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**12-306-1 ACCESSORY DWELLING UNITS.**

**12-306-1.01 Purpose**

Accessory Dwelling Units are allowed in certain situations to create additional housing options for a relative/family member, caregiver, or farm employee while maintaining the rural character of unincorporated Douglas County.

**12-306-1.02 Occupancy.**

- a. The Accessory Dwelling Unit shall be occupied by one of the following for not less than three years following the issuance of the certificate of occupancy for the Accessory dwelling Unit:
  - (1) a relative/family member,
  - (2) a caregiver, or a
  - (3) farm employee.
  
- b. An Affidavit of Occupancy shall be provided to the Zoning and Codes Director prior to the issuance of a Certificate of Occupancy.
  
- c. The length of occupancy can be reduced in the instance that the Accessory Dwelling Unit was occupied initially by a relative and the relative is deceased or the Accessory Dwelling Unit was initially occupied by a caregiver and the recipient of the care no longer lives in the home or is deceased.

**12-306-1.03 Means of Establishment**

An Accessory Dwelling Unit may be established by one of the following means:

- a. Conversion of existing space within a principal dwelling or construction of an addition to a principal dwelling.
  
- b. Conversion of existing space within an accessory structure or construction of an addition to an accessory structure.
  
- c. Construction of a separate accessory structure which will include the Accessory Dwelling Unit.

**12-306-1.04 Standards that apply to all Accessory Dwelling Units:**

- a. One Accessory Dwelling Unit is permitted on a vested parcel, platted lot or a Residential Development Parcel, which contains a dwelling. This dwelling will be considered the principal dwelling.
  
- b. An Accessory Dwelling Unit shall not be allowed within, or attached to, a mobile home but may be allowed within a manufactured home.
  
- c. All Accessory Dwelling Units, whether new construction or conversion of existing space, shall comply with the Douglas County Construction Codes.
  
- d. An Accessory Dwelling Unit may be located within a structure which the Zoning and Codes Director has determined is a legal nonconforming structure with respect to building height or setbacks provided any addition to the structure does not extend or increase the degree of nonconformity.
  
- e. The Accessory Dwelling Unit, if located in a newly constructed detached accessory structure, shall be located a minimum distance of 25 ft from the primary structure.

- f. An Accessory Dwelling Unit that is located within, or attached to, the principal dwelling may utilize the same septic system as the principal dwelling provided the septic system is adequately sized per the Douglas County Health Department requirements.
- g. Solid waste management systems for Accessory Dwelling Units must comply with the Douglas County Sanitary Code.
- h. The Accessory Dwelling Unit and the principal dwelling unit shall share a common access point on the adjacent road unless site conditions prohibit the use of the shared access point. In that case, a separate entrance requires approval by the County Engineer. To the greatest extent feasible, existing access points shall be utilized.
  - 1) A shared access point/driveway must be used whenever possible to maintain the appearance of a single dwelling.
- i. An Accessory Dwelling Unit may have an area of up to 1,000 sq ft. This area may be increased to 1,400 sq ft provided the area of the Accessory Dwelling Unit is not greater than 80% of the area of the primary dwelling.
- j. Separate sale or ownership of an Accessory Dwelling Unit is prohibited, unless the parcel or lot is subdivided in accordance with the Subdivision Regulations, creating a separate lot or Residential Development Parcel for each dwelling.
- k. The accessory dwelling unit shall not be used as a short term lodging use such as a bed & breakfast.
- l. An Accessory Dwelling Unit is subject to the same occupancy limits as the principal dwelling. (one family, or group living as a household unit--limited to 4 adults if any of the residents are not related).
- m. The following area requirements apply to a detached Accessory Dwelling Unit:
  - 1) A minimum of 3 acres outside the regulatory floodplain must be provided for the septic systems of the principal dwelling and Accessory Dwelling Unit (6 acres total) if the dwellings are served by Rural Water or other public water source.
  - 2) A minimum of 5 acres outside the regulatory floodplain must be provided for the septic systems of the principal dwelling and Accessory Dwelling Unit (10 acres total) if the dwellings are served by well water.

**12-306.1.05 Additional Standards for Accessory Dwelling Units in the AG-2 and CP Districts:**

- a. The Accessory Dwelling Unit, if detached, should be located behind the front plane of the principal dwelling whenever possible.
- b. Either the Accessory Dwelling Unit or the principal dwelling shall be occupied by the owner of the property.

**12-306.1.06 Accessory Dwelling Unit Permit:**

Accessory Dwelling Units must be permitted by the Zoning and Codes Director prior to their

establishment. This process is administrative unless the Accessory Dwelling Unit is located on a property which also has a Conditional Use or a Type 2 Home Occupation.

- a. The Permit application, available from the Zoning and Codes Office, shall be provided to the Zoning and Codes Office along with a plot plan with the following information, at a minimum:
  - 1) Locations of both the principal and accessory dwellings;
  - 2) Property boundaries. For large properties, the boundaries in the area of the dwellings may be shown;
  - 3) The distance between the structures and the property boundaries.
  - 4) Location of access drive.
  - 5) Area and height of the principal and accessory dwellings.
  - 6) Locations of the septic system(s);
- b. The Zoning and Codes Director shall review the application to insure compliance with the Accessory Dwelling Unit Standards and the required setbacks.
- c. When approved, the permit is completed with the filing of an Affidavit of Occupancy with the Zoning and Codes Director.
  - 1) The affidavit shall note that the occupant of the Accessory Dwelling Unit shall be either a relative/family member, caregiver, or farm employee for not less than 3 years after the Certificate of Occupancy is issued for the Accessory Dwelling Unit.
  - 2) In the AG-2 and CP Districts, the affidavit shall also note the requirement that one of the dwelling units is to be occupied by the owner of the property.
- d. Accessory Dwelling Unit Permit requiring Board of County Commission Approval.  
A permit for an Accessory Dwelling Unit on a property with a Conditional Use Permit or a Type 2 Rural Home Occupation Business may not be administratively approved, but requires approval by the Board of County Commissioners.
  - 1) The permit application shall be reviewed by the Zoning and Codes Director for compliance with the standards in this section and a recommendation forwarded to the Board of County Commissioners.
  - 2) The Board of County Commissioners may approve the Accessory Dwelling Unit in addition to the other uses on the property if they determine the combined uses are compatible with nearby land uses.
  - 3) The applicant shall provide written notice of the Accessory Dwelling Unit as noted below:
    - i. The applicant shall obtain a list of property owners within 2,640 ft of the vested parcel, Residential Development Parcel, or platted lot on which the Accessory Dwelling Unit is proposed from the Douglas County Clerk's Office. If the notification area includes land within the corporate limits of a city, the list shall

extend 400 feet into the city. If the notification area extends into the adjacent County, notice must be sent to property owners in the adjacent County.

- ii. The applicant shall mail a letter which contains the information below to the property owners on the list to advise them of the proposed Accessory Dwelling use and provide them the opportunity to contact the applicant or the Zoning and Codes Department if they have questions:

*“An Accessory Dwelling Unit at \_\_\_\_\_(ADDRESS)\_\_\_\_\_ is in the process of being permitted by Douglas County. The property at \_\_\_\_\_(ADDRESS)\_\_\_\_\_ also contains \_\_\_\_\_(NAME OF BUSINESS)\_\_\_\_\_ a Type 2 Rural Home Occupation Business or Conditional Use and therefore requires approval of the Douglas County Board of County Commissioners. Please contact me at \_\_\_\_\_(PHONE NUMBER, EMAIL ADDRESS)\_\_\_\_\_ with any questions regarding this registration or the Douglas County Zoning and Codes Department at 785-331-1343 for information.”*

- iii. A copy of the notification letter, the certified property owner list, and certification of the dates the letters were mailed to the addresses on the list shall be included with the Accessory Dwelling Unit registration materials noted in Section 12-306-1.06(a).
  - iv. The Accessory Dwelling Unit permit application will be placed on a Board of County Commissioner’s agenda for consideration a minimum of 20 days following the date of the letter.
- 4) When approved, the permit is completed with the filing of an Affidavit of Occupancy with the Zoning and Codes Director that includes the legal description of the property and identifies the structure as an Accessory Dwelling Unit subject to the standards in Section 12-306-1 of the Zoning Regulations.
- i. The affidavit shall note that the occupant of the Accessory Dwelling Unit shall be either a relative/family member, caregiver, or farm employee for not less than 3 years after the Certificate of Occupancy is issued for the Accessory Dwelling Unit.
  - ii. In the AG-2 and CP Districts, the affidavit shall also note the requirement that one of the dwelling units is to be occupied by the owner of the property.

**12-306-2            ACCESSORY STRUCTURES:**  
**12-306-2.01        Construction and Use**

Accessory structures shall be constructed in conjunction with or after the principal building and no accessory structure shall be used when the main building on the eligible parcel is not being used with the following exceptions:

- a. A temporary Certificate of Occupancy has been issued by the Zoning and Codes Director for use as storage or temporary dwelling during an active building permit.
- b. An accessory structure located without a principal structure on a Residential Development Parcel (RDP) as a result of a Certificate of Survey may continue to be used until the Residential Development Parcel has transferred to different ownership; however, the use will be regulated as a nonconforming use per Section 12-308-2.

- c. A structure that is accessory to a use of the land, such as a shed for athletic equipment on a property with an athletic field.

**12-306-2.02 Accessory Structure Standards**

- a. Accessory structures shall not be constructed or placed within a dedicated easement.
- b. Accessory structures shall be constructed on the same lot or parcel as the principal structure or use of the land.
- c. An accessory structure shall be used for a use that is accessory to the use of the principal structure or the land.
- d. Off-site fabricated storage structures or containers, including steel cargo containers can be used as accessory structures provided the following standards are met:
  - 1) The structures/containers shall be securely anchored, per building code.
  - 2) The structures are not permitted in regulatory floodplain, unless approved with a floodplain development permit and securely anchored with an engineered tie-down system.
  - 3) No stacking of containers is allowed.
  - 4) The structures/containers are painted and well maintained.
  - 5) No more than two structures/containers are permitted on a property.
  - 6) The structures/containers are subject to the structure setbacks applicable to the zoning district in which the container is located and shall be located behind the front plane of the house on residentially developed properties or properties zoned AG-2 or CP.

**12-306-3 AGRICULTURE**

Agricultural uses which meet the exemption criteria of Resolution 08-25 are exempt from the provisions of these Regulations except as noted below:

- a. Agricultural structures must comply with the Floodplain Management Regulations and setbacks from adjacent road right-of-way.
- b. An Agricultural Use Exemption application for an agricultural building must be submitted to the Zoning and Codes Office prior to construction so the exempt status can be documented.

**12-306-4 HOBBY FARM**

The following standards apply to this use in the CP Zoning Districts:

- a. A Hobby Farm is permitted, to such an extent as not to be objectionable to surrounding residents by reason of odor, dust, noise, or other factors.
- b. No retail or wholesale business office or store shall be maintained on the property.

### **12-306-5 AGRITOURISM**

Agritourism is recognized as a vital tool for sustaining the family farm and represents significant economic potential for the community in general. These regulations are intended to foster and promote agritourism in keeping with the State of Kansas policy of encouraging agritourism, while ensuring that the public health, safety, and welfare are protected.

#### **12-306-5.01 Purpose**

- a. Agritourism profits from the rural experience and should be designed and operated in such a manner as to maintain or enhance the rural character. These regulations were developed to allow Agritourism within the Agricultural Zoning District with adequate review to insure compatible development with the nearby land uses and the character of the area.
- b. Agritourism uses which meet the definition set forth in these Regulations and are registered with the State and with the County may occur as permitted in this section without any additional review under Section 12-307-2, Conditional Use Permits; Section 12-307-3, Site Plan Regulations; or Section 12-306-39, Special Event Permits, although other State and local regulations shall apply.

#### **12-306-5.02 Determination of use**

Agritourism Registration forms shall be jointly reviewed by the Director of Zoning and Codes and the Planning Director within 7 working days of submittal to determine if the proposed use(s) meet the definition of Agritourism set forth in these Regulations.

- a. If additional descriptive information is necessary for the determination, this information will be provided by the registrant and kept as a part of the registration.
- b. The applicant for the Agritourism registration may file an appeal from the Director's determination. Appeals from the determination shall be made to the Board of County Commissioners. An appeal must be filed within 30 days of notification of the determination to the applicant. The appeal will be considered at the next available Commission meeting.

#### **12-306-5.03 Levels of Agritourism Uses**

- a. Agritourism uses which the Zoning and Codes Director determines meet the definition of 'Agriculture,' provided in Section 12-315 are subject to Section 12-306.3 of these regulations.

- b. Tier 1 (low intensity) Agritourism Uses

Tier 1 Agritourism involves low intensity uses that are not expected to generate noise, or other impacts, to the level that they would have negative impacts on surrounding properties.

Tier 1 Agritourism uses include, but are not limited to the following:

- 1) Farmers Markets with 10 or fewer vendors,
- 2) Seasonal Corn Mazes and Pumpkin Patches visits and activities,
- 3) Farm-related Interpretative Facilities, Exhibits, and Tours,
- 4) Historical, Cultural, or Agriculturally Related Educational and Learning Experiences
- 5) Recreation-related Operations (Fishing, Hunting, Bird Watching, Hiking, etc.),
- 6) Equestrian Facilities,
- 7) Farm Stays,
- 8) Farm Winery Tours and Events,

- 9) Small scale assembly type uses such as weddings, receptions, etc.,
- 10) Small-scale entertainment such as the integration of music, theatre, or arts to enhance the rural experience,
- 11) Ancillary Retail Sales; and,
- 12) Other uses that may be determined on a case-by-case basis to meet the intent of the Tier 1 definition.

**c. Tier 2 (medium intensity) agritourism uses**

Tier 2 uses include higher intensity activities or have higher attendance than Tier 1 uses. Examples of Tier 2 Agritourism uses include, but are not limited to:

- 1) Uses that would be considered a Tier 1 use that do not meet the Tier 1 standards provided in this section;
- 2) Farmers Markets with more than 10 vendors;
- 3) Overnight stays such as Bed and Breakfasts, Farm Stays, or camping.
- 4) Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related.
- 5) Other uses that may be determined on a case-by-case basis to meet the intent of the Tier 2 definition.

