expedited approval of sign permits.
- D. **Procedures.** The procedures for approval of a Master Sign Plan include [Sec. 35-920-1, Pre-Application Conference](#), through [Sec. 35-920-8, Conditional Approval](#).

Effective on: 4/18/2018

Subsec. 35-930-2H, Major Modifications

- A. **Generally.** The Zoning Administrator may review and recommend an application and the MUAPB may approve major modifications of an approved plan subject to this Subsection.
- B. **Applicability.** Major modifications are applicable to a site plan, master development plan, preliminary or final development plan, or master sign plan.
- C. **Review Criteria.** Generally, a proposed major modification must:
 - 1. Be consistent with the purposes of this UDO and, if applicable, the purposes of the approved development, and will:
 - a. Promote the efficient development and preservation of the entire development;
 - b. Be necessary because of changed or changing conditions in or around the property and the nature of such conditions;
 - c. Result in a relative gain to the public health, safety, convenience, or general welfare;
 - d. Not be requested solely to confer a special benefit upon any person;
 - e. Have an insignificant effect on the character or impact of the development; and
 - f. Not result in a change in the use of land, in the intensity of land uses, or, except as provided in Paragraph 2, below, an increase in residential density.
 - 2. Specifically, major modifications consist of the following:
 - a. An increase in the net residential density of more than 5%;

- b. An increase in gross floor area of a residential building of more than 10%;
- c. An increase in lot coverage of a residential building of more than 10%;
- d. An increase in floor area of a nonresidential use by more than 10%;
- e. A reduction or relocation of open space that would change the character of the development;
- f. A change to the site plan, grading plan, traffic circulation plan, or drainage plan that will negatively impact the site or development, as determined by the Zoning Administrator or City Engineer;
- g. Significant changes to the configuration of structures; and
- h. Reconfiguration of parking, loading, and stacking areas resulting in a loss of spaces.

D. Scope of Approval.

- 1. *Approval.* Upon approval or conditional approval of the major modification(s), the applicant must file the amended Preliminary or Final Development Plan with the Register of Deeds as set out in [Subsec. 35-930-2J, Planned Development Floating Zone](#). Then, the applicant may proceed in filing an application for the next step in the development process or continue development in accordance with the conditions and terms of the development plan.
- 2. *Denial.* If the MUAPB does not approve the major modification(s), the applicant may appeal the decision to the Commission for a final decision.

E. Procedures. The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), through [Sec. 35-920-8, Conditional Approval](#).

Effective on: 4/18/2018

Subsec. 35-930-2I, Plan Referral

- A. **Generally.** The authorizations, approvals, and permits outlined in [Sec. 35-910-3, Summary of Administrative Applications and Procedures](#), may be approved or conditionally approved by the Zoning Administrator. In instances where the review criteria or standards and requirements of this UDO are not clearly demonstrated by the applicant, the Zoning Administrator may forward the application with or without a recommendation to the MUAPB for final action.
- B. **Applicability.** This Subsection is applicable to all authorizations, approvals, and permits outlined in [Sec. 35-910-3, Summary of Administrative Applications and Procedures](#).
- C. **Review Criteria.** The MUAPB must approve, conditionally approve, or deny the referred authorization, approval, or permit in accordance with the review criteria of the respective application, and provided the authorization, approval, or permit:
 - 1. Meets the purposes of this UDO;
 - 2. Complies with all applicable local, state and federal laws;
 - 3. Offers proof of all necessary licenses (e.g. lodging, food establishment, etc.), permits, certifications, or other such requirements.
 - 4. Complies with all applicable building, electrical, fire, and life safety codes, and is inspected prior to occupancy.
 - 5. Is, or may be, compatible with surrounding land uses and will not materially detract from the character of the immediate area or negatively affect development of the surrounding area.
 - 6. Is suitable for the site proposed relative to protecting site resources, preserving open space and views, and mitigating environmental impacts.
 - 7. Is demonstrated to have adequate infrastructure and services available to provide a level of service in compliance with this UDO and all applicable building, fire, and accessibility code requirements.

- D. **Scope of Approval.** Upon referral from the Zoning Administrator, the MUAPB will take final action. Thereafter, the applicant may proceed with requests for other required permits, as applicable.
- E. **Procedures.** The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), through [Sec. 35-920-8, Conditional Approval](#).

Effective on: 4/18/2018

Subsec. 35-930-2J, Planned Development Floating Zone

- A. **Generally.** Submittal and approval of a preliminary development plan improves the efficiency and speed of approval of a final development plan. Once approved, the development plans provide documentation for recording which manages development and use within the planned development floating zone.
- B. **Applicability.**
 - 1. *Zoning Map Amendment.* Except as specified in this Subsection, the administrative bodies must review a proposal to change the zoning district for a particular property to a PD Floating Zone in accordance with the provisions for a Zoning Map Amendment.
 - 2. *Composition.* A PD Floating Zone submittal consists of three parts, which must receive approval in the order listed below:
 - a. A Zoning Map Amendment;
 - b. A Preliminary Development Plan; and
 - c. A Final Development Plan.
 - 2. *Concurrent Submittal.* If the subject property does not already have a PD Floating Zone designation, an applicant must, at minimum, file a Zoning Map Amendment application together with a Preliminary Development Plan. If the subject property already has a PD Floating Zoning designation, but does not have a valid Preliminary Development Plan, then the applicant may file a stand-alone Preliminary Development Plan.
- B. **Review Criteria.** In addition to the review criteria in [Subsec. 35-930-20, Zoning Map Amendment \(Rezoning\)](#), the Commission (Preliminary Development Plan) and MUAPB (Final Development Plan) must base their approval, conditional approval, or denial on the following:
 - 1. *Overall Criteria.*
 - a. *Necessity.* The PD Floating Zone is necessary because the development cannot otherwise take place under the regulations of this UDO.
 - b. *Mix of Housing and Uses.* The development contains a variety of housing types, and a mix of employment opportunities or commercial services necessary to achieve a balanced community and beyond what is achievable under the by-right development options in [Division 35-230, District Standards and Land Uses](#).
 - c. *Design Elements.* The development makes use of landscaping, buffering, screening, natural and man-made drainage patterns, recreational amenities, circulation, and common open space to achieve an orderly and creative arrangement of all land uses with respect to each other and to the entire community.
 - d. *Integrated Transportation.* The development contains a planned and integrated comprehensive transportation system providing for a separation of pedestrian and vehicular traffic, to include facilities such as roadways, bicycle ways, and pedestrian walkways.
 - e. *Phasing.* The development is phased in a manner which may be accommodated by the timely provision of public utilities, facilities, and services.
 - 2. *Preliminary Development Plan.*
 - a. *Variations from Adopted Standards.* The MUAPB and Commission concur with the proposed variations of the UDO standards including, but not limited to: land uses, density, lot area and width, building setbacks, building height, building elevations, parking, access, streets and circulation, utilities, screening, landscaping

and buffering, accessory structures, signs, lighting, project phasing or scheduling, owners' associations, and other requirements specified in the proposed Preliminary Development Plan.

- b. *Filing with the Register of Deeds.* Upon approval of the PD Floating Zoning, and prior to submittal of a Final Development Plan application, the applicant must file a statement containing the following:
 - 1. The legal description of the Planned Development Floating Zone;
 - 2. A statement that the Preliminary Development Plan is on file with the Zoning Administrator; and
 - 3. A statement specifying the nature of the plan, the proposed density or intensity of land uses and other pertinent information sufficient to notify any prospective purchasers or users of the land of the existence of such a plan and binding successors and assigns to the plan.
- 3. *Final Development Plan.*
 - a. The applicant shows good cause for any variations in the Final Development Plan compared to the approved Preliminary Development Plan; and
 - b. The variations in the Final Development Plan are in the public interest according to the MUAPB and if not, the Final Development Plan will be modified as a condition of approval.

C. Scope of Approval.

- 1. *PD Floating Zone Ordinance.* If the Commission approves a Preliminary Development Plan, it must additionally approve an ordinance establishing the PD Floating Zone on the subject property. Such ordinance must specifically include:
 - a. Wording which incorporates into the ordinance by reference all approved drawings and documents;
 - b. A description of the boundaries of the PD Floating Zone; and
 - c. Any restrictions, conditions, and use limitations approved as part of the Preliminary Development Plan.
- 2. *Subdividing PD Floating Zones.* The Preliminary Development Plan also functions as a Preliminary Plat. Concurrent with or subsequent to approval of a Final Development Plan, a Final Plat application must be submitted for review and approval of the MUAPB. The Final Plat must be approved if it conforms to the approved Preliminary Development Plan.
- 3. *Abandonment or Failure to Proceed.*
 - a. If the owner of record chooses to abandon an approved Preliminary or Final Development Plan, the owner must notify the Zoning Administrator in writing and file a new application and fee to rezone the subject property to the zoning district consistent with the Future Land Use Plan.
 - b. If the period of validity of the PD Floating Zone expires as set out in [Sec. 35-910-3, Summary of Applications and Review Authority](#), the MUAPB may revoke its approval of the Preliminary and Final Development Plan and the Zoning Administrator will notify the owner of record in writing. If, within 30 calendar days of receipt of the notice of such revocation, the owner of record does not file an application for reinstatement of the Preliminary or Final Development Plan, the MUAPB may consider the plan abandoned and may proceed with rezoning the subject property.