**12-306-5.04 Standards that apply to both tier 1 and tier 2 agritourism uses**

- a. The Agritourism use is located on a parcel, or one of a number of contiguous parcels under the same ownership as land uses which meet the definition of ‘Agriculture’ or on a working farm or ranch as determined by the Zoning and Codes Director. (Contiguous shall mean lands that are adjacent and road, railroad, and other rights-of-way and easements shall not exclude parcels from being contiguous.)
- b. The Agritourism operator, the person with the financial and legal responsibility for the Agritourism activity, shall be limited to the property owner or operator, his/her family members and employees (whether paid or unpaid).
- c. Adequate parking including ADA parking (where applicable) shall be provided on-site for the use.
  - 1) No parking may occur on adjacent roads or adjacent road right-of-way.
  - 2) For the purpose of calculating parking requirements, parking is calculated at a rate of 1 parking space per 2 attendees.
- d. No motors or motorized vehicles, with the exception of agricultural machinery and vehicles or electric motors, will be utilized for the Agritourism Use.
- e. Parking areas (excluding overflow areas) that are within view of residences or the road right-of-way shall be screened from view with landscaping and/or fencing. Screening materials may not be located within or along the right-of-way. Alternate forms of screening may be utilized, provided the Zoning or Codes Director or the Board of County Commissioners, as applicable, determine they will provide effective screening of the parking area.
- f. Exterior lighting should be limited as much as possible to maintain the rural character and should be on only when the use is occurring. If exterior lighting is proposed, a plan shall be



provided which shows the location of lighting for the Agritourism activity and the type of lighting fixtures being used as well as means taken to shield the lighting to insure no trespass or glare to adjacent properties.

- g. Sanitary facilities shall be provided in accordance with Lawrence Douglas County Health Department requirements for the proposed use and anticipated attendance.

**12-306-5.05 Tier 1 Agritourism Use Standards**

- a. The Agritourism operator, the person with the financial and legal responsibility for the Agritourism activity, must reside on the parcel, or one of a number of contiguous parcels (as defined in this section), containing the Agritourism use.
- b. Parking for the Agritourism use is limited to no more than 40 parking spaces;
- c. In order to minimize noise from the agritourism use the Outdoor amplification of sound: such as auctioneering speakers or amplified music (with the exception of a stereo or radio) is prohibited.
- d. Ancillary retail sales shall be a subordinate and ancillary portion of the Agritourism Use. The area designated for ancillary retail sales shall not exceed 500 sq ft.

**12-306-5.06 Administrative waiver provision**

The Director of Zoning & Codes may waive the standards for a Tier 1 Agritourism use if it is determined that the Agritourism use, by virtue of the size or type of use proposed, the location of the use, or other site specific characteristics, will not generate noise or other impacts that negatively impact surrounding properties.

**12-306-5.07 Tier 1 agritourism registration process**

- a. The Agritourism operator shall submit the following materials to the Zoning and Codes Office:
  - 1) Submitted State Agritourism Registration.
  - 2) Completed Douglas County Agritourism Registration form.
  - 3) Site plan which illustrates the use and its conformance with the Zoning Regulations as well as the relationship of the use to the surrounding properties or right-of-way. At a minimum, the following items must be included:
    - i. All structures to be utilized for the agritourism use identified on the plan with dimensions, including the distance to the nearest property line.
    - ii. Areas where the agritourism use will occur and any areas where visitors would be allowed shown and labeled on the plan.
    - iii. Access and parking areas shown and dimensioned, noting the number of spaces provided. For determination of parking requirements, parking is calculated at a rate of 1 parking space per 2 attendees.
    - iv. The water and sanitation facilities provided per the County Health Department approval.

- v. Locations where exterior lighting for the Agritourism use is proposed, including the height and direction of the lighting, the type of lighting fixtures, and the means taken to shield the lighting to prevent or reduce trespass or glare to adjacent properties.
  - vi. Hours of operation noted.
  - vii. Anticipated attendance noted based on building occupancy determined by a licensed professional based on the building code or limited occupancy established with the restrictions of use. Attendance is not necessarily limited to that which can be served by available parking, as participants may arrive by bus or alternative forms of transportation.
  - viii. Materials required as part of the required public notice.
- b. A 20 day property owner notification period is required. Notice of the proposed Agritourism Use must be provided to the property owners as follows:
- 1) The applicant shall obtain a list of property owners within ½ mile (2,640 ft) of the property on which the Agritourism activity is to occur from the Douglas County Clerk's Office.
    - i. If the notification area includes land within the corporate limits of a city, the list shall include owners of property within the ½ mile (2,640 ft) notification area that extend 400 feet into the city. If the notification area extends into the adjacent County, notice must be sent to property owners in the adjacent County.
    - ii. The list shall have been obtained within 30 days of the date the registration is submitted.
  - 2) The applicant shall mail a letter which contains, at a minimum, the information below to the property owners on the list to advise them of the proposed Agritourism use and provide them the opportunity to contact the applicant or the Zoning and Codes Department if they have any questions.
 

*"An Agritourism use located at \_\_\_\_\_ is in the process of being registered with Douglas County. The Agritourism use will consist of (brief description of the event). Please contact me at (phone number, email) with any questions regarding this registration or the Douglas County Zoning and Codes Department at 785-331-1343."*
  - 3) A copy of the letter, the property owner list, and certification of the date the letters were mailed to the address on the list shall be submitted as part of the registration.
- c. The registration materials shall be reviewed by the Director of Zoning and Codes with the following approval criteria:
- 1) The nature of the use is compatible with adjacent land uses and enhances or maintains the rural character of the unincorporated portion of the county.
  - 2) The proposed arrangement of buildings, off-street parking, access, and lighting is compatible with adjacent land uses and maintains the rural character of the area;

- 3) Adequate screening is provided between the parking area and adjacent residences or road rights-of-way.
  - 4) The vehicular ingress and egress to and from the site provides for safe, efficient and convenient movement of traffic;
- d. The Zoning and Codes Director may apply conditions to the registration, such as limitation on the hours, location, or the activity itself if, in the Director's opinion, the conditions are necessary to mitigate off-site impacts or to protect the health, safety, and welfare of the Agritourism participants.

**12-306-5.08 Tier 1 agritourism change of use**

Only those activities specifically listed in the registration form and approved by the Director are allowed to occur as Agritourism. Any change in proposed uses such as a new activity, increased parking, or expanded area of activity would require:

- a. The modification of the registration with the State, if necessary.
- b. Resubmittal of the Douglas County Registration Form and revised site plan to the Zoning and Codes Office for a determination of compliance with the definition of Agritourism (if a new use is proposed) and registration through the processes established in this section.
- c. Engaging in any activity not listed on the registration or operating out of compliance with the plans and conditions approved with the registration would be considered a violation subject to the enforcement provisions of Section 12-319.

**12-306-5.09 Tier 1 agritourism duration and re-registration**

The Agritourism use may continue as long as the use complies with the conditions and standards that were applied with the registration.

- a. The Douglas County Agritourism Registration coincides with the State Registration. Re-registration with the County is required when the State registration is renewed, every 5 years.
- b. To re-register the use, the Agritourism operator shall submit an updated State Registration to the Director of Zoning and Codes.

**12-306-5.10 Tier 2 agritourism use standards**

The following use standards apply to all Tier 2 Agritourism uses:

- a. The area designated for ancillary retail sales shall not exceed 500 sq ft unless a larger area is approved by the Board of County Commissioners.
- b. With the exception of agricultural activities, no activities associated with the Agritourism use may occur within 50 ft of a property line of the subject parcel or the perimeter of a group of contiguous parcels. The County Commission may vary this separation requirement depending on the nature of the Agritourism activity and the adjacent property.

### **12-306-5.11 Waiver provision**

The Board of County Commissioners may waive the Tier 2 use standards if they determine that the Agritourism use, by virtue of the size or type of use proposed, the location of the use, and other site-specific characteristics, will not significantly impact surrounding properties.

### **12-306-5.12 Tier 2 agritourism uses registration process**

- a.** The Agritourism operator shall submit the following materials to the Zoning and Codes Office:
  - 1) Copy of the submitted State Agritourism Registration.
  - 2) Completed Douglas County Agritourism Registration form.
  - 3) Site plan meeting the requirements outlined in Section 12-306-5.07.
  - 4) Information from the applicable fire department regarding access to the proposed Agritourism Activity area.
  
- b.** A minimum 20 day notification period is required. The Commission will hold a public hearing on the proposed use at the time and place listed in the public notice.
  - 1) The County Zoning and Codes Office shall mail notice to all property owners within ½ mile (2,640 ft) of the proposed use and the date and time the use will be considered by the Board of County Commissioners.
  - 2) If the notification area includes land within the corporate limits of a city, the list shall include owners of property within the ½ mile (2,640 ft) notification area that extend 400 feet into the city. If the notification area extends into the adjacent County, notice must be sent to property owners in the adjacent County.
  - 3) For Agritourism uses that will be located on an unpaved road, the Zoning and Codes Office shall mail notices to all property owners of residentially developed property on an unpaved road which would be considered the most direct route to the nearest hard-surfaced road.
  
- c.** The Director of Zoning and Codes shall review the registration application with the criteria noted in this section and provide a report with recommendation to the Commission.
  - 1) The proposed arrangement of buildings, off-street parking, access, lighting is compatible with adjacent land uses;
  - 2) Adequate screening is provided between the parking area and adjacent residences or road rights-of-way.
  - 3) The vehicular ingress and egress to and from the site provides for safe, efficient and convenient movement of traffic including emergency vehicles;
  - 4) The nature of the use is compatible with adjacent land uses and enhances or maintains the rural character of the unincorporated portion of the county.

- 5) Suitability of the existing road network system for the traffic expected to be generated by the Agritourism use. Road improvements may be required in some cases.
- d. The Board of County Commissioners may take one of the following actions on the registration:
- 1) Approve the registration, including waiving any standard deemed reasonable to waive;
  - 2) Approve the registration with conditions/restrictions such as limitation on the size of buildings and parking areas, establishment of operating hours; establishment of buffering, limitation on activities; road improvements; etc;
  - 3) Return the registration to staff with request for more information; or
  - 4) Deny the registration.

#### **12-306-5.13 Change of Use**

Only those activities specifically listed in the registration form and approved by the Directors are allowed to occur as Agritourism. Any change in proposed uses such as a new activity, increased parking, expanded area of activity would require:

- 1) The modification of the registration with the State, if necessary.
- 2) Resubmittal of the revised registration form and revised site plan to the Zoning and Codes Office for a determination of compliance with the definition of Agritourism provided in this Section by the Director of the Zoning and Codes Office and the Planning Director and registration through the processes established above.
- 3) The Zoning and Codes Director, following notification of neighbors within 2,640 feet, may approve minor changes to the plan (changes that do not include an additional use or an increase in agritourism activity or parking area above 25% of the previous activity or parking area) administratively.
- 4) Engaging in any activity not listed on the registration, or operating out of compliance with the plans and conditions approved with the registration shall be considered a violation subject to the enforcement provisions of Section 12-313-9.

#### **12-306-5.14 Duration and Review**

The Agritourism Use may continue as long as the use complies with the conditions and standards that were applied with the registration. Re-registration is required.

- 1) The Douglas County Agritourism Use registration coincides with the State Registration. Re-registration with the County is required when the State registration is renewed, every 5 years.
- 2) A Tier 2 use that received County Commission approval may be re-registered administratively by the Zoning and Codes Director if the use remains the same as on the original registration and no unresolved complaints are on file.

**12-306-6 AIRSTRIPS, PRIVATE**

Private runways and airstrips are limited to small airplanes of 12,500 pounds or less. Each runway or airstrip is evaluated in the Conditional Use Permit approval process so that safety issues and the impact of the airstrip on surrounding land uses can be considered.

**12-306-6.01 Design Standards**

The airstrip design must comply with the standards provided in from the Federal Aviation Administration (FAA) regulations particularly Federal Aviation Regulation (FAR) Part 77 *Airspace Obstruction Analysis* and FAA Advisory Circulars 150-5300-14 and 150-5325-4; or new guidelines as they are adopted by the FAA. At a minimum the following standards shall apply, unless these guidelines conflict with new guidelines adopted by the FAA:

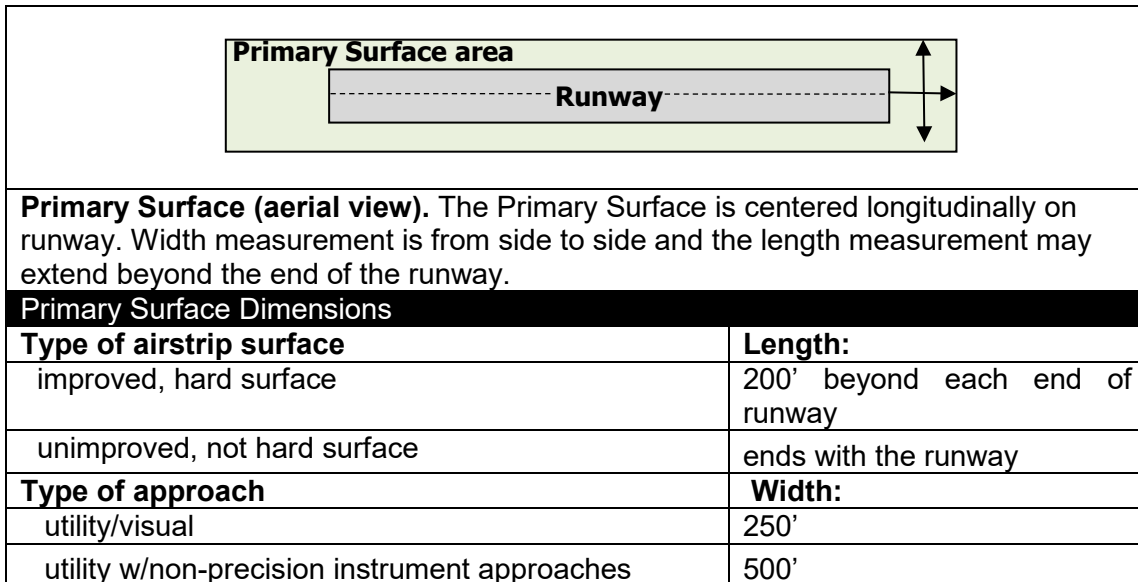
**a. Minimum Length of Airstrip**

- Approach Speed less than 30 knots ..... 300 ft
- Approach Speed between 30 and 50 knots, inclusive 800 ft

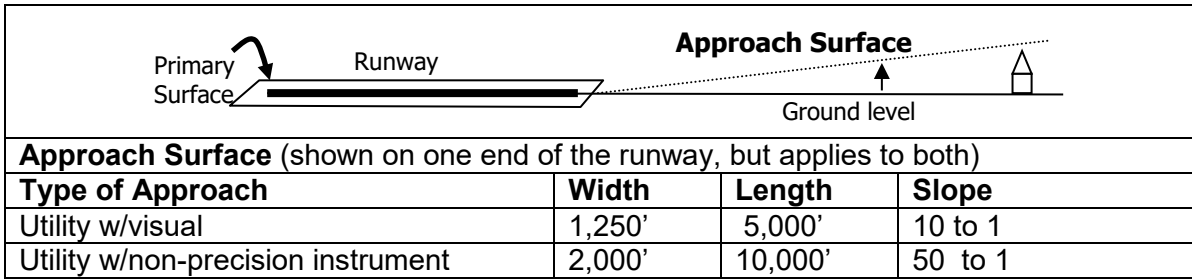
**b. Obstacle Free Zones**

The runway primary surface, the approach surface, and the transitional zone as defined by the FAA in FAR Part 77 shall be obstacle free.