D. Procedures. The procedures applicable to development plan approval include [Sec. 35-920-1, Pre-Application Conference](#), through [Sec. 35-920-8, Conditional Approval](#).

Effective on: 4/18/2018

Subsec. 35-930-2K, Site Plan

A. Generally. All new development, redevelopment, and substantial improvement or expansion within the RH, RC, BC, CN, CC, BP, CA, CD, MU, O-EN, O-EV, O-GC, O-MBP, O-UF, and PI districts require site plan review and approval prior to the issuance of permits that allow for land clearing, site grading, and construction.

- B. Applicability.** This Subsection sets out the review criteria, scope of approval, and procedures for the review of site and building design plans in accordance with the standards and requirements set out in:
1. [Division 35-410, Residential Design Standards](#);
 2. [Division 35-420, Nonresidential Design Standards](#);
 3. [Division 35-710, Parking and Loading](#);
 4. [Division 35-720, Trees, Landscaping, and Screening](#);
 5. [Division 35-730, Signs](#);
 6. [Division 35-740, Outdoor Lighting](#); and
 7. All other applicable standards of this UDO.
- C. Review Criteria.** The criteria used to determine conformance with this UDO will include, but are not limited to, those that are applicable to the respective use and site or building type:
1. *General Conformance.* A site plan must comply with the standards of this UDO and:
 - a. Used to implement the policies and directions of the Comprehensive Plan, as well as each of the other corridor and special area plans, as drafted or amended from time to time;
 - b. Designed to minimize impacts on the use and enjoyment of adjacent land or the public interests;
 - c. Not materially and adversely affect the public health or safety through interpretations of the standards of this UDO that do not give full effect to other provisions that would be protective to health and safety if applied;
 - d. Recognize the limits of existing and planned infrastructure, by thorough examination of the availability and capacity of water, sewer, drainage, and transportation systems to serve present and future land uses;
 - e. Provide for compatibility between the proposed development, surrounding land uses (existing or planned), and the natural environment;
 - f. Provide for efficient and adequate provision of public services;
 - g. Protect against natural and man-made hazards which include, but are not limited to, traffic noise, water pollution, and flooding; and
 - h. Provide for accessibility within the proposed development and appropriate connectivity between the development and adjacent uses.
 2. *Site Design Standards.*
 - a. Compatibility of the proposed use and buildings considering scale and massing in the context of adjacent development;
 - b. Number, location, width, spacing, and surfacing of driveways;
 - c. Site standards per those outlined in [Sec. 35-240-3, Standards for Limited and Conditional Uses](#), as applicable;
 - d. Number, location, dimensions, and setbacks of the required on-site parking and loading, together with the location, number, width, spacing, alignment, corner clearance, and design of driveways and the fixture type, height, location, and maximum illumination of exterior lighting for nonresidential uses; and
 - e. Type, quantity, and placement of development landscaping and bufferyards.
 3. *Building Design Standards:*
 - a. Exterior wall and building trim materials;
 - b. Building wall design and articulation to address monotony and blank walls;
 - c. Roof type and materials, including its pitch, overhangs, eave lines, and projections;
 - d. Building massing, including the lengths of uninterrupted wall planes and offsets that penetrate the roof lines;

- e. Design of large buildings to appear as multiple structures through the use of varied roof forms, building projections, vertical or horizontal offsets, or architectural details;
- f. Exterior floor-to-floor height of each story and the delineations between individual floors;
- g. Building projections on the front facade below the eave line, which may consist of stoops, bay windows, covered porches, extruded entrances, or pedestrian arcades;
- h. Heights, widths, and materials of porches and arcade columns;
- i. Building wall articulations, which may include, among other treatments, a porch, stoop, balcony, windows and casings, cornices, lintels, columns, pilasters, etc.
- j. Details of front entrances;
- k. Fenestration including the design and placement of doors and windows;
- l. Level of quality and architectural interest of buildings;
- m. Type, height, and style of building, site, and pedestrian lighting;
- n. Orientation of buildings and building features to the street, e.g. overhead doors;
- o. Location and screening treatments of ground, building, or roof-mounted mechanical and utility equipment; and
- p. Other building form and design treatments as contextually appropriate.

4. *Multiple-Family Dwellings, Buildings, and Complexes:*

- a. Exterior wall and building trim materials;
- b. Continuity and cohesiveness of the building architecture and its features and patterns with that of the adjacent buildings;
- c. Articulation of building facades and use of building elements for the purpose of creating visual interest and avoiding monotony;
- d. Roof type and materials, including its pitch, overhangs, eave lines, and projections;
- e. Sizes and locations of windows and their relative percentage of the front facade, together with their accentuation, (e.g. shutters, awnings, or decorative framing); and
- f. Quality, sustainable finish materials of all building walls and roofs and their compatibility with that of the adjacent and surrounding buildings.

D. **Scope of Approval.** The Zoning Administrator and DRC will review the application and site plan materials and provide recommendations based on the review criteria to the MUAPB. Upon considering the recommendations and site plan, the MUAPB will approve, conditionally approve, or deny the site plan. At the discretion of the MUAPB, or on appeal of the applicant, the application may be forwarded to the Commission for final action.

E. **Procedures.** The procedures applicable to site plan approval include [Sec. 35-920-1](#), *Pre-Application Conference*, through [Sec. 35-920-8](#), *Conditional Approval*.

Effective on: 4/18/2018

Subsec. 35-930-2L, State or Municipally-Owned and Operated Public Utilities and Facilities

- A. **Generally.** Any public utility or facility owned and operated by either the State or a Municipality is authorized as a permitted use in any zoning district, subject to the provisions of this Subsection.
- B. **Applicability.** If any utility or facility is listed as a permitted or conditional use in [Sec. 35-230-2](#), *Residential Districts and Uses*, or [Sec. 35-230-3](#), *Nonresidential Districts and Uses*, the utility or facility that is proposed for construction or expansion may proceed according to this Subsection or may comply with applicable regulations of this UDO. Other than this Subsection and provisions that apply generally for all land uses, no other regulations apply.

- C. **Review Criteria.** The construction or expansion of a public utility or facility may not proceed until authorized by ordinance of the Commission, which is not an amendment to this UDO nor considered a rezoning of the subject property. An application must be submitted by the owner or representative of the utility or facility, which must include documents and evidence, such as a site plan, sufficient evaluation of the following factors:
1. The nature and scope of the municipality or state agency making the request;
 2. The function of the utility or facility;
 3. The extent of the public interest to be served by the utility or facility;
 4. The effect that regulation of the construction, or expansion, either by the imposition of requirements necessary to mitigate impacts or by a complete denial, will have upon the municipality's, or state agency's, ability to efficiently, economically and prudently meet the public interests they are serving;
 5. The impact that construction or expansion of the utility or facility will have upon legitimate interests of that portion of the community in which it is proposed to be located;
 6. If the owner of the utility or facility is within the City, and if the facility or utility is of a type embraced within the Comprehensive Plan, whether or not it is in conformity with that Plan; and
 7. Such other factors as the MUAPB deems appropriate and relevant.
- D. **Scope of Approval.**
1. *Administrative Review.* The Zoning Administrator and DRC will review the application and site plan materials and provide recommendations based on the review criteria to the MUAPB.
 2. *MUAPB Review and Final Report.* In arriving at their recommendation, the MUAPB must balance the public interests to be served by the construction or expansion of the utility or facility, as opposed to the impact upon interests intended to be protected by this UDO.
 - a. *Approval or Conditional Approval.* If the MUAPB recommends approval, they must also recommend any requirements or conditions deemed necessary to mitigate impacts caused by such use. Such conditions may include, but are not limited to, any bulk or other requirements which would have otherwise been applicable within the zoning district in which the proposed use is to be placed.
 - b. *Final Report and Recommendations.* The MUAPB will then forward their final report and recommendations to the Commission for final action.
 - c. *Commission Consideration and Final Action.* Upon receipt of the MUAPB final report and recommendations, the Commission must consider the request, which must include the above review criteria along with the recommendations and reasoning of the Zoning Administrator, DRC, and MUAPB. The Commission is not bound by the recommendations nor obligated to return the matter to the MUAPB unless it chooses to do so.
 1. *Approval or Conditional Approval.* If the City Commission desires to approve the request, it must do so by adopting an ordinance. In an ordinance approving such request, the City Commission may establish any conditions deemed necessary to mitigate any impacts created by such use.
 2. *Denial.* The Commission must not approve the request unless it determines, by a preponderance of the evidence, that the public interest to be served by the construction or expansion of the utility or facility outweighs the impacts upon legitimate community interests, as such impacts are mitigated by its conditions and requirements.
- E. **Procedures.** The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), through [Sec. 35-920-8, Conditional Approval](#).

Subsec. 35-930-2M, Temporary Conditional Use Permit

- A. **Generally.** Temporary conditional uses are land uses of a limited duration and involving minimal investment yet of a scale and expected attendance so as to warrant conditional use approval.
- B. **Applicability.** The types of temporary uses and the zoning districts where they're allowed are set out in [Sec. 35-260-2, Districts Permitting Temporary Uses](#).
- C. **Review Criteria.** Refer to [Sec. 35-260-3, Frequency and Duration](#), and [Sec. 35-260-4, Temporary Use Standards](#).
- D. **Scope of Approval.**
 - 1. Upon approval, an applicant for a Temporary Conditional Use Permit may proceed in filing for other required permits or may proceed with the limited use setup and operation in accordance with the permit terms.
 - 2. The issuance of a permit for a temporary use does not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize applications for any other permits or approvals.
- E. **Procedures.** The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-8, Conditional Approval](#).

Effective on: 4/18/2018

Subsec. 35-930-2N, UDO Text Amendment

- A. **Generally.** The Commission may amend by ordinance the text of this UDO to implement the Comprehensive Plan, to conform to state or federal legal requirements, address changing or changed conditions, or otherwise advance the public health, safety, and welfare of the City of Manhattan.
- B. **Applicability.** The Commission or MUAPB may initiate by motion the process to amend this UDO.
- B. **Review Criteria.** The Commission must base its approval, conditional approval, or denial on the following:
 - 1. *Purpose of UDO.* The proposed amendment is consistent with [Sec. 35-110-3, Purposes](#).
 - 2. *Impact.* The proposed amendment does not negatively impact the areas that are most likely to be directly affected by such amendment in terms of land use, mobility, air or water quality, noise levels, storm water management, wildlife protection, or vegetation.
 - 3. *Changing Conditions.* The proposed amendment is necessary because of changed or changing conditions in the districts affected, or in the **Manhattan Urban Area**.
 - 4. *Policies and Goals of Comprehensive Plan.* The proposed amendment is consistent with the purposes of the policies and goals in the Comprehensive Plan, or, if it is related to a topic that is not mentioned or fully developed in the Plan, the proposed amendment does not impair the implementation of the Plan when compared to the existing UDO.
- C. **Scope of Approval.**
 - 1. A text amendment does not authorize development. Any development that occurs after the Commission adopts the text amendment is subject to all applicable requirements of this UDO, as revised by the text amendment.
 - 2. An ordinance (or summary) adopting a text amendment will be published in an official newspaper in accordance with Kansas law.
- D. **Procedures.** The procedures applicable for amending the text of this UDO include [Sec. 35-920-4, Administrative Review](#), through [Sec. 35-920-7, Public Meetings and Hearings](#).

Effective on: 4/18/2018

Subsec. 35-930-20, Zoning Map Amendment (Rezoning)

- A. **Generally.** The boundaries of any zoning district in the City may be changed, or the district classification of any parcel of land may be changed, as provided in this Subsection.
- B. **Applicability.**
 - 1. A zoning map amendment (rezoning) may be initiated by the owner of the property to be rezoned or their authorized agent or representative, the Commission, MUAPB, or any other body described in [Division 35-820, Bodies Established](#). Zoning map amendment applications by property owners or their agents or representatives must be submitted on a form approved by the Zoning Administrator.
 - 2. No application for amendment to change the zoning classification of any lot, parcel, or tract of land will be accepted unless such lot, parcel, or tract has 100 feet of frontage on a public street, or has 10,000 square feet of area, or abuts a lot, parcel, or tract of land that has the same zoning classification as that which is proposed for the property which is the subject of the proposed amendment.
 - 3. The Zoning Administrator may require submission of other information as necessary to permit an informed exercise of judgment under the below review criteria. Such information must be related to the scale, location, and impacts of the zoning map amendment and may include, by way of illustration and not limitation, analysis of the capacity of the land to support development (e.g., soil characteristics and hydrology) or the additional impacts (or reduction in impacts) that may be created by changing the district designation, in terms of: traffic (trip generation); drainage (flooding and storm surge); visual, aesthetic, and land use adjacency impacts; water and wastewater use and availability; and other information determined by the City as necessary to make an informed analysis and decision.
- B. **Review Criteria.** The Commission must base its approval, conditional approval, or denial on the following:
 - 1. The proposal is appropriate for the existing use and the physical and environmental characteristics of the subject property.
 - 2. The proposal is compatible with the zoning, land uses, and character of nearby properties.
 - 3. The subject property, its zoning history, and the time it has remained vacant, if applicable, as zoned, is suitable for the proposal.
 - 4. The proposal is consistent with the policies and goals in the Comprehensive Plan or does not impair the implementation of the Plan.
 - 5. The proposed zoning district is consistent with [Sec. 35-110-3, Purposes](#).
 - 6. Denial of the proposal would result in a relative gain to the public health, safety, and welfare, compared with the hardship imposed upon the owner that would result from such denial.
 - 7. Adequate sewer and water facilities, streets, and other needed public services exist, or can be provided to serve the uses that would be permitted by the proposed zoning district.
- C. **Scope of Approval.**
 - 1. No amendment of the Official Zoning Map will become effective unless and until the MUAPB has submitted its report and recommendations to the Commission, the Commission has held a public hearing, and a final ye and nay vote has been taken on the zoning map amendment.
 - 2. A zoning map amendment is recorded as follows:
 - a. The City Clerk maintains a record of all ordinances that change the zoning classification of the area or property; and
 - b. The Zoning Administrator revises the Official Zoning Map to reflect the new zoning district for the property.
- D. **Procedures.** The procedures applicable to site plan approval include [Sec. 35-920-1, Pre-Application Conference](#), through [Sec. 35-920-8, Conditional Approval](#).

Sec. 35-930-3, Quasi-Judicial Applications

Subsec. 35-930-3A, Appeals

- A. **Generally.** An appeal may be taken to the Board of Zoning Appeals (BZA) by any person aggrieved by any officer, department, or board of the City on a matter addressed in this UDO.
- B. **Applicability.** Set out in Table 35-930-3A-1, *Summary of Appeal Authority*, is the proper appellate bodies for various types of appeals, together with the deadlines to appeal.
 - 1. *Appeals of Administrative Decisions.* The BZA will hear and decide appeals from, and review orders, decisions, determinations, or the failure to act, of the Zoning Administrator, or other City officials, departments, and agencies, and to that end, the BZA has the same powers and is subject to the same standards and limitations as the Zoning Administrator or other City officials, departments, and agencies with respect to any order, decision, or determination being appealed. These decisions include those where an applicant appeals the final decision of a site plan, master development plan, master sign plan, or a preliminary or final development plan, or other applicable denials.
 - 2. *Appeals of a Sign Permit or Development Plan.* The City Manager or Commission have the authority to hear and decide on applicant appeals of decisions for sign permits, decisions of the MUAPB or HRB concerning site plans, preliminary and final development plans, master development plans, subdivision plats, and plans referred to the City Commission from the MUAPB. The decision of the Commission is final and not thereafter appealable.
 - 3. *Matters Not Subject to Appeal.*
 - a. Administrative recommendations to the MUAPB or HRB are not subject to administrative appeal.
 - b. Decisions on an administrative appeal are not subject to further administrative appeal (e.g., if an appeal is taken to the BZA regarding a decision of the Zoning Administrator to deny an application, then the decision of the BZA with respect to that appeal is not reviewable by the Commission on a second administrative appeal).

Table 35-930-3A-1 Summary of Appeal Authority					
Application Type	Appellate Bodies				Deadline to Appeal (calendar days)
	City Manager	BZA	City Commission	Court of Competent Jurisdiction	
Appeal of an Administrative Decision (except for a sign permit)		♦			Within 30 days of the final action
Appeal of Site Plan, Master Development Plan, PD Preliminary or Final Development Plan, or a Certificate of Historic Appropriateness			♦		Within 30 days of the final action
Appeal of Sign Permit	♦				Within 10 days of the final action

C. Review Criteria.

- 1. *Document Transmittal.* The appeal application must specify the grounds for the appeal. Upon receipt of the application, the administrative body whose interpretation or final action is being appealed will transmit to the

Zoning Administrator all of the documents, both electronic and physical, constituting the record upon which the decision being appealed was based.

2. *Administrative Appeals Criteria.* The criteria used by the appellate bodies in their decision may include such order or determination as in their opinion is proper to be made given the facts of the appeal and their findings. Generally, the decision must answer the following questions:
 - a. Is the appeal the result of an incorrect interpretation of this UDO;
 - b. Would the decision result in a violation of Kansas or federal statutes; or
 - c. Would the decision violate the applicant’s state or federal constitutional rights.

3. *Criteria for Appeals of a Sign Permit or Development Plan.* The City Manager (sign permit) or Commission may approve, conditionally approve, or deny the appeal in accordance with the review criteria of the respective application, and further provided the plan being appealed:
 - a. Meets the purposes of this UDO;
 - b. Complies with all applicable local, state and federal laws;
 - c. Offers proof of all necessary licenses (e.g. lodging, food establishment, etc.), permits, certifications, or other such requirements;
 - d. Complies with all applicable building, electrical, fire, and life safety codes, and is inspected prior to occupancy;
 - e. Is, or may be, compatible with surrounding land uses and will not materially detract from the character of the immediate area or negatively affect development of the surrounding area;
 - f. Is suitable for the site proposed relative to protecting site resources, preserving open space and views, and mitigating environmental impacts; and
 - g. Is demonstrated to have adequate infrastructure and services available to provide a level of service in compliance with this UDO and all applicable building, fire, and accessibility code requirements.

C. Scope of Approval.

1. *Appeals of Administrative Decisions.*
 - a. *Stay of Proceedings.* The filing of an appeal stays all legal proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the City Manager, Commission, or BZA that by reason of facts, a stay would cause imminent peril to life or property. In such case, the proceedings may not be stayed other than by a restraining order that the BZA or a court of competent jurisdiction may grant.
 - b. *Action of BZA.* The BZA may affirm or reverse, wholly or partly, or may modify the final action from which that applicant has appealed. To that end, the BZA has all the powers of the original administrative official and may attach appropriate conditions and may issue or direct the issuance of a subsequent permit. The concurring vote of three members of the BZA is necessary to take final action. The BZA must render a written decision on the appeal without unreasonable delay after the close of a public hearing.