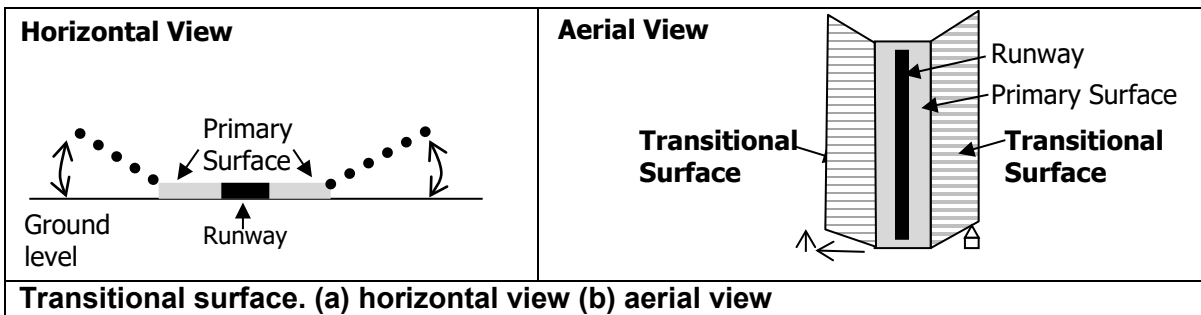
- 1) The Primary Surface is centered longitudinally on a runway centerline in the dimensions shown in the following chart:



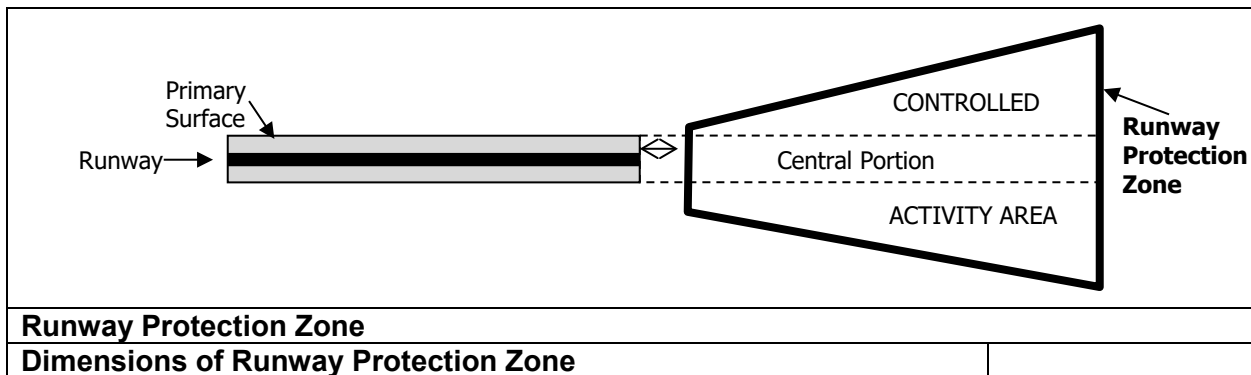
- 2) The Approach Surface is longitudinally centered on the extended runway centerline and extends outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end. The width of the approach surface is equal to the width of the primary surface at each end of the runway. Dimensions of the approach surface for different types of runway are noted in the table below:



- 3) Transitional surfaces extend outward and upward at right angles to the runway centerline and the runway centerline, extended at a slope of 7 to 1 from the sides of the primary surface and from the sides of the approach surfaces until it reaches 150 feet above the highest point on any runway (airstrip elevation).



- 4) The Runway Protection Zone (RPZ) is an area off the runway end which is intended to enhance the protection of people and property on the ground. There may be obstacles within the controlled activity area but an airstrip will not be permitted if incompatible objects and activities exist in the RPZ Zone. The RPZ is trapezoidal in shape and centered about the extended runway centerline. The controlled activity area and a portion of the runway Obstacle Free Area are the two components of the RPZ. The RPZ dimension for a particular runway end is a function of the type of aircraft and approach visibility minimum associated with that runway end. The RPZ begins 200 ft beyond the end of the area usable for takeoff or landing. When determining if a location is suitable for an airstrip, the RPZ area must be evaluated for incompatible uses which include: churches, schools, office buildings, fuel storage facilities, parking areas and other similar uses.



Approach Visibility Minimums	Length (feet)	Inner Width (feet)	Outer Width (feet)	Acres
Visual and not lower than 1 mile	1,000	250	450	8.035
Not lower than ¾ mile	1,700	1,000	1,510	48.978
Lower than ¾ mile	2,500	1,000	1,750	78.914

5) A driveway which the public may access may not also be used as a private airstrip.

**12-306-6.02 Compatibility with Area Land Use**

- a. Noise is a negative impact associated with airstrips. The Board of County Commissioners shall consider the proximity of residences or places of assembly to determine if the noise associated with the proposed airstrip may be detrimental.
- b. Additional conditions restricting the hours of use or intensity of use may be placed on the airstrip if it is determined that the noise may negatively impact surrounding properties.

**12-306-6.03 Faa Notification Required**

- a. As required in FAA Regulation 14 CFR Part 157: Notice of Construction, Alteration, Activation, and Deactivation FAA, Form 7480-1 must be filed at least 90 days before the proposed construction or modification of any airstrip. This notification serves as the basis for evaluating the effects of the proposed action on the safe and efficient use of airspace by aircraft and the safety of persons and property on the ground.
- b. The FAA will return written determination of Form 7480-1 to the applicant. The CUP approval is contingent upon the FAA determination of Form 7480-1. The applicant must provide a copy of the form sent to the FAA with the CUP application.

**12-306-6.04 Approval Criteria for Private Airstrip**

- a. The FAA shall be notified by submitting FAA Form 7480-1. Copy of submittal and all correspondence with FAA shall be provided to the Planning Office with the Conditional Use Permit application.
- b. A Conditional Use Permit application shall be filed with Planning Office. An airstrip layout plan shall be provided which shows the width and length of the airstrip and the imaginary zones. The type of runway and approach being proposed must be noted within the application materials.
- c. The Primary Surface must be owned by the owner of the airstrip or runway. The Approach Surface, Transitional Surface, and the Runway Protection Zone should also be on property which is owned by the airstrip or runway owner. If these areas are not owned by the owner of the airstrip, the CUP may be approved if they are under the control of the airstrip owner through a permanent easement or if the CUP is conditioned so that any construction within these zones will require a re-evaluation of the airstrip.
- d. CUP approval will be contingent upon determination by FAA and will not be considered final until the FAA determination has been provided to the Planning Office. If a determination of 'no objection'-- approval will be granted; if 'conditional determination' rendered by FAA, CUP will be approved when the conditions have been met; if 'determination with objections', CUP will be denied.



- e. For determining if obstacles are located within the obstacle free areas, a roadway will be considered to contain an obstacle of 14 ft (the height of a large farm vehicle or implement).
- f. The following land uses are prohibited from the Runway Protection Zone: residences, places of public assembly, and fuel storage facilities.
- g. An airstrip shall not be approved if there are obstructions in the obstacle free zones (primary surface, approach surface, or transitional surface).
- h. The CUP approval of an airstrip does not constrain the development potential on adjacent properties, unless easements have been put in place. The airstrip CUP approval is contingent upon the maintaining of obstacle free zones. If structures or other obstacles are constructed in obstacle free zones, the airstrip CUP approval will be re-evaluated. If it is possible, the airstrip can be reconfigured to avoid conflict with the new structures/items. If reconfiguration isn't possible, the airstrip CUP will be returned to the Board of County Commissioners for amendment, if it is possible to reconfigure or relocate the airstrip to avoid conflict in the obstruction free zones, or for revocation of the CUP approval if it isn't possible to resolve the conflict.

**12-306-7            ANCILLARY AGRICULTURAL RETAIL SALES**

- a. Ancillary non-agricultural retail sales associated with a greenhouse, nursery, or other agricultural use is permitted with site plan approval for up to 500 sq ft of sales area. Sales area greater than 500 sq ft for ancillary retail goods requires approval through a Conditional Use Permit.
- b. Ancillary retail sales associated with an Agritourism use are permitted when registered as part of the Agritourism use.

**12-306-8            ANIMAL HOSPITAL OR CLINIC**

- a. Standards that apply in all districts in which they are permitted:
  - 1) A hospital or clinic for large animals shall be located on a lot or eligible parcel containing 5 acres or more.
  - 2) All buildings, structures, pens for large animals, or open pens, runs, cages or kennels for small animals shall be located at least 200 feet from any property lines.
  - 3) The site plan shall include a drainage plan to show how cleaning water and stormwater runoff will leave the property.
  - 4) KDHE approval of waste water management plan.
- b. Standards that apply in the GI District:
  - 1) Permitted only as an accessory use to a research facility.

**12-306-9            BED AND BREAKFASTS**

- a. A Bed and Breakfast with 3 or fewer guest bedrooms may be operated as an accessory use to the principal use of an owner-occupied structure or may have an on-site resident manager.

- b. A Bed and Breakfast establishment with 4 or more guest bedrooms is required to have a full-time resident manager or owner on the site and must be licensed by the State of Kansas to do business.
- c. The establishment shall not contain restaurant facilities but may provide food service for overnight or other transient guests only.

**12-306-10      CAMPGROUNDS**

**12-306-10.01    General Standards**

- a. Campgrounds may not be located on properties/parcels that are less than 5 acres.
- b. Gross density shall not exceed 20 campsites per acre with no more than 2 camping units on any campsite.
- c. The water supply system and sewage management measures shall be designed, constructed, and maintained in compliance with the Lawrence-Douglas County Health Department regulations and recommendations.
- d. An attendant or caretaker shall be available at all times to keep the park, its facilities and equipment in a clean, orderly, and sanitary condition. (Primitive campgrounds are exempt from this requirement.)
- e. No camping units/camp sites may be rented or occupied by the same party for periods that exceed 14 days and are not to be for individual sale or ownership.
- f. Fires will be permitted only in facilities which have been provided for such purposes. All fire or cooking facilities shall be located, constructed, maintained, and used to minimize fire hazard and smoke nuisance in the campground and the neighboring properties.
- g. No campfires permitted when the County Burn Ban is in effect.
- h. All camping spaces shall be graded nearly level, except that each space shall be designed to provide drainage to a stormwater detention area, as required by the County Engineer. (Primitive and Family/Personal campgrounds are exempt from this requirement.)
- i. Campsite ID numbers, at least 4" in height, shall identify each space and shall remain visible when in use. (Primitive and Family/Personal campgrounds are exempt from this requirement.)
- j. Campsite Design Standards;
  - 1) Campsite width:      20 ft
  - 2) Campsite set back: 25 ft from local road right-of-way,  
50 ft from collector or arterial,  
20/30 ft from side and rear property lines.  
50 ft from river bank  
20 ft from interior drive  
8 ft from fire pit, or other source of open flame

- 3) Landscaping
  - i. The campground shall be adequately landscaped to provide a buffer from nearby properties and roadways, and to prevent erosion.
  - ii. A minimum 100 ft landscaped buffer is required for park areas adjacent to private lands in a Residential zoning district.
  - iii. If the proposed campground would be visible from a residence on an abutting property, fencing and/or buffering vegetation shall be installed. Fences shall be no less than six feet in height, and shall be sight obscuring. (This requirement may be waived if the recreational vehicle park or campground owner is also the owner of the contiguous residence.)
  
- 4) Access
  - i. Access drives must have all weather surfacing and a minimum width of 24 feet for two-way traffic and 15 feet for one-way traffic with a vertical clearance of at least 13 feet, 6 inches. (Primitive campsites with no vehicular access are exempt from this parking requirement.)
  - ii. Campgrounds must be designed so that vehicles wait on the interior access drive, rather than the adjacent road, for access into the campground.
  - iii. All interior drives shall be looped, or a turnaround meeting fire apparatus access requirements shall be provided at the end of all roads.
  
- 5) Parking
  - i. Minimum of 1 parking space required per campsite. (Primitive campsites with no vehicular access are exempt from this parking requirement.)
  - ii. Adequate barriers shall be provided to confine vehicles to driveways and parking spaces.

**12-306-10.02 Standards specific to campgrounds which permit camping vehicles (RV campgrounds)**

- a. Each RV campsite shall provide at least 900 sq ft of space.
- b. Wheels and tires shall not be removed from any RV nor skirting applied.
- c. RV pad area must use an all-weather surface (such as gravel, asphalt, etc.) as approved by the County Engineer.
- d. All camping vehicles (RVs) shall have current licensing and registration and be in operable road worthy condition, as applicable.
- e. Each RV campsite shall abut an internal road which provides unobstructed access to a public road.
- f. Sewage disposal methods shall comply with the Douglas County Sanitary Code and require approval of the Health Code Official.

**12-306-10.03 Standards specific to tent camping.**

- a. Each tent campsite shall provide at least 600 sq ft of space.
- b. Group tent sites shall be permitted as long as the maximum number of sites of the group site is designated and the group site density does not exceed 20 campsites per acre.