2. *Appeals of a Sign Permit or Development Plan.* The City Manager or City Commission must issue a written decision with findings to affirm, overturn, or modify the denial or revocation action of the MUAPB or HRB. The written decision will be provided by U.S. Mail to the person making the appeal at the address provided in the appeal. The decision of the City Manager or Commission is final and not thereafter appealable.

D. Procedures. The procedures applicable to an appeal include [Sec. 35-920-3, Application Submittal and Completeness](#), through [Sec. 35-920-8, Conditional Approval](#).

Effective on: 4/18/2018

Subsec. 35-930-3B, Conditional Use Permit (CUP)

- A. **Generally.** A conditional use is a use that is allowed within a district, but which is subject to specific standards and a public hearing process in order to reduce the potential for incompatibility with other uses within or adjacent to the district. These uses commonly have the potential for various adverse impacts such as traffic congestion, noise, visual and aesthetic impacts, which if unmitigated, could undermine the integrity of the district. The designation of a conditional use means that it is only allowed in a proposed location if all of the conditions applicable to the use, set out in [Sec. 35-240-3, Standards for Limited and Conditional Uses](#), and all of the other applicable requirements of this UDO or conditions of the BZA are met.
- B. **Applicability.** The provisions of this Subsection are applicable to all uses that are designated as "conditional" in the tables set out in [Division 35-230, District Standards and Land Uses](#).
- C. **Review Criteria.**
 - 1. *Application.* An application for a Conditional Use Permit (CUP), must be filed with and on the forms provided by the Zoning Administrator. The application must contain in complete form all information requested on the form(s), as well as such additional information as may be requested by the Zoning Administrator. With application, the applicant must provide a complete and correct list of all owners of record of all property located within 200 feet of the boundaries of the property on which the proposed conditional use would be located.
 - 2. *Criteria.* The BZA must base its approval, conditional approval, or denial on the following:
 - a. *Land Uses.*
 - 1. *Applicable Provisions.* The proposal complies with all applicable requirements of this UDO.
 - 2. *Property Values.* The proposal will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.
 - 3. *Neighborhood Impact.*
 - a. The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to the street network will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.
 - b. In determining whether the conditional use will so dominate the immediate neighborhood, the BZA will give consideration to:
 - I. The location, nature and height of buildings, structures, walls and fences on the site; and
 - II. The nature and extent of landscaping and screening on the site.
 - 4. *Adequate Facilities.* Adequate utility, drainage, and other such necessary facilities have been or will be provided.
 - 5. *Adequate Driveways and Access.* Adequate access roads or entrance and exit drives will be provided and will be designed to prevent traffic hazards and minimize traffic congestion in public streets and alleys.
 - b. *Telecommunication Structure.* Refer to [Subsec. 35-930-3F, Telecommunication Structure](#).
 - c. *Nonconforming Uses.* Refer to [Subsec. 35-930-3C, Conditional Use Permit for a Nonconforming Use](#).
- D. **Scope of Approval.** The BZA may grant those conditional uses that are authorized to be allowed as a conditional use in a particular zoning district. No conditional use may be granted unless such grant complies with all applicable provisions of this UDO.
 - 1. *Conditions and Restrictions.* The BZA may impose conditions, safeguards, and restrictions upon the subject property to comply with the review criteria of this Subsection and to carry out the purposes of this UDO. Failure to comply with such conditions, safeguards, and restrictions constitutes a violation of this UDO and enables the

Zoning Administrator to pursue the enforcement actions established in Article 35-11, *Enforcement and Remedies*.

2. *Decisions and Records*. A final decision of the BZA occurs upon the majority vote on the CUP request at a public hearing. The BZA will render a written decision on an application for a CUP without unreasonable delay after the close of the hearing. The Zoning Administrator will maintain complete records of all actions of the BZA.
 3. *Period of Validity*. No exception granted by the BZA may be valid for a period longer than 180 days from the date on which the BZA grants the CUP, unless within such 180-day period:
 - a. A building permit is obtained and the construction, moving, or remodeling of a structure is started; or
 - b. A use is commenced or continued pursuant to the conditional use.
 4. *Extension*. The BZA may grant additional extensions not exceeding 180 days each, upon written application, without notice or hearing.
- E. **Procedures**. The procedures applicable to for a decision regarding issuance of a conditional use permit include [Sec. 35-920-1, Pre-Application Conference](#), through [Sec. 35-920-8, Conditional Approval](#).

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Subsec. 35-930-3C, Conditional Use Permit for a Nonconforming Use

- A. **Generally**. Many land uses within the community were lawfully established only to have become nonconforming by way of a change in the zoning regulations or map. These uses are "legally nonconforming," which are deemed to be a conditional use of the zoning district in which the use if located.
- B. **Applicability**. The provisions of this Subsection apply to all legally nonconforming uses within the City of Manhattan. Once a conditional use is approved by the BZA, all enforcement provisions of this Code apply.
- C. **Review Criteria**.
 1. *Application*. An application for a Conditional Use Permit (CUP) must be filed with and on the forms provided by the Zoning Administrator. The application must contain in complete form all information requested on the form(s), as well as such additional information as may be requested by the Zoning Administrator. With the application, the applicant must provide the following:
 - a. The correct legal description of the property on which the nonconforming use is located;
 - b. A site plan showing all existing structures and improvements on the property, together with all proposed modifications, deletions, or additions to structures or improvements on the subject property;
 - c. A description of all existing uses on the property, including the dates when such uses were established, along with all proposed modifications to the existing use(s) on the site; and
 - d. A complete and correct list of all owners of record of property located within 200 feet of the boundaries of the property on which the nonconforming use is located.
 2. *Public Hearing*. A hearing on the application will be conducted, and notice given, by the BZA in the same manner as hearings are conducted, and notice given, for any other conditional use application.
 3. *Criteria*. The BZA may not grant a conditional use, or related exception, unless in each specific case, it makes written findings of fact, based upon the particular evidence presented to it, that all the following standards have or will be met:
 - a. The size of the zoning lot is not increased from that which exists;
 - b. That either:

1. The existing use does not have a significantly adverse impact upon either the surrounding neighborhood or the public health, safety or general welfare, and the proposed modifications, additions, or deletions will not worsen such impact; or
 2. The existing use does have such a significantly adverse impact and the granting of the proposed modifications, additions, or deletions will be more likely to reduce or eliminate such impact than a denial of such proposal;
 - c. The proposed conditional use complies with this UDO, except for those existing conditions that are legally nonconforming; however, the proposal may contain requests for exceptions to such requirements as provided below; and
 - d. The existing use continues in a substantially similar form, or in a form that is altered only to make it more modern or efficient.
4. *Exception(s)*. An applicant may request an exception as part of the conditional use for which the BZA may grant an exception to this UDO as to any of the following:
- a. Any bulk regulation set out in [Division 35-230, District Standards and Land Uses](#);
 - b. Any regulation of signage set out in [Division 35-730, Signs](#); or
 - c. Any regulation of parking set out in [Division 35-710, Parking and Loading](#).

D. Scope of Approval.

1. *Change to a Permitted Use*. As a condition of granting a conditional use permit, the BZA will require that, in the event the use of the subject property changes to a permitted use at that location, the conditional use permit will expire and may not be re-established.
2. *Conditions and Restrictions*. In granting a conditional use permit and any related exception(s), the BZA may impose such conditions, safeguards, and restrictions on the premises benefited by the conditional use or exception as may be necessary to comply with the review criteria set out above, and to carry out the purposes of this UDO. The applicants' failure to comply will constitute a violation of this UDO.
3. *Decisions and Records*. A final decision of the BZA occurs upon the majority vote on the conditional use permit and exception(s) following the public hearing. The BZA will render a written decision containing the findings of fact, if any, without unreasonable delay following the close of the public hearing. The Zoning Administrator will maintain complete records of all actions of the BZA.
4. *Period of Validity*. No conditional use permit or exception granted by the BZA will be valid for a period longer than 180 days from the date on which the BZA grants the conditional use permit, unless within such 180-day period:
 - a. A building permit is obtained and the modifications, deletions, or additions to the structures, site, or improvements are started, or
 - b. The modified use is commenced pursuant to the conditional use permit.
5. *Extension(s)*. The BZA may grant additional extensions not exceeding 180 days each, upon written application, without public notice or a public hearing.

- E. **Procedures**. The procedures applicable to for a decision regarding issuance of a conditional use permit include [Sec. 35-920-1, Pre-Application Conference](#), through [Sec. 35-920-8, Conditional Approval](#).

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Subsec. 35-930-3D Exceptions

A. Generally.

1. *BZA Authority.* When deemed necessary by the BZA, the BZA may grant exceptions from the provisions of this UDO on the basis and in the manner provided in this Subsection, and only in those instances where the BZA is specifically authorized to grant such exceptions. In no event may an exception be granted unless it is specifically listed in this Subsection.
2. *Application.* An application for an exception, must be filed with and on the forms provided by the Zoning Administrator. The application must contain in complete form all information requested on the form(s), as well as such additional information as may be requested by the Zoning Administrator. With the application, the applicant must provide a complete and correct list of all owners of record of all property located within 200 feet of the boundaries of the property to be affected by the proposed exception.