**12-306-10.04 Table**

Type of campground	Family/Personal camping	Special Event Campgrounds	Primitive Campground	Developed Campground
<b>Purpose and needs</b>	To allow property owners, the use of their property for their own, and their families and friends, camping purposes.	To provide for safe and temporary housing accommodations for tourists and guests during an event which is permitted as a Special Event	To provide for safe and enjoyable camping facilities in areas which have minimal development to maximize the natural character of the area	To provide for safe and enjoyable camping facilities which have been developed to accommodate campers in any type of camping unit. May also include amenities such as showers.
<b>Time limits</b>	14 cumulative days in a calendar year. More requires a no-fee permit from the Zoning and Codes Director.	Time frame approved for the Special Event	14 days per visit. Each visit must be separated by 1 week.	14 days per visit. Each visit must be separated by 1 week.
<b>SITE PLAN REQ.</b>	No	Yes	Yes	Yes
<b>Types of accommodations</b>	Tents, campers, recreational vehicles, etc.	Tents, campers, recreational vehicles, etc.	Tents, yurts, and other low impact camping units	Any type of camping unit such as a tent, cabin, RV, motor home, no permanent housing
<b>Type of facilities and amenities</b>	Any accessory uses permitted with the principal use of the land	Any facilities/uses that are approved as part of the Special Event Permit	Minimal facilities/uses needed to accommodate campers, that are approved as part of the Conditional Use permit	Any facilities/uses permitted in the applicable zoning district that are approved as part of the Conditional Use Permit
<b>Minimum area needed to have a campground</b>	n/a	As approved with the Special Event Permit	5 acres	5 acres
<b>Maximum density</b>		As approved with the Special Event Permit	20 campsites per acre	20 campsites per acre
<b>Approval</b>	Zoning and Codes permit required for camping beyond 14 days per year	Special Event Permit with Board of County Commissioners approval	Conditional Use Permit (Camping that is accessory to an Agritourism use would be included in the Agritourism registration, which require Board of County Commissioners approval.	

**12-306-10.05 Family /Personal)Camping:**

- a. Camping units shall comply with setback requirements for the zoning district in which they are located.
- b. Private camping may occur up to 14 cumulative days in a calendar year without a permit.
  - 1) After those 14 days, property owners may request a no-fee permit to camp for up to 30 days in a calendar year. (One renewal may be granted) The permit will require Health Department approval of sanitary provisions.
- c. Private camping may be permitted for an extended time frame, beyond 30 days, when approved by the Director of Zoning and Codes as being an accessory use to the construction

of a residence. The camping unit may not be used as a dwelling after the residence is issued a Certificate of Occupancy.

- d. For properties without a principal residence, camping units must be moved on and off (or stored within an enclosed structure) when not used for camping

**12-306-11      CARETAKER/MANAGER RESIDENCE**

- a. A caretaker/manager residence may be located within a detached dwelling or within the principal structure.
- b. The caretaker/manager living in the residence must be employed on the premises.

**12-306-12      DAY CARE CENTER**

- a. A wall or fence at least 4 feet in height must be maintained around the perimeter of any play area.
- b. A Day Care Center requires approval of a Conditional Use Permit except when it operates as an accessory use to a school, religious institution, or other use that was approved with a site plan.

**12-306-13      DAY CARE HOME,**

- a. A day care home is limited to the care of 12 or fewer individuals.
- b. A day care home must be an accessory use to an occupied residence.

**12-306-14      DETACHED SINGLE-FAMILY DWELLING**

Only one principal detached single-family dwelling may be constructed on any platted lot or vested parcel with the following exception:

- a. Multiple Farm Employee Housing units may occur on a parcel when approved with a Conditional Use Permit.

**12-306-15      EVENT CENTER/PUBLIC ASSEMBLY**

Roads on primary route to property will be evaluated through the site planning process to determine the size of event which may be accommodated or the types of road improvements which may be necessary.

**12-306-16      EXTERIOR STORAGE**

- a. Standards that apply in the V, BSC, LB, RT, and GB Districts:

Material storage yards, in connection with retail sales of products where storage is incidental to the approved occupancy of a store, is permitted provided:

- 1) All products and materials shall be stored in a completely enclosed building, or enclosed by a masonry wall, fence, or hedge, or a combination of these features which is at least 6 feet in height. Stored materials and equipment shall not exceed the height of the enclosure.
- 2) Storage of vehicles and equipment used in connection with the permitted trade or business is permitted within a wall, fence or hedge. This does not include the storage of heavy equipment, such as road-building or excavating equipment.

- 3) Exterior storage areas shall be located in compliance with the setbacks in the applicable zoning district.

**b. Standards that apply in the LI and GI Districts:**

- 1) Material storage yards are permitted as an accessory or principal use of the site provided exterior storage is screened from adjacent residential zoning districts or residentially developed property, and the adjacent road by a wall, fence or hedge or a combination of these features which is at least 6 feet in height.
- 2) Exterior storage areas shall be located in compliance with the setbacks in the applicable zoning district.

**12-306-17 FARM STAND**

**12-306-17.01 General Standards**

- a. Any structure used for the farm stand shall be located a minimum of 25 ft from the edge of the roadway.
- b. Any structure used for the farm stand shall be located so that it does not interfere with sight distance for a corner property (Section 12-305)
- c. Adequate area shall be provided on the site to allow one customer vehicle parking space.
- d. No parking associated with the farm stand shall occur along the roadway or in the road right-of-way.

**12-306-17.02 Standards that apply in the CP District**

No farm stand shall be permanently maintained on the property. Stands are permitted from March 15<sup>th</sup> through October 31<sup>st</sup>.

**12-306-18 FARMER'S MARKET**

- a. Adequate off-street parking shall be provided so that customers are parking on private property rather than road right-of-way. Customer parking in the road right-of-way is prohibited.
- b. Structures are subject to the Dimensional Standards in Section 12-303.

**12-306-19 FIREWORKS SALES**

A permit must be obtained from the Zoning and Codes Office for any fireworks sales operations within the unincorporated area of Douglas County. The fireworks sales may operate only on the times and dates listed on the permit. In addition to the permit the following conditions apply:

- a. No shooting of fireworks shall be permitted within 100 feet of the fireworks stand.
- b. A temporary stand shall be located at least 25 feet from road or highway right-of-way.
- c. Sales cannot occur in an Agricultural Exempt building.
- d. Off-street parking must be provided for employees and customers.
- e. Weeds and grass must be cut back within 100 feet of the stand.

- f. The stand may not be located in any area where its proximity to other explosive or flammable materials will create safety hazards.
- g. Temporary identification or advertising signs shall be placed as authorized in writing on the permit.
- h. The temporary stand and signs shall be removed on or before the 8<sup>th</sup> day of July.
- i. Sale or other distribution of fireworks, under the permit, shall be limited to fireworks authorized under the laws of the State of Kansas, with the exception that the sale or other distribution of fireworks known as 'bottle rockets' is prohibited.

**12-306-20 HELIPORTS**

- a. Only heliports developed for exclusive use of the owner and persons authorized by the owner are permitted within the unincorporated portions of Douglas County.
- b. Each heliport is evaluated in the Conditional Use Permit approval process so that safety issues and the impact of the heliport on surrounding land uses can be considered.
- c. FAA Notification is required for new heliports or changes to the heliport through the submittal of FAA Form 7480-1 (Figure 1-1), a heliport layout diagram, and a heliport location map. The applicant must provide a copy of the form sent to the FAA with the CUP application. A copy of the FAA determination must be provided to the Planning Office as a condition of the Conditional Use Permit approval.

**12-306-21 TYPE 1 HOME OCCUPATIONS**

Type I Home Occupations include incidental and accessory home occupation uses that can be conducted wholly within the dwelling unit and that are ancillary to the primary residential use of the property. Type I Home Occupations are uses that are incidental and accessory to the primary residential use, and as such, are activities that are compatible with residential or farm activities.

- a. Typical Type I Home Occupations include uses such as fine art studios or instruction; small educational classes, home crafts; professional offices; office facilities for salespersons when no sales occur on the premises; offices for service-type businesses such as insurance agents, decorators, and tax advisors; and personal services such as seamstresses and beauty or barber shops.
- b. The following uses are expressly prohibited as Type I Home Occupations. This list of prohibited uses is not intended as an exhaustive list. Uses that are similar to those listed below may be prohibited and other uses may be prohibited based on their inability to comply with all applicable standards of this Section.
  - 1) Auto and other vehicle repair;
  - 2) Funeral homes;
  - 3) Medical or dental offices, clinics, or hospitals, which generate or results in biohazardous materials.
  - 4) Renting of trailers, cars, or other equipment;
  - 5) Restaurants;
  - 6) Tourist homes; Vacation Rentals
  - 7) Contractor's equipment and material storage;

### **12-306-21.01 Type 1 Home Occupation Standards**

- a. The operator of the home occupation must reside on the site of the home occupation.
- b. A Type I Home Occupation shall not occupy more than 50% of the gross square footage of the principal dwelling unit.
- c. No equipment shall be used that creates noise, vibration, electrical interference, smoke or particulate matter emission that is perceptible beyond the property lines of the subject parcel.
- d. There shall be no visible evidence of the conduct of a Type I Home Occupation, other than a permitted sign. All equipment, materials, goods and vehicles shall be stored indoors or otherwise completely screened from view of adjacent parcels and rights-of-way.
- e. A maximum of 2 non-resident employees are allowed.
- f. No inventory of products shall be displayed or sold on the premises other than what has been produced on the premises or the incidental sale of goods that are associated with the Home Occupation (beauty products with a beauty salon or art supplies for an art class, for example).
- g. The home occupation activity shall be conducted wholly within the dwelling unit.
- h. No off-street parking spaces shall be provided exclusively for a Type I Home Occupation. Parking spaces required for the primary residential use will need to serve the needs of the Home Occupation.
- i. Classes are limited to no more than 6 students at one time.

### **12-306-21.02 Registration of Home Occupations**

- a. Home Occupations must be registered with the Zoning and Codes Office. The application form is available from the Douglas County Zoning and Codes Office. The registration and approval process is an administrative procedure.
- b. Upon submittal of a completed application, the Zoning and Codes Director will verify that the requested use is compliant with the provisions of the standards in Section 12-306-21.01.
- c. If the operator/owner of a Home Occupation does not own the real estate on which the Home Occupation is conducted, an affidavit of equitable interest or a copy of a lease evidencing a leasehold interest can be submitted as a substitute for fee simple ownership of the real estate.
- d. A Home Occupation permit will be issued for a use if it is found to be compliant with the conditions and standards in Section 12-306-21.01.
- e. The Home Occupation use permit is valid for a period of twelve months from the date of issuance.
- f. To renew the permit, a renewal application form must be filed at the Douglas County Zoning and Codes Office. Renewal of a Home Occupation Permit for the same use can be requested either by mail or in person.
  - 1) It is the responsibility of the Home Occupation business owner to annually renew the



use permit.

- g.** The fees charged for the initial permit and for the renewal permit are based on a separate Fees and Enforcement Policy resolution adopted by the Board of County Commissioners. A fee schedule is available at the Zoning and Codes Office.

**12-306-21.03 Appeals Of Decisions Concerning Home Occupations**

- a.** Any applicant for a home business that is dissatisfied with the final determination of the Douglas County Zoning and Codes Director as it relates to Home Occupation registration may appeal such determination to the Board of County Commissioners.

- 1) The provisions in Sections 12-306-21 are not provisions that can be appealed to the County Board of Zoning Appeals.

- b.** The Board of County Commissioners may appoint a hearing officer to hear and decide appeals made from subsection (a) in this section. In the event that there is a single commissioner so appointed, the decision of that Commissioner shall be deemed to have been made by the entire Board of County Commissioners and the aggrieved person shall have no right to appeal to the entire Commission.

- c.** Any person who is dissatisfied with the decision of the Board of County Commissioners may appeal such decision to the District Court, as provided by law.

- d.** A final determination of the Board of County Commissioners shall not be a prerequisite to the commencement of any enforcement action against any person allegedly violating the Zoning Regulations.

**12-306-21.04 Permit Non-Transferable**

The Home Occupation Permits are valid for the registered use and for the current owner of the real estate at the described location on the use permit. The use permit is non-transferable.

**12-306-22 TYPE 2 HOME OCCUPATIONS**

Type II Home Business Occupations are uses that are incidental and accessory to the primary residential use, and as such, are activities that are compatible with residential or farm activities. Type II Home Occupations are more intense occupations in that they have more employees than the Type 1 Occupations or occur in an accessory structure that is ancillary to the primary residential use of the property. Type 1 occupations that exceed the Type 1 standards are considered Type 2. Such occupations are often service-oriented or involve production of materials for sales off premises.

- a.** Type 2 Home Occupations include the assembly, distribution, maintenance, and repair of agricultural implements and equipment; assembly of mechanical devices and components; automobile painting, upholstery, and other mechanical or body repairs; welding and machine shops; and contractor's equipment and material storage, or uses that the Director of Zoning and Codes determines to be similar in impacts to nearby land uses, in addition to uses permitted as Type 1 Home Occupations that do not meet the standards for a Type 1 Home Occupation.
- b.** The following uses are expressly prohibited as Type 2 Home Business Occupations. This list of prohibited uses is not intended as an exhaustive list. Other uses will be prohibited based on their inability to comply with all applicable standards of this Section.

- 1) Auto and other vehicles repair (except as noted above);
- 2) Funeral homes;
- 3) Medical or dental offices which result in, or generate, biohazardous materials.
- 4) Renting of trailers, cars, or other equipment;
- 5) Restaurants;
- 6) Tourist homes;
- 7) Exterior storage of Contractor's equipment and material;

**12-306-22.01 Type 2 Home Occupations standards:**

- a. A maximum of 4 Nonresident Employees;
- b. The home occupation activity shall be conducted within the dwelling unit or within an accessory building that is no greater than 3,600 square feet in gross area. (An accessory structure in use by a rural home business occupation on August 16, 2000, for a use permitted in Type 2 Home Occupations-is not subject to the maximum size limitation of 3,600 square foot. The use or use area existing on August 16, 2000 cannot be enlarged or expanded under the Type 2 Home Occupation regulations);
- c. The majority of work related to agricultural implement repair or grading and earthwork activities must be conducted off premises;
- d. No equipment shall be used that creates noise, vibration, electrical interference, smoke or particulate matter emission from a dwelling or accessory structure that is perceptible beyond the property lines of the subject parcel;
- e. All equipment, materials, and vehicles used for the home occupation shall be stored indoors or otherwise completely screened from view of adjacent parcels and rights-of-way;
- f. No inventory of products shall be displayed or sold on the premises other than what has been produced on the premises; or the incidental sale of goods that are associated with the Home Occupation (beauty products with a beauty salon or art supplies for an art class, for example).
- g. A minimum site area of 5 acres is required for all Type 2 Home Occupations established after August 16, 2000.
- h. The site containing the Type 2 Home Occupation must have direct access to a public road.
- i. A minimum of one parking space shall be provided for each non-resident employee, based on the maximum number of employees present at any one time.
- j. All parking spaces shall be located a minimum of 50 feet from property lines and public rights-of-way, and shall be screened by landscaping, a fence, or buildings to minimize visibility from the public rights-of-way or from adjacent residences.
- k. All automotive, welding, and machine shop work must be conducted entirely inside an enclosed structure without any outdoor storage of vehicles, parts or equipment.
- l. Contractor's equipment and material storage shall be totally enclosed in a building without

any outdoor storage of vehicles, parts, or equipment.