B. Applicability. The BZA is authorized to grant exceptions from the following requirements:

1. Any bulk regulation set out in [Division 35-230, District Standards](#).
2. Any requirement for surfacing of off-street parking set out in [Sec. 35-710-6, Design, Use, and Maintenance](#), provided the BZA also requires a reasonable schedule within which conformance of the surfacing requirement is required.
3. Any requirement related to the number of off-street parking spaces set out in [Sec. 35-710-3, Off-Street Parking](#).
4. Any regulation related to the height or setback of signs set out within the Subsections of [Sec. 35-730-10, On-Premise District Regulations](#), or [Sec. 35-730-11, Off-Premise Signs](#).
5. Those portions of the Floodplain Regulations described in [Subsec. 35-930-3E, Floodplain Exceptions](#).
6. The height restrictions prescribed by the Airport Overlay (A-O) District set out in [Sec. 35-220-1, Airport Overlay \(O-A\) District](#)), provided the Federal Aviation Administration (FAA) has provided a determination of no adverse impact on the operation of air navigation facilities and the safe, efficient use of navigable airspace.
7. Any of the compatibility standards in the High-Density Residential (RH) or Established Neighborhood Overlay (O-EN) districts.
8. Any of the following requirements:
 - a. In [Sec. 35-240-3, Standards for Limited and Conditional Uses](#), regarding Wireless Telecommunication Facilities and Towers, the provisions pertaining to:
 1. Lot size requirements;
 2. Bulk regulations;
 3. Co-location; and
 4. Use Limitations.
 - b. In [Sec. 35-710-6, Design, Use, and Maintenance](#), any of the front yard restrictions pertaining to driveways, parking, and landscaping.

C. Review Criteria. The BZA may not grant an exception unless it makes specific written findings of fact, based upon the particular evidence presented to it, that all of the following standards have been met:

1. The property complies with all applicable requirements of this UDO, other than the one for which an exception is being requested;
2. The proposed exception will not cause a substantial adverse effect on nearby properties;
3. The exception desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;

4. The strict application of this UDO is unreasonable, or unnecessary when all facts and circumstances are considered whereby in determining this standard, the BZA must weigh all facts and circumstances and place whatever emphasis and relevance it deems to be appropriate on each;
5. Examples of such facts and circumstances to be considered are as follows:
 - a. Whether or not conditions of the property requiring the exception were created by the applicant with prior knowledge and disregard of applicable regulations;
 - b. Whether or not the applicant acquired the property with knowledge of the conditions which require the exception and whether or not the consideration for the acquisition took into account such conditions;
 - c. Whether or not there are reasonable alternatives which would allow the property to meet the strict application of this UDO;
 - d. Whether or not a granting of the exception will result in a relative gain to the health, safety and general welfare of the community; and
 - e. Any other standards for exceptions that are specifically identified in this UDO.

D. Scope of Approval.

1. *Conditions and Restrictions.* In granting an exception, the BZA may impose conditions, safeguards, and restrictions upon the premises benefited by the exception, and to carry out the purposes of this UDO. Failure to comply will constitute a violation of this UDO.
2. *Decisions and Records.* A final decision of the BZA occurs upon the majority vote on the exception request at a public hearing. The BZA will render a written decision on an application without unreasonable delay after the close of the hearing. The Zoning Administrator will maintain complete records of all actions of the BZA.
3. *Period of Validity.* No exception granted by the BZA may be valid for a period longer than 180 days from the date on which the BZA grants the exception, unless within such 180-day period:
 - a. A building permit is obtained and the construction, moving, or remodeling of a structure is started; or
 - b. A use is commenced or continued pursuant to the exception.
4. *Extension.* The BZA may grant additional extensions not exceeding 180 days each, upon written application, without notice or hearing.

E. Procedures. The procedures applicable for a decision regarding approval of an exception include [Sec. 35-920-3, Application Submittal](#), through [Sec. 35-920-8, Conditional Approval](#).

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Subsec. 35-930-3E, Exceptions to Floodplain Regulations

- A. **Generally.** The BZA may grant exceptions from the floodplain regulations set out in [Article 35-6, Environmental Standards](#), subject to the requirements of this Subsection, and following the application and hearing procedures in [Division 35-920, Standardized Development Procedures](#).
- B. **Applicability.**
 1. *Regulatory Floodway.* Exceptions may not be issued by the BZA within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result, which must be determined by a professional engineer provided at the time of the application to the BZA.
 2. *Historic Places.* The BZA may authorize issuance of an exception for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Register of Historic Kansas Places without regard to the requirements set out in [Article 35-6, Environmental Standards](#).

3. **New Construction or Substantial Improvement.** No exception may be issued in connection with new construction or substantial improvements except upon:
 - a. A lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level; or
 - b. A lot of any size, which because of physical limitations, legal restrictions enforceable by the City or these regulations is incapable of being subdivided and which is contiguous to and surrounded by lots with existing structures constructed below the base flood level; or
 - c. A lot of any size which contains a condition unique to the property in question, not ordinarily found in the same zoning district, not created by an action or actions of the property owner or applicant and requiring the requested exceptions.

- C. **Review Criteria.** Exceptions may only be issued upon:
 1. A showing of good and sufficient cause;
 2. A determination that failure to grant the exception would result in exceptional hardship to the applicant;
 3. A determination that the granting of an exception will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and
 4. A determination that the exception is the minimum necessary, considering the flood hazard, to afford relief.

- D. **Scope of Approval.**
 1. The decision of the BZA to approve, conditionally approve, or deny an application for an exception is final and may only be appealed to the District Court. Approval or conditional approval authorizes the applicant to proceed on the basis of the BZA decision.
 2. *Relative to a Floodway Exception.*
 - a. Upon approval of an exception, the Floodplain Administrator will notify the applicant in writing that:
 1. Flood insurance requirements remain in place for any excepted use or structure and cannot be excepted by the City;
 2. The issuance of an exception to construct a structure below the base flood level could result in increased premium rates for flood insurance; and
 3. Such construction below the base flood level increases risks to life and property.
 - b. The Floodplain Administrator will maintain a copy of the written findings of fact, written decisions and notices issued by the BZA for any exception granted under this Subsection. The Floodplain Administrator will report such exceptions issued in its annual or biennial report submitted to FEMA.

- E. **Procedures.** The procedures applicable for a decision regarding approval of an exception include [Sec. 35-920-3, Application Submittal](#), through [Sec. 35-920-8, Conditional Approval](#).

Effective on: 4/18/2018

Subsec. 35-930-3F Telecommunication Structure

- A. **Generally.** This UDO regulates the placement, construction, and modification of telecommunication structures. There are different types of approval processes required depending on whether the structure is located in a residential, nonresidential, or another zoning district.
- B. **Applicability.** A telecommunication structure requires a quasi-judicial permit if it is erected upon any parcel of land, or upon any antenna support structure, where it requires a conditional use set out in [Sec. 35-230-2, Residential Districts and Uses](#).

- C. **Review Criteria.** The BZA will consider a conditional use permit application or a development plan amendment subject to the requirements set out in [Subsec. 35-930-3B](#), *Conditional Use Permit*, and will also take into account the following additional standards:
 - 1. Whether substantial evidence exists to demonstrate that existing or approved telecommunication structures or antenna support structures are unsuitable for collocation or to serve the proposed service area; and
 - 2. Whether the proposed telecommunication structure has incorporated a reasonable level of stealth design to minimize the visual impact of the telecommunication structure(s), given the type of telecommunication structure and the character of the area in which the structure(s) is proposed to be located.
- D. **Scope of Approval.**
 - 1. *Approval.* Upon approval of a conditional use permit or an amendment to a Master Development Plan or a Preliminary or Final Development Plan, an applicant for a telecommunication structure may proceed in filing other applicable applications or for other required permits, or may proceed with the placement, construction, or modification of the structure as applicable.
 - 2. *Denial.* If an conditional use permit is denied, the applicant may to appeal to the courts as provided by law.
 - 3. *Written Findings Required.* The Zoning Administrator will create a written record of the review proceedings, and all decisions will be supported in writing setting forth the reasons for approval or denial.
- E. **Procedures.** The procedures applicable to this approval include [Sec. 35-920-3](#), *Application Submittal and Completeness*, through [Sec. 35-920-8](#), *Conditional Approval*.