#### **12-306-22.02 Registration of Home Occupations**

- a. Home Occupations must be registered with the Zoning and Codes Office. The application form is available from the Douglas County Zoning and Codes Office. The registration and approval process is an administrative procedure.
- b. Upon submittal of a completed application, the Zoning and Codes Director will verify that the requested use is compliant with the provisions of the standards in or Section 12-306-22.01.
- c. If the operator/owner of a Home Occupation does not own the real estate on which the Home Occupation is conducted, an affidavit of equitable interest or a copy of a lease evidencing a leasehold interest can be submitted as a substitute for fee simple ownership of the real estate.
- d. A Home Occupation permit will be issued for a use if it is found to be compliant with the conditions and standards in Section 12-306-22.01.
- e. The Home Occupation use permit is valid for a period of twelve months from the date of issuance.
- f. To renew the permit, a renewal application form must be filed at the Douglas County Zoning and Codes Office. Renewal of a Home Occupation Permit for the same use can be requested either by mail or in person.
  - i. It is the responsibility of the Home Occupation business owner to annually renew the use permit.
- g. The fees charged for the initial permit and for the renewal permit are based on a separate Fees and Enforcement Policy resolution adopted by the Board of County Commissioners. A fee schedule is available at the Zoning and Codes Office.

#### **12-306-22.03 Appeals Of Decisions Concerning Home Occupations**

- a. Any applicant for a home business that is dissatisfied with the final determination of the Douglas County Zoning and Codes Director as it relates to Home Occupation registration may appeal such determination to the Board of County Commissioners.
  - 1) The provisions in Sections 12-306-22 are not provisions that can be appealed to the County Board of Zoning Appeals.
- b. The Board of County Commissioners may appoint a hearing officer to hear and decide appeals made from subsection (a) in this section. In the event that there is a single commissioner so appointed, the decision of that Commissioner shall be deemed to have been made by the entire Board of County Commissioners and the aggrieved person shall have no right to appeal to the entire Commission.
- c. Any person who is dissatisfied with the decision of the Board of County Commissioners may appeal such decision to the District Court, as provided by law.

- d. A final determination of the Board of County Commissioners shall not be a prerequisite to the commencement of any enforcement action against any person allegedly violating the Zoning Regulations.

**12-306-22.04 Permit Non-Transferable**

The Home Occupation Permits are valid for the registered use and for the current owner of the real estate at the described location on the use permit. The use permit is non-transferable.

**12-306-23 KENNEL, COMMERCIAL DOG**

**12-306-23.01 Standards that apply in all districts:**

- a. Any open pens, runs, cages or kennels shall be located at least 500 feet from any property lines.
- b. A minimum of 20 acres is required for a kennel.
- c. Adequate water supply must be provided for drinking and cleaning and appropriate sewage and waste management measures, approved by the Health Department, must be followed to eliminate odor.
- d. The site plan must show contours so appropriate drainage of cleaning water and stormwater runoff can be determined.
- e. Shelters must be provided with heating and cooling units to protect the animals from extreme temperatures.
- f. An exercise area such as an individual dog run or an exercise yard which may also be used for training and obedience classes must be provided.
- g. Runs shall be adequately fenced and roofed to contain animals.
- h. The building design, site layout, and/or other features must result in a facility that does not create noise which negatively impacts nearby properties.

**12-306-23.02 Standards that apply in the AG-1 District**

Must be located on a property with a residence or veterinary clinic and be operated by the resident or veterinarian staff.

**12-306-24 LANDFILL**

A landfill is generally defined as a place to dispose of refuse and other waste material by burying it and covering it over with soil, especially as a method of filling in or extending usable land. The term 'landfill' encompasses many types of landfills such as Sanitary, Industrial, Solid Waste, Construction and Demolition Waste, and Clean Rubble. Definitions for the various types of landfills are provided in Chapter 10 of the County Code, 'Solid Waste Management'.

- a. All landfills require approval of a Conditional Use Permit with the exception of landfills that meet both of the following criteria:
  - 1) The waste materials being disposed were produced on site (i.e. were not hauled to the site); and
  - 2) The waste materials consist only of Clean Rubble, as defined in Chapter 10 of the County Code.

- b.** The following general standards shall apply to all landfills which require CUP approval:
- 1) For all landfills that require a KDHE permit, the applicant shall hold a valid, state-issued permit at all times such landfill is in operation.
  - 2) For all landfills that require a County permit, per Chapter 10 of the County Code, the applicant shall hold a valid, County-issued permit at all times such landfill is in operation.
  - 3) The landfill operation shall be limited to the disposal of waste included in the definition of that type of landfill in K.S.A. 65-3424.
  - 4) The applicant shall submit complete plans for the design and operation of the landfill, providing detail as to such matters as noise and dust control, stormwater drainage and detention or retention, hours of operation, truck route, interior roads, fire suppression, security, lighting, screening, and reclamation.
  - 5) Minimum setbacks for any excavation, or fill, associated with the landfill shall be established at a rate of 1 ft for each ft of depth excavated, in accordance with K.S.A. 49-501 and shall be a minimum of 100 ft from any road right-of-way and 30 ft from all other property lines. Additional setbacks may be required based on topography, visibility of site, adjacent land use, drainage issues, etc. Setbacks must be maintained free of any activity, either surface or subsurface.
  - 6) If the County determines that any road associated with the use is inadequate for the expected quantities of traffic, especially with respect to heavy truck traffic, the applicant shall be required to improve and maintain the road(s) to a standard acceptable to the County. An Improvement and Maintenance Agreement between the applicant and the County shall be required to assure that the road(s) used by the operation will be appropriately improved and maintained.
  - 7) Landfill operations may require screening, depending on the location, and as determined by the Board of County Commissioners.
  - 8) If more than 1 acre of land is to be disturbed, a Storm Water Pollution Prevention Plan (SWP3) must be submitted to KDHE and approved prior to commencement of the landfill. A copy of the approved SWP3 must be provided to the Planning Office prior to final approval of the CUP to insure the CUP complies with the provisions of the SWP3.
  - 9) At a minimum, the reclamation plan shall show the finished grade of the property, note the amount of top soil to be placed over the landfill, the type of vegetation to be installed (seed mix, etc.), and the proposed use following reclamation.
  - 10) Landfills shall not be located within a special hazard flood area except that:
    - i. Clean Rubble Landfills may be used to fill in ponds, borrow pits, or other depressions in the special hazard flood area. Grading (fill or excavation), dredging, and any development must comply with Douglas County Floodplain Management Regulations.

- i. If approved, the CUP shall be limited to a specific timeframe. If the landfill activity is not completed within this timeframe, the applicant may request in writing that the CUP be placed on the County Commission agenda for consideration of renewal. The request for renewal should be made prior to the expiration date and public notification of the meeting shall be provided by staff.

**12-306-25 EQUIPMENT STORAGE**

- a. Open or enclosed storage must meet the minimum yard requirements of the district in which it is located.
- b. Open storage must be screened by a view reducing wall, fence or landscaping material from adjacent public roads and residences.

**12-306-26 MANUFACTURING AND PRODUCTION USES (LIGHT OR GENERAL)**

**12-306-26.01 Standards that apply in the GB District**

- a. No outside storage of material is permitted.
- b. No industrial use in the GB District shall occupy more than 6,000 sq. ft of floor area.

**12-306-26.02 Standards that apply in the GI District**

- a. Any industry conforming to applicable regulations of the State of Kansas concerning health, safety, and industrial hazard is permitted, so long as it is not maintained as a nuisance.

**12-306-26.03 Standards that apply in the LI District**

- a. All industrial uses shall be conducted within a completely enclosed building with no open storage of raw, in-process, or finished material and supplies or waste material.
- b. Finished or semi-finished products manufactured on the premises may be stored in the open if screened from the road and adjacent residential property by landscaping, fences, or walls.

**12-306-26.04 Standards that apply in all districts:**

- a. Adequate parking and loading space shall be provided on-site for all employees and traffic to the facility.
- b. Loading operations shall be conducted at the side or rear of buildings.
- c. The front yard shall be landscaped with trees, grass, shrubs, or pedestrian walks and maintained in a neat and attractive condition.
- d. All fencing shall have a uniform and durable character and shall be properly maintained.

**12-306-27 MINING AND EXCAVATION**

**12-306-27.01 Existing Uses**

Mining and excavation of mineral or raw materials including, but not limited to: stone, sand, gravel or other building materials and the manufacturing, processing, storage and selling of said minerals and materials shall be permitted to continue in operation in the AG-1(Agricultural) District; and Floodway and Floodway Fringe Overlay Districts only on those areas under lease and on record at the time countywide zoning went into effect, September 23, 1966.

**12-306-27.02 Standards**

The following standards apply to all mining and excavation activities:

- a. All mining and excavation activities shall observe the following setbacks:
  - 1) No excavation or other quarrying or mining activity shall be permitted within 300 ft of a residence or 200 ft of a residential zoning district, whichever is greater.
  - 2) No excavation or other quarrying or mining activity shall be located closer than 50 ft from any adjoining property under separate ownership.
  - 3) No excavation or other quarrying or mining activity shall occur closer than 100 ft from any right-of-way.
  - 4) The setback areas may be used for the erection of berms or other screening features required by the conditional use permit.
  
- b. Berms at a maximum of 3:1 slope shall be installed along the right-of-way adjacent to any quarrying activity and along the property lines between the use and any adjacent residential use to screen activities from the right-of-way or adjacent residential property unless the existing vegetation or topography provides an effective screen.
  - 1) As an alternative, berms may be installed within the interior of the site if the berms provide an effective screen for activities from the right-of-way or adjacent residential use.
  
- c. If blasting is to occur, a pre-excavation seismology study shall be conducted at the property boundaries and at any residence within 1,000 feet that requests it prior to the commencement of the quarry use.
  - 1) Notice of this study shall be mailed to all property owners as identified on the Certified Douglas County Property Owner List required for the Conditional Use application.
  - 2) A copy of the study shall be provided to the Zoning and Codes Office to be maintained in the file and a copy shall be maintained on site.
  
- d. The Applicant or operator shall provide a surety bond, reclamation bond, Certificate of Deposit or Letter of Credit, in a format acceptable to the Planning Director, to ensure that the site is reclaimed as outlined in the approved Reclamation Plan.
  - 1) The bond amount shall be established based on engineering or contractor estimates for reclamation of the mined area, or area proposed to be mined, as shown on the reclamation plan.

**12-306-27.03 Application materials**

- a. The plans submitted with the application must show relevant information including specific setbacks, phasing, prevailing winds, road networks, dust management plan, water use, ground water table, drainage study, and other information as may be deemed necessary to make an informed decision. At a minimum the plans shall include:
  - 1) The boundary of the entire tract;
  - 2) Vehicular access routes and surfacing;
  - 3) The lateral extent and area, in acres, of the proposed excavation;

- 4) Distances from the lateral extent of the excavation to all property lines;
  - 5) The depth of the proposed excavation;
  - 6) Existing topography;
  - 7) Existing ground cover and location of any environmentally sensitive lands as identified in Section 20-810(i) of the Subdivision Regulations; and
  - 8) Information regarding the blasting being proposed.
- b.** An operation plan which indicates the excavation method to be utilized, provisions for the storage and handling of overburden, the location of over burden piles, the location and phasing of mining activities, storage areas for top soil, the location of berms and information regarding the removal of the berms shall be submitted with the application.
- c.** A drainage study which shows the pre-mining drainage, the mining drainage, and the post-reclamation drainage. Shall be submitted with the application.
- 1) The County Engineer shall evaluate the drainage study to insure that off-site impacts are minimized.
  - 2) More detailed drainage studies will be provided prior to mining in any phase.
- d.** A reclamation plan that described in general how the excavated area will be reclaimed shall be provided with the application. This plan shall show the remaining water features on the property and contours so it can be determined that proper drainage is provided. The following standards apply to the reclamation:
- 1) Sequential reclamation shall be utilized whenever possible.
  - 2) The reclamation plan shall include a proposed schedule for completion of operations and reclamation.
  - 3) The type of reclamation proposed will depend on the final use anticipated for the property.
  - 4) Any remaining water bodies shall have banks with a maximum slope of 3:1 for the first 5 feet below water level. Banks above the anticipated water level shall have a maximum slope of 3:1 unless the County Engineer determines slopes of higher ratio are stable.
  - 5) Up to 10 acres may be opened and mined from in a subsequent phase prior to the approval of the reclamation of the previous phase. Before moving into the subsequent phase, a detailed reclamation for the current phase must be provided to the Planning Office for review and approved by the County Commission.
- e.** A dust control plan which describes the precautions and maintenance activities the operator will undertake to prevent fugitive dust contamination from the site and from the principal access route to the site.



- 1) The principal access route will be defined as the route of least distance between the furthest entrance to the property involved and a paved public highway approved by the County Engineer. The principal access route to be used will be designated by the County Engineer and may not be deviated from except upon prior written approval of the County Engineer.
  - 2) Fugitive dust contamination from the site and/or from the access road must be minimized by the application of dust palliative measures approved by the County Engineer at appropriate intervals. The applicant shall describe in detail what methods they will use and at what intervals. The County engineer shall determine if the proposed plan is adequate to alleviate off-site impacts from fugitive dust contamination resulting from the operation. If the measures prove to be ineffective, additional dust control methods may be required by the County Commission.
- f. A traffic study evaluating the expected impact of the operation on all township and county roads that could be affected by the activity. As a requirement of the conditional use permit the operator shall agree to reimburse the township or county for any repair of damage to the principal access route due to ongoing truck traffic resulting from the operation and to bring the road to the condition that existed prior to the operation. The following procedure shall be used to determine the extent of the damage and to accomplish the appropriate reimbursement:
- 1) The extent of reimbursement to be paid for the repair of damages shall be determined by the County Engineer by conducting an assessment of the road conditions, in cooperation with the operator/property owner, prior to the activity commencing and following the completion of the activity or the development of significant road damage, whichever occurs first. Any funds collected from the operator/property owner for damages to the road shall be used solely to repair the damages caused by the operation and for no other purposes. The repairs to the damaged roads shall be completed no later than 1 year after the damage occurs or the completion of the activity; or the funds shall be returned to the operator/property owner. In lieu of the financial measures, the operator/property owner may execute an agreement, running in favor of the county, that would require the operator/property owner to repair the road damages directly, using the operator/property owner's resources upon notification by the County. Failure to perform the repair immediately upon notification would constitute a violation of the conditions of the CUP and excavation or processing activities approved with the CUP would cease until the repairs had been made.
  - 2) The operator/property owner may appeal the decision of the County Engineer to the County Commissioners. A decision by the Board of Commissioners will be made no later than 60 days after the appeal request has been filed with the Zoning and Codes Office.

**12-306-28      MINI- OR SELF-STORAGE**

Mini- or self-storage facilities shall meet the following locational criteria and development standards:

- a. Mini-or self-storage facilities shall be located within an Urban Growth Area or within an appropriate zoning district.

- b.** Facility should be located within a ¼ mile of a hard surfaced road classified as 'collector' or higher.
- c.** Security fencing and lighting shall be provided for the entire facility. Security fencing is fencing which permits visibility while obstructing access. An example would be a 6 foot high chain link fence.
- d.** All outdoor lights shall, to the maximum extent feasible, confine emitted light on the property on which the light is located and shall not be directed upwards toward the sky. All lights are to be shielded to reflect or direct light away from adjoining property but may be of sufficient intensity to discourage vandalism and theft. No light poles may be higher than 15 ft. Photometric plans shall be submitted with the site plan. Maximum illumination at lot line is as follows:
  - 1) .2 foot-candles, or less, if adjacent to a residentially zoned or developed property.
  - 2) 1 foot-candle if adjacent to non-residentially zoned or developed property.
- e.** Screening, must be provided on any side which abuts a residentially zoned district or residentially developed property with a view reducing wall, fence, berm landscaping materials or a combination of these.
- f.** Access drives shall be a minimum of 20 feet wide for one-way traffic and 25 feet for two-way traffic (to allow parking within the drive aisles).
- g.** Off-street parking shall be required on the basis on one space for each 8,000 square feet of floor area in the facility, plus one space for each employee, but in no case shall the number be less than five spaces.
- h.** All storage shall be kept within an enclosed building, unless a portion is designated for covered (non-enclosed) or exterior vehicle storage. This area may be used for storage of trucks, automobiles, trailers, boats or recreational vehicles, including motor homes.
  - 1) Exterior storage of unregistered and/or disassembled vehicles is prohibited.
  - 2) Any covered (non-enclosed) or exterior vehicle storage shall be screened from adjacent public roads, residentially zoned properties or residentially developed property with a view reducing wall, fence, landscaping materials or a combination of these measures.
- i.** Access drives and parking spaces must be shown on the site plan and physically designated on the site. One vehicle and trailer will be permitted per stall.
- j.** Activities which are prohibited on the premises include miscellaneous or garage sales, commercial shipping and receiving, and the servicing or repair of motor vehicles, boats, trailers, lawn mowers and other similar equipment. Storage spaces shall not be used for storage of commercial or industrial trucks and/or trailers, workshops, hobby shops, manufacturing or similar uses. Human occupancy shall be limited to that required to transport, arrange and maintain stored materials.
- k.** The area shall be properly policed by the owner or operator for removal of trash and debris.

- l. Keyless keypad entry system is required, or a similarly secure entry system with monitoring ability.
- m. All storage units shall be oriented toward the interior of the site. Doors may not be located along or visible from the perimeter of the site.

**12-306-29      EXTENDED CARE FACILITY**

- a. The facility must be located on a hard-surfaced road.
- b. The facility must be in an area which is served by fire/medical emergency vehicles.
- c. Adequate on-site sewage management system must be provided and approved by the Lawrence-Douglas County Health Department.
- d. Water supply must be approved by the Lawrence-Lawrence-Douglas County Health Department.

**12-306-30      OUTDOOR SPORTS OR RECREATION FACILITY**

Excluded from these use standards are recreation facilities that are accessory to a residence.

- a. Game fields, and courts shall not be located within 25 feet of the side or rear property lines.
- b. View reducing fencing and/or landscaping shall be provided to screen outside uses and parking areas from abutting residentially developed properties. Parking areas outside the fenced area shall be screened with hedges at least three and one-half feet (3 ½') in height around parking area to screen adjoining residentially developed properties, or roadway from headlights.
- c. Any above-ground pumps and filters shall be at least 50 ft from abutting properties and screened to minimize noise trespass to adjoining properties.
- d. Dispensing of food, beverages, candy, tobacco, ice cream and sandwiches shall be from vending machines or small snack bar, concession stand or dining facility operated on the premises during the hours the recreational facility is open for use and shall not be open to the general public.
  - 1) The dispensing of food and concessions is to be operated as an accessory use to the recreational use.
  - 2) Drive-thru facilities are expressly prohibited.
  - 3) Food preparation and dispensing shall comply with the Douglas County Health Code and regulations of the State of Kansas.
  - 4) Off-site advertising of food or food services is prohibited.

**12-306-31      RADIO, TELEVISION, AND MICROWAVE TOWERS.**

**12-306-31.01      Purpose.**

This section establishes standards for the use and construction of radio or television broadcasting towers and/or apparatus, microwave transmitting and/or receiving towers and/or stations, or any tower or other similar structure 100 feet or more in height from the ground, or 40 feet in height as

measured to the highest point of the tower/antenna if mounted on a structure or building, or of any height if lighted; whether publicly or privately owned with the exception of Wireless Facilities.

**12-306-31.02 Development Plan Required.**

At the time of application for Conditional Use Permit the applicant shall submit a development plan in sufficient detail, as determined by the staff of the Planning Department, to evaluate its conformance with applicable standards and guidelines. The development plan shall include:

- a. Written authorization from the property owner of the proposed tower site.
- b. A site plan drawn to scale showing the property boundaries, tower, guy wire anchors and other apparatus, existing and proposed structures, proposed transmission buildings and/or other accessory uses, access road(s) location, access road surface material, parking area, fences, location and content of warning sign, exterior lighting specifications, a landscaping plan, land elevation contours, and existing land uses surrounding the site. If any accessory building is proposed, details of the building including elevations and proposed use of the building is required to be submitted with the application.
- c. A report or written information which describes the tower height and design including a cross-section of the structure; engineering specifications prepared by a qualified professional engineer, licensed to practice in the State of Kansas detailing construction of tower, base and guy wire anchorage; the proposed painting and lighting schemes; and describes the tower's capacity, including the number and type of antennas that it can accommodate.

**12-306-31.03 Additional Public Notice**

a. In addition to the written notice to owners within ½ mile (2,640 ft) of the tower request which is provided by the Planning Office, all owners of record of unincorporated property located within a one-mile radius of the proposed tower request must also be notified with written notice by the applicant. The applicant shall submit a Certificate of Mailing for the notice required by this Section, and a list of notified property owners at the time of application for a Conditional Use Permit. An application for a Conditional Use Permit for a communication tower shall not be valid without an executed Certificate of Mailing. The notice shall be sent by regular mail, postage pre-paid, by the applicant. The notice shall provide:

- 1) A brief description and location of the proposed tower;
- 2) Projected date for construction;
- 3) The person, with contact telephone number and address, designated by the applicant to respond to questions concerning the proposed tower;
- 4) The date the Conditional Use Permit application will be submitted to the Planning Office for review and process;
- 5) A statement with substantially the following information:

Notice of Conditional Use Permit (CUP) Consideration pending before the Lawrence-Douglas County Planning Office.

*This letter is being sent to the owners of unincorporated property for the purpose of*

*informing the property owner(s) and other interested parties about the proposed tower development describe further in this letter. This letter does not grant the recipient and/or property owner any additional legal rights to challenge the proposed development, instead, it is being provided solely to advise property owner(s) of the pending development. For further information, contact the applicant's designated representative or the Lawrence-Douglas County Planning Office at (785) 832-3150.*

- 6) The failure to receive the additional notice by a property owner shall not affect the validity of the Conditional Use Permit approval or consideration.

#### **12-306-31.04 General Provisions**

- a. An effort in good faith must be made to locate new antenna on existing towers, or other structures. A request for a new tower must be accompanied by evidence that application was made to locate on existing towers, with no success.
- b. The owner at the owner's expense shall remove any tower that is not in use for a period of one year, unless a request for an extension has been approved by the Board of County Commissioners.
- c. A sign shall be posted on the tower or the exterior fence around the base of the tower noting the name and telephone number of the tower owner/operator.

#### **12-306-31.05 Setbacks**

- a. A ground mounted tower shall be set back from the nearest property line a distance which is at least equal to the height of the tower, measured from the center of the tower.
- b. The setback for a tower mounted on the roof of a building or on top of other structures may be determined from either the edge of the property line or the edge of the roof as follows:
  - 1) The tower shall be set back a distance which is at least equal to the total height of the structure and tower from the nearest property line, measured from the center of the tower (similar to a ground-mounted tower), or
  - 2) If the overall setback above is not met, the tower shall be set back a distance equal to the height of the tower above the roof/structure from the edge of the roof.
- c. The Planning Commission may recommend and the Governing Body may approve a waiver from these setback requirements if it finds that all of the following conditions are met:
  - 1) The waiver will not adversely affect the public health, safety, or general welfare of the community;
  - 2) The waiver will not adversely affect the rights of adjacent property owners or residents;
  - 3) Strict application of the provisions of this section would constitute unnecessary hardship on the Owner/Applicant; and
  - 4) The waiver is appropriate under the circumstances.
- d. Additional setbacks may be required to contain ice-fall or debris from tower failures and/or to preserve the privacy of adjoining residential and public property. Setbacks shall apply to

all tower parts including guy wire anchors, and to any accessory facilities.

**12-306-31.06 Development Standards**

- a. The height of a tower shall meet the setback requirements as stated in this chapter.
- b. All towers should be located in areas zoned commercial, industrial, or agricultural, except that towers may be permitted in areas zoned residential if it can be demonstrated that all reasonable efforts were made to locate the proposed tower in non-residentially zoned areas.
- c. All towers and accessory facilities shall be sited to have the least practical adverse visual effect on the environment. Towers shall not be lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Towers should be a galvanized finish or painted gray or light blue unless other standards are required by the FAA. In all cases, mono pole towers shall be preferable to guyed towers or free standing structures. Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.

**12-306-32 RECYCLING COLLECTION FACILITIES**

The standards below apply to all recycling facilities with the exception of a recycling facility which is located within a building:

- a. Recycling collection facilities shall be limited to one area per property, parcel or tract of land under common ownership dedicated to such facilities.
- b. Any recycling collection facility shall be located within the designated area as shown on the approved site plan.

**12-306-33 RELIGIOUS INSTITUTIONS AND ASSEMBLY**

Access should be limited to roads with a classification of 'collector' or higher but can be taken from a local road provided it is within close proximity, less than 0.25 miles or 1,320 feet, from an intersection with a collector or arterial road.

**12-306-34 RESIDENTIAL DESIGN MANUFACTURED HOMES**

Same conditions apply as for single family homes with the following additional conditions:

- a. Minimum dimensions of body width shall be 22 feet;
- b. Minimum roof pitch shall be 2.5" in height to 12 running inches;
- c. Siding material shall be wood, masonry, composition board or finished aluminum lap siding or other materials normally found on site built homes.
- d. Roofing materials shall be wood shingles, composition shingles or fiberglass shingles, asphalt shingles, clay or concrete tile or slate;
- e. On level sites, the main floor shall be no greater than 20" above finished grade at the foundation. On sloping or irregular sites, the side closest to grade level shall not be greater than 20" above finished grade at the foundation; and
- f. The home shall be permanently mounted on a foundation or basement which meets the provisions of the Building Code.

**12-306-35 RIDING STABLE/ACADEMY, COMMERCIAL**

**12-306-35.01 Standards that Apply in the AG-1 and AG-2 Districts:**

- a. Stables may be used for the commercial boarding of horses or one-on-one instruction by the property owner or manager without requiring a site plan or approval as a Home Occupation.
- b. Stables that have any other commercial components, such as renting horses for rides, riding classes, or other uses will require site planning or approval as a Home Occupation.
- c. Any buildings for keeping of animals shall be located at least 200 feet from any side or rear property lines that abut residentially zoned or developed property.

**12-306-36 SALE BARN /AUCTION HOUSE**

- a. Adequate off-street parking areas must be provided to accommodate both vehicles and trailers.
- b. Loading area must be screened from view of road rights-of-way or residential properties with a fence, wall or view reducing landscaping or a combination of these features.
- c. Livestock sales must have sewage and waste disposal measures approved by the Lawrence-Lawrence-Douglas County Health Department or Kansas Department of Health and Environment identified in their site plan.

**12-306-37 SALVAGE/JUNK YARDS**

- a. All exterior storage and processing areas shall be screened as follows:
  - 1) A salvage yard abutting a collector or arterial road must be screened from the road right-of-way or road easement by a solid masonry wall or solid wood fence at least 6 feet in height and be designed and located to prevent visibility of stored or stacked material. The fence shall be located no closer than 15 feet to any road right-of-way or road easement. In no case shall the height of the solid fence exceed 10 feet.
  - 2) A salvage yard abutting a local road must be screened from the road right-of-way or road easement through view reducing means, such as fencing or landscaping.
  - 3) Fencing shall be placed along the side and rear of all processing and storage areas and may be of any approved type. Live screening may be used in lieu of fencing where deemed appropriate.
- b. No open burning of junked, salvaged, or discarded materials is permitted. Incinerators may be used for burning of wastes or the conducting of salvage operations if such incinerators are of a type approved by the Kansas State Department of Health and Environment.
- c. Salvage, junked, and/or discarded materials shall not be placed in environmentally sensitive areas, nor shall they be buried.

**12-306-38 SEXUALLY ORIENTED BUSINESS**

Sexually Oriented Businesses include, but are not limited to, the following: Adult arcades, Adult media outlet, Adult cabarets, Adult motion picture theaters, Adult retail establishment, Adult theaters, Escort agencies, Nude model studios, and Sexual encounter centers.

### **12-306-38.01 Development Standards**

The following development standards provide location and operational requirements which shall be adhered to and complied with and certified as to their existence when making application for a Conditional Use Permit for the operation of a Sexually Oriented Business. A Conditional Use Permit cannot be granted if these standards are not met.