Effective on: 4/18/2018

Subsec. 35-930-3G, Variance

- A. **Generally.** Variance procedures provide means by which relief may be granted from unforeseen applications of this UDO. In specific cases, a variance from the terms of this UDO may be granted by the BZA provided the variance will not be contrary to the public interest, and where, due to special conditions, a literal enforcement of this UDO, in an individual case, results in unnecessary hardship, provided that the spirit of this UDO must be observed, public safety and welfare secured, and substantial justice done. A variance does not permit a prohibited use. Only when such hardships or difficulties are not appropriate for remedy pursuant to other provisions of this UDO is a variance appropriate.
- B. **Applicability.** The provisions of this Subsection are applicable to any instance whereby an unnecessary hardship is caused by the strict interpretation and application of this UDO.
- C. **Review Criteria.**
 - 1. *Application.* An application for a variance, must be filed with and on the forms provided by the Zoning Administrator. The application must contain in complete form all information requested on the form(s), as well as such additional information as may be requested by the Zoning Administrator. With the application, the applicant must provide a complete and correct list of all owners of record of all property located within 200 feet of the boundaries of the property on which the proposed variance would be located.
 - 2. *Criteria.* The BZA may not grant a variance unless the BZA, in each case, makes written findings of fact, based upon the particular evidence presented to it, that all of the following standards have or will be met:
 - a. The variance arises from such condition which is unique to the property and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant;
 - b. Granting the variance will not adversely affect the rights of adjacent property owners or residents;
 - c. The strict application of this UDO from which a variance is requested will constitute unnecessary hardship upon the property owner;

- d. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
 - e. Granting the variance will not be opposed to the general spirit and intent of this UDO.
3. *Matters not Subject to a Variance.* Some variances are not within the jurisdiction of the BZA, including:
- a. Building code variances (variances to the requirements of adopted standardized building codes and amendments to such codes that are adopted by the City and amended from time to time);
 - b. Variances from the terms of one or more conditions of approval imposed by an administrative body described in [Division 35-810, Bodies Established](#). Modifications to conditions of approval must be sought from the body that granted the approval.
 - c. Variances that would have the effect of making existing nonconforming or illegal construction (buildings and structures), site improvements, parking, signage, lighting, or landscaping conforming. Nonconforming situations are subject to the requirements of Article 35-10, *Nonconformities*.
 - d. Variances that would allow a prohibited use or which would constitute a change in district boundaries;
 - e. Variances used to modify any requirements set out in [Sec. 35-240-3, Standards for Limited and Conditional Uses](#); and
 - f. Variances used to vary state or federal laws or regulations unless such authority is expressly granted to the City.

D. Scope of Approval.

- 1. *Conditions and Restrictions.* The BZA may impose conditions, safeguards, and restrictions upon the premises benefited by the variance to comply with the standards of this Subsection, and to carry out the purposes of this UDO. Failure to comply constitutes a violation of this UDO.
- 2. *Decisions and Records.* A final decision of the BZA occurs upon the majority vote on the variance request at a public hearing. The BZA will render a written decision without unreasonable delay after the close of the hearing. The Zoning Administrator will maintain complete records of all actions of the BZA with respect to applications for variances.
- 3. *Period of Validity.* No variance granted by the BZA may be valid for a period longer than 180 days from the date on which the BZA grants the variance, unless within such 180-day period:
 - a. A building permit is obtained and the construction, moving, or remodeling of a structure is started; or
 - b. A use is commenced or continued pursuant to the variance.
- 4. *Extension.* The BZA may grant additional extensions not exceeding 180 days each, upon written application, without notice or hearing.

E. **Procedures.** The procedures applicable for a decision regarding the granting of a variance include [Sec. 35-920-3, Application Submittal](#), through [Sec. 35-920-8, Conditional Approval](#).

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Sec. 35-930-4, Subdivision Applications

Subsec. 35-930-4A, Concurrent Plat

- A. **Generally.** For the subdivision of a small tract, a concurrent plat process may be used to consolidate the processes of Preliminary and Final Plats.
- B. **Applicability.** This Subsection applies to the subdivision of land for five or fewer lots where this is to dedication of public rights-of-way proposed.

- C. **Review Criteria.** The application must contain all the documents required for both Preliminary and Final Plats and must be reviewed, simultaneously, in the same manner required for Preliminary and Final Plats.
- D. **Scope of Approval.** Approval of a Concurrent Plat is consistent with that of a Final Plat, excluding the responsible Governing Body's acceptance of rights-of-way, easements, and public land dedication.
- E. **Procedures.** The procedures applicable to Concurrent Plat approval include [Sec. 35-920-3, Application Submittal](#), through [Sec. 35-920-8, Conditional Approval](#), applicable as set out in [Subsec. 35-930-4E, Preliminary Plat](#).

Effective on: 4/18/2018

Subsec. 35-930-4B, Final Plat or Replat

D. Generally.

- 1. *Period of Validity.* A Final Plat application must be submitted within the two-year period of validity of the Preliminary Plat, as may be extended.
- 2. *Replats.* An application for a Replat may be submitted at any time for all, or a portion, of a parcel controlled by a recorded Final Plat. The review and approval of a Replat is the same as a Final Plat, except a Replat will not be deemed "complete" if all, or any portion, of the tract proposed for the Replat has been approved by the Zoning Administrator, which establishes how the special assessments are to be re-apportioned on the tract to be replatted.

- E. **Applicability.** Following approval of a Preliminary Plat, the next step in the subdivision of land is a Final Plat, which applies to land within the **Urban Area**. A Final Plat is reviewed and recommended by the responsible Zoning Administrator and approved or denied by the MUAPB, with the acceptance of rights-of-way, easements, and land dedication by the responsible Governing Body.

F. Review Criteria.

- 1. *Application.* Upon receipt of an application, the responsible Planning Department will review the application to determine if the Plat substantially conforms with the approved Preliminary Plat and any conditions or requirements of the MUAPB and complies with the UDO currently in effect. If the plat conforms, the plat will be placed on the agenda of the MUAPB. If the Final Plat does not conform, the responsible Planning Department will notify the subdivider of the discrepancies and the action necessary to obtain conformance. Upon receipt of notification, the subdivider may:
 - a. Take the suggested action and resubmit the application for Plat approval;
 - b. Request that the application be scheduled with the MUAPB to determine conformance;
 - c. Request the application be considered for approval of a Preliminary/Final Plat in one action, whereby the requirements of [Sec. 35-920-6, Public Notice](#), apply.
- 2. *Completeness Review.* The Final Plat or Replat will be deemed "complete" when the responsible Planning Department determines the plat is in substantial conformance with the Preliminary Plat and complies with the UDO in effect at the time, or when the subdivider makes a written request.

G. Scope of Approval.

- 1. *Required Approval.* The MUAPB must approve the Final Plat under the following conditions.
 - a. *Substantial Conformance.* It is in substantial conformance with the approved Preliminary Plat, including all conditions or requirements of the MUAPB, and, the Final Plat complies with all requirements of the UDO in effect as of the date of final approval.

- b. *Timing of Determination.* The MUAPB must determine substantial conformance within 60 calendar days after the first meeting of the MUAPB. If a determination is not made within this period, the Final Plat will be deemed "approved", unless the subdivider has agreed, in writing, to an extension of the 60 calendar day period.
 - c. *Once Approved.* Upon approval, a Final Plat will be endorsed to indicate it has been approved by the MUAPB and a certificate of such approval will be issued by the responsible Zoning Administrator, upon demand.
 2. *Conditional Approval.* If events occurred subsequent to approval of the Preliminary Plat, which raise issues the MUAPB believes should be addressed pursuant to this Subsection, the MUAPB may make such requirements as permitted for a Preliminary Plat.
 3. *Denial.*
 - a. *Factors Set Out in Writing.* If the MUAPB determines that a Final Plat or Replat does not comply with the UDO in effect at the time, or does not conform to the Preliminary Plat, or both, the MUAPB may deny the Final Plat. In such event, the MUAPB will set forth in writing its order of denial, which will also set forth the factors the MUAPB relied upon in making such determination.
 - b. *Resubmittal.* If the MUAPB enters an order denying a Final Plat or Replat, it may also set a period of time within which the subdivider may resubmit the Plat, with amendments, for reconsideration by the MUAPB.
 4. *Actions Taken.*
 - a. *Acceptance of Rights-of-Way, Easements, and Dedicated Land.* Before a Final Plat or Replat is recorded, it will be submitted to the responsible Governing Body for consideration of the acceptance of streets and other public ways, service and utility easements, and land dedicated for public use.
 1. *Corporate Limits.* When a Final Plat or Replat is within the corporate limits, acceptance of dedications will be shown over the signature of the Mayor or any other City official duly authorized to act during the absence or disability of the Mayor and attested by the City Clerk.
 2. *Urban Area or Urban Service Area.* When a Final Plat or Replat is located in the unincorporated areas of the County, acceptance of dedications will be submitted and shown over the signatures of the County Commission and attested by the County Clerk.
 - b. *Timing of Acceptance.* The responsible Governing Body must accept or refuse the dedication of land for public purposes within 30 calendar days after the first regularly scheduled meeting, following the date of official submission of the Plat. The responsible Governing Body may defer action for an additional 30 calendar days to allow for modifications in order to comply with the requirements.
 - c. *Deferral or Refusal.* If the Governing body defers or refuses any dedications, it will advise the subdivider and the MUAPB of the reasons for such deferral or refusal. The reasons must be solely related to the ownership, improvement, maintenance, and use of such dedicated land.
 - d. No Plat may be filed of record, or effective, if it contains dedications of land to the public that have not been accepted by the responsible Governing Body.
 5. *Recording.* Upon approval of a Final Plat, acceptance of all dedications, and submission of all documents, the responsible Planning Department will file the Final Plat with the appropriate Register of Deeds. If all documents have not been submitted within one year of the date upon which the appropriate Governing Body accepted the dedications, or within one year of the approval of the Final Plat, whichever is later, the approval of the Final Plat will be deemed "withdrawn" and the Final Plat will not be filed until it has been submitted again for approval.

H. **Procedures.** The procedures applicable to Final Plat approval include [Sec. 35-920-3, Application Submittal](#), through [Sec. 35-920-8, Conditional Approval](#), applicable as set out in this Subsection, and followed by the actions of the Governing Body to accept public rights-of-way, easements, and public land dedications.

Effective on: 4/18/2018

Subsec. 35-930-4C, Lot Split or Boundary Adjustment

A. **Generally.** The responsible Planning Department is authorized to review, and either approve or deny Lot Splits and Boundary Line Adjustments in accordance with the standards of this Subsection.