- a. Sexually Oriented Businesses shall not be located within 1,000 feet of any other Sexually Oriented Business, or within 1,000 feet of any residence, residential zoning, church, school, park or playground, or any other area where large numbers of individuals under the age of 18 regularly attend or congregate. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point on the property lines of applicant's premises to the nearest point on the property line of the residence, school, church, park or playground.
- b. Sexually Oriented Businesses proposed for any building, structure, or open space shall meet all requirements of this and other county, state and health regulations pertaining to buildings and structures; parking; zoning; signage; and on-site and off-site improvements; as provided in the other applicable ordinances, resolutions and regulations of the Unincorporated Territory of Douglas County, Kansas.
- c. The interior of a Sexually Oriented Business shall be adequately lighted (as defined in Subsection vi below) and constructed so that every portion thereof, with the exception of restrooms, is readily visible to the clerk or other supervisory personnel from the counter or other regular station where payment is made for the stock in trade, fare, or live entertainment offered in such establishment. Private or semi-private viewing rooms or booths are prohibited.
- d. The lobby or entrance area of a Sexually Oriented Business shall be designed to minimize the obstruction of sidewalks or pedestrian paths during operating hours and to prevent the interior of the establishment from being viewed from the exterior. Exterior lighting shall be provided at a minimum of two (2) foot-candles of illumination at the entrance and in the parking lot.
- e. All sexually oriented graffiti shall be prohibited. Any existing sexually oriented graffiti shall be immediately removed from the interior or exterior of a building uses for adult entertainment business or of a vacant building formally used for such purpose upon adoption of this regulation.
- f. All areas within a Sexually Oriented Business shall be illuminated at a minimum of one and one-fourth (1.25) foot candles, minimally maintained and evenly distributed at ground level.
- g. No materials that graphically depict "specified anatomical activities" or "specified anatomical areas", or that are characterized by their emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" shall be permitted in restrooms.
- h. All live entertainment shall take place in an area which is at least two feet (2') above the primary level of the customer floor level and at least six (6) feet from all members of the public and which is separated by a rail or other physical barrier designed to obstruct any contact between any entertainer and the public.



- i. The names and telephone numbers of the principal owner and manager of the adult entertainment business shall be legibly written or printed and posted in a visible, unobstructed place viewable from the front door of the establishment. This information shall be kept current so the constituents or general public know whom to contact in case of an emergency.
- j. Illegal activities shall not be permitted to occur on the premises. All measures necessary to eliminate illegal activities on the premises shall be taken as soon as they are known to exist.
- k. All Sexually Oriented Businesses shall permit law enforcement and code enforcement officers to inspect the premises at any time without advance notice during normal business hours.
- l. All Sexually Oriented Businesses shall comply with all laws regarding the protection of minors from harmful materials.
- m. All Sexually Oriented Businesses shall take all necessary & reasonable measures to control patrons' conduct which results in disturbances; vandalism; criminal activity; or crowd control problems which occur inside or outside the premises; traffic control problems; or the creation of a public or private nuisance; or the obstruction of another business's property.

**12-306-38.02 Expansion of Use**

- a. Any substantial enlargement of the use area shall be subject to compliance with the Sexually Oriented Business operation and locational standards set forth in this section, prior to such alteration or expansion.
- b. Any nonconforming Sexually Oriented Business proposed to be substantially enlarged shall first be required to obtain a Conditional Use Permit.

**12-306-38.03 Criminal Offense**

The violation of any law, which is a criminal offense for which the operator or owner of a Sexually Oriented Business is convicted, shall be cause for immediate and automatic suspension and or revocation of the Conditional Use Permit authorizing the establishment and operation of the Sexually Oriented Business.

**12-306-39 SMALL SCALE INDUSTRIAL USES**

- a. A small scale industrial use is an industrial use that is operated on residential property and was originally registered as a Home Occupation but now exceeds the standards of the Type II Home Occupation. The use is of such a scale as to be compatible with nearby land uses, while maintaining the rural character of the area.
- b. Small Scale Industrial Uses permitted as Conditional Uses include establishments primarily engaged in on-site production or assembly of goods by hand manufacturing involving the use of hand tools and small-scale equipment. Typical uses include:
  - 1) On-site production of goods by hand or artistic endeavor;
  - 2) Placement of digital or analog information on a physical or electronic medium;
  - 3) Light manufacturing, predominately from previously prepared materials, of finished

products or parts, provided the noise, light, smell, or vibration does not extend beyond the site;

- 4) Research of an industrial or biotechnical nature;
  - 5) Food Production, such as a bakery or a meat processing facility with no on-site slaughter;
  - 6) Moving picture production such as movies, videos, and television; and
  - 7) Similar small scale industrial uses which do not create any more danger to health and safety in surrounding areas and which do not create any more offensive noise, vibration, smoke, dust, lint, odors, heat, or glare that that which is generally associated with light industrial uses of the type specifically permitted.
- c. Standards to maintain consistency with the Comprehensive Plan recommendations for Industrial uses and to insure compatibility with nearby land uses and the character of the area are listed below:
- 1) The proposed use shall be located primarily outside of the regulatory floodplain.
  - 2) Vegetative cover and wildlife habitat on the site shall be preserved, along with other environmentally sensitive areas to act as buffers and site amenities.
  - 3) The site shall have adequate utilities, infrastructure, and services for the proposed use.
  - 4) The total square footage of all buildings used in the operation and storage shall not exceed 10,000 sq. ft. unless a larger area is approved by the Board of County Commissioners.
  - 5) The establishment may employ up to 15 full-time, non-resident employees.
  - 6) All business activity shall be conducted within the structure with no outdoor storage of materials or product.
  - 7) Parking spaces for all employees and loading areas must be provided on the site. No loading activity or parking is to occur on the adjacent roadway.
  - 8) The use does not require Federal air quality discharge permits.
  - 9) The use shall not generate offensive off-site external effects (such as noise, glare, vibrations, etc.)
  - 10) The site shall be located on a full maintenance public road.
    - i. Traffic information shall be provided, as requested by the County Engineer, to insure the suitability of the adjacent roads to handle the anticipated traffic to be generated by the use.
    - ii. Improvements to the access point to meet current standards, or roadway improvements needed due to traffic generated by the use, or spacing of access

drives, all as identified by the County Engineer, shall be required as part of the Conditional Use.

- iii. The property must, at a minimum, meet the Access Management Standards for residential properties.
- 11) Exterior lighting associated with the use shall be limited. The Conditional Use site plan shall show the location of proposed exterior lighting with the height noted. Lighting spec sheets shall be provided with the plans to illustrate the means taken to eliminate glare. Full cut-off fixtures shall be provided; however, low level lighting (less than 2,600 lumens or 150 watt incandescent bulb) does not require full cut-off fixtures.
- 12) New structures for the use should be of a type that is common to the rural area, rather than industrial, to maintain the rural character of the area.
- 13) No shift work/24 hour a day businesses shall be permitted. Business shall operate with defined working hours.

#### **12-306-40 SPECIAL EVENTS**

The term "Special Event" shall mean a short-term use of land or structures which is not otherwise included as a permitted or accessory use by these Zoning Regulations.

##### **12-306-40.01 Purpose and Intent**

- a. The purpose of this section is to establish procedures and standards for conducting short-term Special Events on private property within the unincorporated area of Douglas County.
- b. The regulations in this section are intended to provide an efficient procedure for processing Special Event applications while promoting the health, safety and welfare of all persons in the county by ensuring that Special Events do not create disturbances, become nuisances, disrupt traffic, or threaten or damage persons or property.

##### **12-306-40.02 Exempt Events**

The following types of events are exempt from the requirement to have a Special Event Permit:

- a. Private gatherings held by the property owner or resident for which no admission or fee is charged for use of the property or facilities and no admission or entrance fee is charged, (such as wedding receptions or family reunions).
- b. Garage sale, estate or farm auction, or similar event. A maximum of 2 of these events are permitted through this exemption per calendar year.
- c. Fundraising or non-commercial events for nonprofit religious, political, educational or community service organizations which meet all of the following criteria and standards:
  - 1) Event is conducted entirely on private property;
  - 2) Any structure used in conjunction with the Special Event shall meet all applicable yard setbacks and shall be subject to a valid building permit;
  - 3) The event shall be restricted to hours of operation between 8 AM and 11 PM;
  - 4) Maximum duration of 7 days;

- 5) Maximum of 4 events on a property per calendar year; and
- 6) Signs displayed in conjunction with use shall comply with sign regulations for the Zoning District in which the property is located.

**12-306-40.3 Events Which Require Special Event Permits**

- a. Events which do not meet the criteria for exemption listed in Section 12-306-40.02 require a Special Event Permit.
  - 1) These include events which are open to the general public, whether or not an admission or entrance fee is charged. These events include, but are not limited to auctions, markets, sporting events, rallies, concerts, performances, festivals, fairs, carnivals, fundraisers, or similar public gatherings.
- b. Events may occur either with or without the sale or provision of alcoholic liquor or cereal malt beverages. The property owner or sponsor of the event is responsible for obtaining necessary liquor licenses.

**12-306-39.04 Permit Approval Process**

- a. Special Event Permits may be approved administratively or may require approval by the Board of County Commissioners, depending on the nature of the activity and the potential impacts to the surrounding properties.
- b. Special Events which do not meet the criteria listed in Section 12-306-40.05 or the standards listed in Section 12-306-40.06 or have characteristics that the Director of Zoning and Codes determines may constitute a nuisance or danger shall require approval of the Board of County Commissioners.

**12-306-40.05 Criteria for Administrative Review**

The permit may be processed administratively if the Director of Zoning and Codes determines the Special Event Permit application meets all of the following criteria:

- a. The principal route to the event is on a road network suitable for the anticipated attendance, per the determination of the County Engineer or township official;
- b. Event hours between 8 AM and 11 PM;
- c. The event lasts no more than 14 days;
- d. Expected attendance on site at one time no more than 100 persons.
- e. Up to 4 events within the calendar year may be permitted administratively for a property. Additional events require approval by the Board of County Commissioners; and
- f. The event does not propose any overnight sleeping or camping, whether or not accommodations are provided.

**12-306-40.6 General Standards**

In addition to the criteria noted above, all Special Events shall comply with the following performance standards and any additional conditions deemed necessary by the Director of

Zoning and Codes, or the Board of County Commissioners, if applicable, in order to minimize any negative impacts to surrounding properties and protect the public health, safety and welfare.

**a. Noise**

The County Noise Regulations (including Section 7-201 *et seq.* of the Douglas County Code, as amended) shall be observed.

**b. Parking**

Adequate off-street parking areas (including accessible parking) are provided for the event.

- 1) Accessible parking must be located as near to the event area as possible.
- 2) Parking shall be provided on the same property as the event to the fullest extent possible.
- 3) No parking shall occur on the public right-of-way
- 4) Parking may be located on adjoining property with advance written consent of the affected landowner. A copy of the written consent shall be provided to the Director of Zoning and Codes prior to approval of the permit.

**c. Location of Event**

- 1) The event shall not interfere with access into the site for emergency vehicles.
- 2) No Special Events are permitted to be located within the regulatory floodway.

**d. Health and Sanitation**

All requirements of the Lawrence-Douglas County Health Department shall be met.

**e. Lighting**

All lighting sources shall be shielded or aimed so the direct illumination is confined to the property on which the Special Event is located.

- 1) The operation of searchlights or similar lighting sources is prohibited.
- 2) Flashing light source is prohibited.
- 3) Animated or lighted signs are prohibited.

**f. Other Permits and Laws**

Any required local or state permits or licenses, etc., shall be obtained before the Special Event Permit is issued and the event shall comply with all applicable sales tax and other laws of Douglas County.

**g. Structures**

Any structure used for a Special Event must comply with Douglas County Construction Codes.

**h. Site Restoration**

The site shall be left free of debris, litter or any other unsightly evidence of the use upon completion or removal of the use and shall thereafter be used only in accordance with the applicable provisions of the zoning regulations.

**12-306-40.7 Review and Approval Procedure**

Special Events which do not meet the exemption criteria listed in Section 12-306-40.02 shall obtain a Special Event Permit through the following procedure:

- a. Submittal of a completed Special Event Permit application, and the appropriate application fee to the Douglas County Zoning and Codes Department.
  - 1) The application must be provided at least 28 days prior to the event to allow time for a review of the application and notification of neighbors. The Director of Zoning and Codes shall make a determination within 7 calendar days of the submittal as to whether the permit may be approved administratively or requires Board of County Commissioners approval.
  - 2) Applications which are referred to the Board of County Commissioners for approval will be reviewed and placed on the next available agenda.
- b. The applicant shall obtain a list of property owners within ½ mile (2,640 ft) of the property on which the Special Event is proposed from the Douglas County Clerk's Office. If the foregoing area includes area within the corporate limits of a city, the list shall include owners of property extending 400 feet into the corporate limits of the city. The applicant shall mail a letter which contains the information below to the property owners on the list to advise them of the proposed event and provide them the opportunity to contact the applicant or the Zoning and Codes Department if they have any questions.

*A Special Event Permit is being proposed for property located at \_\_\_\_\_.  
The event will consist of (brief description of event) and will run from \_\_\_\_\_ to \_\_\_\_\_ between the hours of \_\_\_\_\_. A Special Event Permit application will be submitted to the Douglas County Zoning and Codes Department.*

*Please contact me at \_\_\_\_\_ with any questions regarding this event, or the Douglas County Zoning and Codes Department at 785-331-1343.*

The applicant must provide a copy of the letter, the property owner list and certification of the date the letters were mailed to the addresses on the list with their application.

- c. A Special Event Permit may be administratively issued by the Director of Zoning and Codes if the criteria listed in Section 12-306-40.05 and the standards listed in Section 12-306-40.06 are met and the Director determines the event will not create a public nuisance or danger.
- d. Special Events which do not meet the criteria for administrative approval, or are determined to constitute a potential nuisance or danger to the public, shall be referred to the Board of County Commission for action.

- e. Following the approval of the Special Event, a permit shall be issued to the applicant at no additional charge. The permit shall be kept on the premises during the duration of the event.

#### **12-306-41 TEMPORARY BUSINESS USES**

Temporary business uses may be permitted in any district upon the review and finding of the Board of County Commissioners that the proposed use is in the public interest. In making such determination, the Board shall consider the intensity and duration of the use, the traffic that can be expected to be generated by the use, the applicant's plans for dealing with sanitation and other public health and safety issues, and other factors which the Board in its discretion determines will affect the public health, safety and welfare.