B. **Applicability.** This Subsection applies to the administrative process and approval to split or to adjust the boundary of a platted lot, without necessitating submission for a Replat.

C. **Review Criteria.**

1. *Consideration of Lot Splits.*

a. *Approval.* The responsible Planning Department will approve an application for dividing a lot into two lots, provided:

1. The original lot was not previously split;
2. Both new lots conform to the requirements of this UDO; and
3. The proposed split does not create lots that are out of character with the original subdivision.

b. *Denial.* A Lot Split will be denied if:

1. A vacation, modification, or addition of streets, alleys, setback lines, access control, or an easement is required or proposed;
2. Installation of a public facility is required or proposed;
3. The lot split will result in a lot without access to a street or to adequate services or which cannot meet floodplain requirements;
4. A substandard sized lot will be created according to this UDO or the sanitary code;
5. A newly created lot will not comply with this UDO;
6. Any newly created lot will be in violation of any applicable restrictive covenants filed of record (for which the responsible Department is entitled to rely on information provided by the applicant regarding the existence of restrictive covenants); and
7. Any other factor which fails to comply with the purposes of this UDO and the responsible Governing Body policies.

c. *Permit Issuance.* No building permit will be issued for a lot created by a Lot Split until the Lot Split has been approved by the responsible Planning Department.

d. *Timing of Decision.* The responsible Zoning Administrator will either approve, conditionally approve, or deny the Lot Split within 30 calendar days after submittal of the application. Upon approval, the applicant must prepare a Lot Split Survey, as described below.

2. *Consideration of Boundary Line Adjustments.*

a. *Approval.* The responsible Planning Department may approve a Boundary Line Adjustment, if the adjustment does not create lots that are out of character with the original subdivision, and all lots conform to the requirements of this UDO.

b. *Denial.* A Boundary Line Adjustment will be denied if the adjustment causes:

1. One or both lots to be substandard in size according to this UDO or the sanitary code;
 2. One or both lots to not comply with this UDO;
 3. One or both lots to be in violation of any applicable restrictive covenants filed of record, for which the responsible Department is entitled to rely on the information provided by the applicant regarding the existence of such restrictive covenants); and
 4. Any other factor to comply with the purposes of this UDO and the responsible Governing Body policies.
- c. *Timing of Decision.* The responsible Zoning Administrator will either approve, conditionally approve, or deny the Boundary Line Adjustment within 30 calendar days after submittal of the application. Upon approval, the applicant must prepare a Boundary Line Adjustment Survey, as described below.
- D. **Scope of Approval.** Upon approval, the applicant must prepare a Lot Split or Boundary Line Survey ("Survey") in accordance with the approval of the application. The Survey must indicate, as a title, that it is a Lot Split or Boundary Line Adjustment of _____ subdivision. The Survey must be prepared in the same manner, with all of the same information, where applicable, as a Final Plat. In addition, all documents required to be submitted with a Final Plat must also be submitted with a Survey, which must contain:
1. A certification by the responsible Zoning Administrator indicating that it has been submitted to, and approved by, the responsible Planning Department pursuant to this UDO.
 2. A surveyor's certification indicating that such person is duly licensed by the applicable authority and that the property was surveyed in accordance with all applicable rules and laws, duly acknowledged by a notary public, and in a form approved by the responsible Planning Department; and
 3. *Filing.* The responsible Planning Department will file the Lot Split or Boundary Line Adjustment Survey with the appropriate Register of Deeds when all requirements of this Subsection have been met. If these requirements have not been met within one year of the approval, the approval will be deemed "withdrawn" and the Survey will not be filed without a re-approval by the responsible Planning Department.
- E. **Procedures.** The procedures applicable to this approval include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-4, Administrative Review](#).

Effective on: 4/18/2018

Subsec. 35-930-4D, Public Improvement Acceptance

- A. **Generally.** The responsible Governing Body may include part, or all, of any subdivision within a benefit district to finance the construction of public improvements necessary to serve a subdivision, whether or not these improvements are located within, or without, the subdivision.
- B. **Applicability.** All public improvements necessary to serve a subdivision, such as, but not limited to, streets, sidewalks, storm sewers, utilities, drainage improvements, etc., must be constructed and financed pursuant to the policies, rules, regulations, and laws of the responsible Governing Body, and also pursuant to this UDO, where applicable.
- C. **Review Criteria.** The responsible Governing Body will comply with all applicable rules, regulations, ordinances and statutes in the creation of a benefit district.
- D. **Scope of Approval.** The MUAPB may make written recommendations to the responsible Governing Body concerning any factor deemed relevant related to the construction or financing of public improvements necessary to serve an approved subdivision. Such recommendations is not binding on the Governing Body and will not affect the approval of the plat. In addition to such recommendations, the MUAPB may deny approval of a plat, or condition such approval, based upon a finding that necessary public facilities or services will not be available to the platted area within a reasonable time, pursuant to [Subsec. 35-930-4E, Preliminary Plat](#).

- E. **Procedures.** The procedures applicable to the acceptance of public improvements include [Sec. 35-920-4, Administrative Review](#), and [Sec. 35-920-7, Public Meetings and Hearings](#), provided that a public hearing or notice is not required.

Effective on: 4/18/2018

Subsec. 35-930-4E, Preliminary Plat

- A. **Generally.** A preliminary plat is required for the subdivision of land into two or more tracts, parcels, or lots. A sketch plat may be submitted prior to or during a pre-application meeting.
- B. **Applicability.** The first step in the subdivision of land is a preliminary plat, which applies to land within the **Urban Area**. A Preliminary Plat is reviewed and recommended by the responsible Zoning Administrator and approved or denied by the MUAPB.
- C. **Review Criteria.**
1. *Application.* The subdivider must submit an application, on forms provided by the responsible Planning Department, for the review and approval of a Preliminary Plat. The responsible Planning Department may provide for submission deadlines for materials required in support of an application.
 - a. *Corporate Limits.* If the land proposed to be subdivided is within the corporate limits of Manhattan, the application must be submitted to the City's Community Development Department.
 - b. *Urban Service Area.* If the land proposed to be subdivided is located within the **Urban Service Area**, the application must be submitted to the City's Community Development Department and the County's Planning and Development Department ("responsible Planning Department"). These Planning Departments will coordinate the review of such applications.
 - c. *Urban Area.* If the land proposed to be subdivided is located in the **Urban Area**, the application shall be submitted to the responsible Planning Department.
 2. *Concept Plan Required.* The MUAPB may require submittal of a concept plan when the land proposed for subdivision:
 - a. Is a portion of the contiguous land that is under the same ownership;
 - b. Is contiguous to land outside of the **Urban Area**; or
 - c. Is adjacent to land that is significantly constrained.
 3. *Benefit District.* If the land proposed to be subdivided is subject to special assessments imposed by the City, the application will be deemed incomplete until the subdivider has submitted a plan and its has been approved by the Zoning Administrator, which establishes how the special assessments are to be re-apportioned on the tract upon platting. The plan must include written approval of all owners of the tract and must be consistent with the original resolution creating the benefit district and the ordinance levying the special assessments. If the proposed Preliminary Plat is modified after approval of the plan, the plat will not be approved until the plan is resubmitted and re-approved.
 4. *Public Hearing.* In arranging for a public hearing, the methods of notice must be conducted as set out in [Sec. 35-920-6, Public Notice](#).
- D. **Scope of Approval.**
1. *Required Approval.* The MUAPB must approve the Preliminary Plat if:
 - a. *Comprehensive Plan.* The plat presents an overall development pattern that is consistent with the policies and goals of the Comprehensive Plan;
 - b. *UDO Requirements.* The proposed Preliminary Plat conforms with the requirements of this UDO;
 - c. *Public Facilities.* There is no indication from providers of public facilities or services that their facilities or services, including but are not limited to, sanitary sewer, water, streets, storm sewer, fire protection, police

protection, schools, electricity, and phone service, will not be available to the platted area within a reasonable period of time;

- d. *Floodway or Floodway Fringe.* The plat conforms to all requirements established by the MUAPB;
 - e. *Layout.* The plat contains a sound, well-conceived parcel and land subdivision layout, including consideration of the land contiguous to the land proposed for subdivision, that is consistent with good land planning, site engineering design principles, and the requirements of [Article 35-5, General Subdivision Design Standards](#);
 - f. *Engineering Practice and Public Safety.* The spacing and layout of proposed streets, curb cuts, intersection locations, medians, and the number and location of ingress and egress points to the land covered by the plat are consistent with good traffic engineering design and public safety considerations; and
 - g. *Health, Safety, and General Welfare.* The subdivider has made every reasonable effort to mitigate the impact of the proposed subdivision on the public health, safety and general welfare, including off-site impacts caused by increased traffic volume and altered traffic flow.
2. *Conditional Approval.* The MUAPB may conditionally approve or deny a Preliminary Plat if:
 - a. The subject property has physical characteristics that will significantly, and adversely, impact the public health, safety, and general welfare of the future users of the site or adjacent areas; and
 - b. Such circumstances are not adequately addressed in this UDO, but reasonably would have been, if they had been known or considered at the time of adoption.
 3. *Revised Plat.* A Preliminary Plat that is conditionally approved must be revised and resubmitted consistent with the conditions approved by the MUAPB, prior to the submission of a Final Plat.
 4. *Flood Prone Areas.*
 - a. *Engineering Study.* Prior to the approval of a Preliminary Plat, the MUAPB may require the subdivider to submit an engineering study of the impact of a flood on any flood prone area not delineated as a Floodway or Floodway Fringe District. The MUAPB must review the plat to determine if the subdivision proposal will be reasonably safe from flooding and may impose construction standards consistent with the need to protect those flood-prone areas identified in the study. In order to be reasonably safe:
 1. Residential development must be constructed on non-settling fill so that the lowest enclosed floor, including a basement of the dwelling would be at least one foot above the flood elevation determined by the concurrent engineering study; and
 2. Commercial or industrial development must be constructed on non-settling fill so that the lowest enclosed floor is at least one foot above the determined flood elevation, or flood-proofed to at least one foot above the determined flood elevation.
 - b. *Review.* The MUAPB must review the plat to assure that:
 1. It is consistent with the need to minimize flood damage within the flood-prone area;
 2. All public utilities and facilities, such as sewer, gas, electrical, water and streets are located and constructed to minimize or eliminate flood damage; and
 3. Adequate drainage easements are provided to reduce exposure to flood hazards.
 - c. *Denial.* The MUAPB may deny a plat in unique circumstances where the facts indicate that due to frequency or severity of flooding, flood depths, or flood velocities, the proposed plat cannot provide lots that are safe from the effects of flooding.
 5. *Actions Taken.*
 - a. *Inaction.* If the MUAPB fails to approve, conditionally approve, or deny a Preliminary Plat within 90 calendar days after the date of the first public meeting on the plat, then the plat is deemed approved, as submitted, unless the MUAPB, for good reasons stated, extends such time frame for a period not to exceed an

additional 90 calendar days. If the MUAPB fails to take action within the extended period, the Preliminary Plat is deemed "approved", as submitted.

- b. *Once Approved.* Upon approval, a Preliminary Plat will be marked to indicate it has been approved by the MUAPB. A revised plat will be reviewed by the responsible Planning Department to determine its compliance with the requirements of the MUAPB, which will be marked accordingly.
- c. *Approval is Not Acceptance.* Approval of the Preliminary Plat by the MUAPB does not constitute final acceptance of the subdivision but is merely an authorization to proceed to the preparation of the Final Plat.
- d. *Automatic Renewal and Expiration.* For Preliminary Plats that will be developed in phases, the approval of the initial and subsequent Final Plats for phases of the project extends the period of validity for the remaining portion of the Preliminary Plat for a period of two years after the date of approval of the Final Plat. Each two-year extension runs from the date of the latest Final Plat approval. Extension periods are not cumulative. If a Final Plat for a phase of the development is not submitted and approved during the two-year period, the original Preliminary Plat, together with any submitted but unapproved Final Plat applications are deemed "expired".

6. *Period of Validity.*

- a. *Original or Extended Period.* An approved Preliminary Plat will be effective for a period of two years. Before the expiration of the two-year period, the subdivider may request and the MUAPB may extend the period of validity for another period of two years.
- b. *Timing of Final Plat(s).* An application for a Final Plat must be submitted within the two-year period, including any extensions. If an application is not filed, the Preliminary Plat will be automatically deemed "withdrawn". For good cause shown, the MUAPB may allow the reinstatement of the Preliminary Plat approval. If the approval is withdrawn, and not reinstated, in order to be approved, the proposed subdivision must be reprocessed as a Preliminary Plat pursuant to this UDO.
- c. *Phasing.* If an application requests approval of a Final Plat, for only a portion of the area covered by the Preliminary Plat, and such request is approved, the original Preliminary Plat will be considered in phases. Upon approval of a Final Plat, the approved portion will be Phase 1, and the balance of the Preliminary Plat will be considered Phase 2. The period of validity for approval of Phase 2 will be two years, commencing on the date of approval of the Final Plat of Phase 1. The process for the approval of a Final Plat for Phase 2 will be the same as for the original Preliminary Plat, including but not limited to, any request for an extension of the period of validity, and including the continued phasing of Phase 2, into more phases.

7. *UDO Conformance.* Notwithstanding the period of validity established in Paragraph 6 above, every plat must conform to the UDO applicable at the time of Final Plat approval, except that any such plat will be exempt from any subsequent amendments to the UDO rendering the Preliminary Plat nonconforming as to bulk, lot size or use regulations, provided that the Final Plat approval is obtained within the period of validity of the Preliminary Plat.

E. **Procedures.** The procedures applicable to Preliminary Plat approval include [Sec. 35-920-1, Pre-Application Conference](#), through [Sec. 35-920-8, Conditional Approval](#), applicable as set out in this Subsection.

Effective on: 4/18/2018

Subsec. 35-930-4F Subdivision Variance

A. **Generally.** Concurrent with the submittal of a Preliminary or Final Plat, or prior to final action on the plat, an applicant may request a variance from the provisions in [Division 35-510, General Lot and Subdivision Standards](#). The variance request must specifically state the provisions from which a variance is requested and the justification for the request.

- B. **Applicability.** The MUAPB may grant variances from the requirements of [Division 35-510](#), *General Lot and Subdivision Standards*, as provided in this Subsection, if the MUAPB makes the findings set forth in Paragraph C, below. No variance may violate any policy or purpose of this UDO or vary any zoning regulation. No variance may be granted with Lot Splits or Boundary Line Adjustments.
- C. **Review Criteria.** The MUAPB must base its approval, conditional approval, or denial on the following:
 1. *Public Interest.* Granting approval of the variance will is not be detrimental to the public health, safety or general welfare or be injurious to adjacent property.
 2. *Unique Characteristics.* There are unique physical characteristics of the property for which the variance is sought and not generally applicable to other property.
 3. *Unnecessary Hardship.* Due to the unique physical characteristics of the property, its shape or topography, an unnecessary hardship to the subdivider would result, as distinguished from a mere inconvenience, and such hardship is not based solely on economics.
 4. *No Conflict.* The granting of the variance would not substantially conflict with any other provision of this UDO or the Comprehensive Plan.
- D. **Scope of Approval.**
 1. *Conditions and Restrictions.* The MUAPB may impose conditions, safeguards, and restrictions upon the premises benefited by the variance to comply with the standards in this Subsection, and to carry out the purposes of this UDO. Failure to comply constitutes a violation of this UDO.
 2. *Decisions and Records.* A final decision of the MUAPB occurs upon the majority vote on the variance request at a public hearing. The MUAPB will render a written decision without unreasonable delay after the close of the hearing. The Zoning Administrator will maintain complete records of all actions of the MUAPB with respect to applications for variances.
- E. **Procedures.** The procedures applicable for issuance of a subdivision variance include [Sec. 35-920-3](#), *Application Submittal and Completeness*, through [Sec. 35-920-8](#), *Conditional Approval*, as applicable.

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Subsec. 35-930-4G, Subdivision Waiver

- A. **Generally.** Concurrent with the submittal of a Preliminary or Final Plat, or prior to final action on the plat, an applicant may request a waiver of the provisions in [Sec. 35-510-8](#), *Easements*, relating to underground utilities. The waiver request must specifically state the provisions from which a waiver is requested and the justification for the request.
- B. **Applicability.** This Subsection applies to all subdivision of land required to install underground utilities.
 1. *Applicable Conditions.* A waiver application may be submitted if physical conditions of the land, or economic conditions associated with the nature of the subdivision in question, make underground installation infeasible. Such request must be accompanied by a report from the responsible public utility stating the per linear foot cost differential between the average cost for installation of underground utilities and the estimated cost at the subdivision.
 2. *Temporary Services.* The responsible Planning Department may grant special permission regarding the provisions in [Sec. 35-510-8](#), *Easements*, relating to underground utilities in cases where temporary electrical power or communication service is reasonably required for emergencies, building construction, or for other temporary purposes to erect, construct, install or maintain poles, wires, and other overhead structures for a period not to exceed 120 days.

3. *Extension of Temporary Services.* In the event the special permission for temporary services cannot be completed within the 120-day period, because of a shortage of material, natural disaster, strikes or payment of which the City or County may become liable to another person, or corporation by reason of any negligence by the utility in the construction, maintenance, and operation of its utility system within the City or County, then upon written request to the responsible Planning Department, the time may be extended an additional temporary period or periods necessary to allow completion of such construction.
- C. **Review Criteria.** The Zoning Administrator, in coordination with the Public Works Director, must recommend and the MUAPB must approve or deny based on the following relevant factors:
1. *Public Interest.* Approval of the waiver is not detrimental to the public health, safety or general welfare or injurious to adjacent property.
 2. *Unique Characteristics.* There are unique physical characteristics of the property for which the waiver is sought and not generally applicable to other property.
 3. *Unnecessary Hardship.* Due to the unique physical characteristics of the property, its shape or topography, an unnecessary hardship to the subdivider would result, as distinguished from a mere inconvenience, and such hardship is not based solely on economics.
 4. *No Conflict.* The granting of the waiver would not substantially conflict with this UDO or the Comprehensive Plan.
- D. **Scope of Approval.** The MUAPB will review the request and either approve or deny the waiver.
- E. **Procedures.** The procedures applicable for issuance of a subdivision waiver include [Sec. 35-920-3, Application Submittal and Completeness](#), and [Sec. 35-920-7, Public Meetings and Hearings](#), provided that a public hearing or notice is not required.

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Division 35-940, Submittal

The required submittal information and materials are provided in the Development Guidebook maintained by the responsible Planning Department.

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