##### **12-306-41.01 Temporary Business Use defined.**

- a. "Temporary business use" shall mean the carrying on of any of the activities enumerated in subparagraph (2) of this Section 12-319-5.01 on real property located in the unincorporated area of Douglas County, Kansas, which is not owned and regularly used by the applicant/sponsor of such activity for such purpose; provided that, "temporary business use" shall not include the activities of persons, families, groups or social or religious organizations that conduct fund raising, social or religious activities on real groups for such activity. An activity enumerated in subparagraph (b), below, held on property which is leased or borrowed for the purpose of conducting the activity shall be presumed to be a "temporary business use" which is subject to the requirements of this Section 12-319-5.
- b. Temporary business uses shall include the following activities conducted only for a temporary and specified duration for projects occurring within Douglas County:
  - 1) Batching or rock-crushing plant, including concrete or asphalt.
  - 2) Construction building or construction materials yard.
  - 3) Real estate tract sales office.
  - 4) Flea market or swap meet.
  - 5) Movie or video filming operations involving a combined crew, cast and extras of greater than ten (10) persons, except that one permit may be acquired for a single movie or video filming operation at different locations over a six (6) month period provided the applicant therefore informs the Douglas County Sheriff of each filming location twenty-four (24) hours prior to commencing filming operations.
  - 6) Any other similar business use of a temporary and specified duration generating no more traffic or other effects on neighboring property than the foregoing.

##### **12-306-41.02 Application Procedure**

- a. An applicant for a Temporary Business Use Permit shall make application to the Zoning and Codes office no less than 28 days before the date of commencement of the proposed Temporary Business Use.
  - 1) For good cause shown, the Board of County Commissioners may allow an application to be filed on shorter notice.

- b. All applications shall be accompanied by a non-refundable application fee in an amount set by resolution of the Board of County Commissioners. A fee schedule is available in the Zoning and Codes Office.
- c. The application shall identify each sponsor of the temporary business use or other persons with a financial interest in the proposed activity.
- d. The application shall be accompanied by a Traffic Impact Study which evaluates the amount and type of traffic expected with the temporary business use and the impact on the nearby road network.
- e. Each temporary business use application shall be accompanied by a temporary business use plan.

**12-306-41.03 Temporary Business Use Plan**

The temporary business use plan shall explain the activity, the number of persons anticipated to attend, the location of the event, and detailed information concerning the applicant's plans and procedures for the following:

- a. Controlling traffic, parking, and road conditions during the temporary business use, including provision for off-road parking;
- b. Addressing health and sanitation concerns at the site, including toilet and drinking water facilities and supplies adequate to meet the anticipated employees, customers, etc., including certification by the Lawrence-Douglas County Health Department that all sanitation and health concerns have been adequately addressed in the applicant's plans
- c. Providing adequate illumination at the site if the temporary business use occurs at night.
- d. Providing security at the site, if needed, including the hiring of private security guards.
- e. Providing adequate fire safety precautions at the site, including consultation with the township fire department and approval prior to the commencement of the temporary business use.
- f. Evidence that the applicant has secured, or can secure, adequate general liability and property insurance coverage for the temporary business use.

**12-306-41.04 Public Notice Requirements**

- a. Upon receipt of the application for a temporary business use permit, the Director of Zoning and Codes shall notify the applicant of the date scheduled for a public hearing on such application before the Board of County Commissioners.
- b. No less than 10 days prior to the public hearing the Director of Zoning and Codes shall send notice of the date, time and place of the hearing by first class mail to the following persons:
  - 1) The owners and occupants of properties within ½ mile (2,640 ft) of the boundaries of the site at which the proposed use will occur.
  - 2) If the foregoing area includes area within the corporate limits of a city, the list shall include owners of property extending 400 feet into the corporate limits of the city.



- 3) If the foregoing area includes area within an adjacent county, the applicant shall provide a certified list of property owners within the notification area from the County Clerk or other designated department in the adjacent county.
- 4) The owners and occupants of residential structures served by driveways which take access from the public road which shall serve as the primary access to the proposed site and that are within 1 mile of the main entrance to such site.
- 5) The public notice provided shall also contain a copy of the temporary business use plan required in Section 12-306(b)(2)(i) or a summary thereof and shall include a statement that additional information may be obtained from the Zoning and Codes Office.
- 6) The failure of any of the above described persons to receive the notice shall not invalidate any proceedings held concerning a temporary business use permit application.
- 7) The notice required by this subsection shall only be required to be sent to the non-owner occupants of properties described herein if the names and addresses of such persons can be ascertained from records of the County that are available to the Director of Zoning and Codes.

**12-306-41.05 Public Hearing and Decision by Board**

- a. Each application for a Temporary Business Use Permit be the subject of a public hearing before the Board of County Commissioners on the date and at the time and place set out in the notice required to be given under Section 12-307(b)(2)(ii)
- b. After the public hearing, the Board may approve or deny the permit, or the Board may continue the hearing or defer a decision on the permit application until a subsequent meeting.
- c. In making its determination, the Board shall consider the intensity and duration of the use, the traffic that can be expected to be generated by the use, the applicant's plans for dealing with sanitation and other public health and safety issues, and other factors which the Board in its discretion determines will affect the public health, safety and welfare.
- d. If the permit is approved, the Board shall establish the effective time period for the permit and all conditions under which the permit is granted. Such conditions may include, but shall not be limited to a requirement that a cash bond be posted by the applicant to reimburse Douglas County for the cost of any overtime incurred by County staff in responding to calls by law enforcement personnel and the provision of other services in connection with the permitted activity.
  - 1) If a bond was required, within 14 days after the conclusion of the use the County Administrator shall review all costs incurred by the County, shall deduct the amount of the costs from the bond, and shall refund the balance of the cash bond to the applicant.

**12-306-41.06 Permit**

When the conditions of approval have been met, the Zoning and Codes Director shall issue a Temporary Business Use Permit.

- a. The Permit shall list the conditions of approval and the time frame of the approved use.
- b. The Temporary Business Use Permit issued shall be available on site for inspection for the duration of the business use.
- c. Any permit issued under this section may not be assigned by the applicant to any other person without the consent of the Board of County Commissioners.

**12-306-42 VALUE ADDED AGRICULTURAL BUSINESS**

**12-306-42.01 Approvals required**

A Value Added Agricultural Business may be permitted by right, with a Conditional Use Permit or as a Home Occupation based on the following criteria:

- a. A Value Added Agricultural Business that is determined by the Zoning and Codes Director to meet the agricultural exemption criteria as defined in Section 12-301-2 and that utilizes only commodities that are produced on-site is a use permitted by right and no additional approvals are required.
  - 1) Per Section 12-301-2, an Agricultural Exemption application must be submitted to the Zoning and Codes Director for determination of agricultural use.
- b. A Value Added Agricultural Business that utilizes any commodities which are not produced on-site shall require registration as a Home Occupation, approval of a Conditional Use Permit or rezoning to a zoning district that permits the use.

**12-306-42.02 Standards**

Value Added Agricultural Businesses which require a Conditional Use Permit or rezoning shall meet each of the following location and development standards (Value Added Agricultural businesses which register as a home-occupation are subject to the home occupation regulations):

- a. A maximum of 4 non-resident, full-time employees shall be allowed.
- b. The total square footage for all buildings used in the operation, production, and storage of materials shall not exceed 10,000 square feet.
- c. Structures are required to be upgraded to meet County building code requirements if used for more than storage of raw agricultural materials.
- d. No part of the production of the value-added product may result in dispersal of smoke or particulate matter emissions that exceeds federal EPA standards.
- e. All equipment used in the production of the value-added product shall be located wholly within a building or structure, or be screened from public rights-of-way and adjacent residential buildings.
- f. The associated noise and vibrations from the production operation shall not be perceptible at the site boundary/property lines.
- g. Storage of products shall be enclosed within a building or structure or screened so that it is not visible from the site boundary/property lines.
- h. The site must have direct access to a full maintenance public road.
- i. Properties must meet the same Access Management Regulations as residential dwellings, at a minimum Additional standards may be applied following the review traffic study which evaluates the anticipated traffic generated by the use and resulting traffic safety impacts.

**12-306-43**      **WHOLESALE STORAGE & DISTRIBUTION/WAREHOUSE**

**12-306-43.01**   **Standards that apply in the GB District:**

Wholesale establishment or warehouse in a completely enclosed building so long as floor area devoted to such uses shall not exceed 20,000 square feet.

**12-306-44**      **WIND ENERGY CONVERSION SYSTEMS**

**12-306-44.01**   **Definitions**

- a.    Small Wind Energy Conversion System (SWECS).    Small wind turbines for personal or small commercial use described as:
  - 1)    Wind Turbine – a device or structure used to convert energy from the wind into electric power. May also be known as windmill or wind pump; devices used to power or run machinery or for pumping ground water; and
  - 2)    Maximum capacity to produce up to 50 kW of electrical power, for consumption on site and not for transfer or sale to a third party.
  
- b.    Large Wind Energy Conversion System (CWECS).    A single wind turbine or system, collection or group of large wind turbines, connected to transmission, collector or feeder lines and energy conversion uses that collect, transmit and store electrical energy for use in a larger electrical network exclusive of individual use. Also known as Commercial Wind Energy Conversion System Project.
  
- c.    Prescribed Burning. The controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental (weather) conditions in accordance with a written prescription that is designed to confine the fire to a predetermined area and to accomplish planned land management objectives.
  
- d.    Road agreement for maintenance. An agreement executed between the applicant and governing body, having jurisdiction over said roads, identifying the responsibilities, cost, upkeep, fees for maintenance of a specific route used for the construction, operation, and decommissioning of a wind energy conversion system.
  
- e.    Extraordinary Events. Any of the following with respect to an approved Large Wind Energy Conversion System: Tower collapse, Turbine failure, Thrown/broken blade or hub, Collector/feeder line failure, Injured worker or citizen, Kills of threatened or endangered species, or Discovery of an unexpectedly large number of dead birds of any variety on site.

**12-306-44.02**   **Large Wind Energy Conversion System (Commercial Wind Energy Conversion Systems).**

- a.    Purpose of Regulations. It is the purpose of this section to provide details related to any application for a Commercial Wind Energy Conversion System (CWECS) Project; create a process to permit the development of a CWECS; provide a basis for public discussion and informed comment on the CWECS; and identify significant environmental, social, and economic effects related to the CWECS Project.
  
- b.    Intent of Regulations. It is the intent of this section to address major issues associated with the project; however, issues not listed may be deemed significant and issues may emerge as significant during the course of review.
  - 1)    These regulations are not intended to restrict installation of Small Wind Energy Conversion Systems authorized and governed by Chapter 13 Construction Codes of

Douglas County Kansas. Small Wind Energy Conversion Systems (SWECS) are expressly exempt from the Conditional Use Permit process.

- 2) These requirements specify the maps, information surveys, and studies that must be submitted as part of the Conditional Use Permit (CUP) application. If approved, one CUP will be issued for the entirety of real property included within the perimeter of the proposed CWECS Project. In the event the application includes multiple properties, the applicant shall provide written evidence of land owner consent for any parcel contained within the CUP application.
- 3) At the time of application for a Conditional Use Permit the applicant shall be required to make surrounding property owners aware of a potential development application. In addition to notifying property owners within 1,000 feet of the CWECS project per section 12-324, the applicant must provide written notice to all owners of record of unincorporated property located within one mile radius of the proposed request. The applicant shall submit a certificate of mailing for the notice required by this section, and a list of notified property owners at the time of the application. The notice shall be sent by regular mail and shall include a brief description of the project, proposed construction date, date the application will be submitted to the planning office, the person with contact information (phone, address) designated by the applicant to respond to questions concerning the proposed application and the following statement:

*This letter is being sent to the owners of nearby property for the purpose of informing the property owners and other interested parties about the proposed CWECS project described further in this letter. This letter does not grant the recipient and/or property owner any additional legal rights to challenge the proposed development, instead, it is being provided solely to advise property owner(s) of the pending development. For further information, contact the applicant's designated representative or the Lawrence-Douglas County Planning Office at 785-832-3150.*

- 4) Location Criteria. The purpose of this section is to identify appropriate location criteria for siting wind turbines. Wind turbines shall be subject to section 12-328 of the County Zoning Regulations and are prohibited from location within any federally designated floodway [F-W Overlay District].

#### **12-306-44.03 Conditions Required for Approval.**

In addition to the findings of fact listed in section 12-307-2.07 the additional considerations shall be evaluated.

- a. The applicant shall demonstrate its ability to strictly conform to all applicable performance standards detailed in these Regulations as well as applicable State and Federal law and regulations.
- b. Key Issues. Key issues relating to CWECS include, but are not limited to:
  - 1) Visual Impact;
  - 2) Noise Impact;

- 3) Wildlife Habitat/ Native Flora and Fauna/ "Heritage Habitat Areas" [A Natural Areas Inventory of Douglas County in Northeast Kansas Prepared by the Kansas Natural Heritage Inventory, Kansas Biological Survey];
- 4) Bird migration/strike;
- 5) Endangered or Threatened Species;
- 6) Water Quality and Soil Erosion;
- 7) Infrastructure, including roads and bridges for construction access;
- 8) Aviation/FAA;
- 9) Reception Interference;
- 10) Cultural Heritage;
- 11) Maintenance of the Rural Character;
- 12) Cumulative Impact;
- 13) Company experience, reputation, and financial ability;
- 14) Removal/Reclamation;
- 15) Bond agreement; and
- 16) Specific requirements for building and construction.

**12-306-44.04 Development/Site Plan Requirements.**

As part of the CUP application, the applicant shall submit a CWECS Development Plan.

- a. Each CWECS plan shall include the following:
  - 1) Name of the project;
  - 2) Name / address of land owner and land developer;
  - 3) Narrative describing phases of construction (if applicable);
  - 4) Concept plan showing the general location of turbines, electric collector and feeder lines, electrical equipment, substations, maintenance roads, and other associated facilities to be located on the subject property; equipment storage buildings or exterior storage areas;
  - 5) Extent of area of subject property to be disturbed or cleared for access, construction, operation and maintenance;
  - 6) Boundaries of the 100-year floodplain as identified on the Federal Insurance Administration's "Flood Hazard Boundary Maps" of Douglas County, Kansas; and,

- 7) The location of any underground pipelines and other utility easements.
- 8) Provision of the following notes on the plan that state:
  - i. *Decommissioned equipment shall be removed from the site and the foundations shall be removed to a depth of four (4) feet below the ground surface.*
  - ii. *The CWECS and its associated facilities shall not be operated so as to cause microwave, television, radio, telecommunications or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law.*
  - iii. *During site clearance and construction, silt fences and other temporary erosion controls shall be installed and left in place until new native vegetation covers the bare ground around the turbines.*
  - iv. *This CUP shall not be transferred from one party to a different person or entity without approval of the Board of County Commissioners. Applicant shall notify the Board of County Commissioners and the Director of Zoning and Codes, in writing, of a transfer from one party to another. All CUP transferees shall be required to meet the same conditions as the original Applicant. The transferee shall also meet the surety bond/escrow requirement to ensure the CWECS is decommissioned and removed to CUP specifications at the end of the project's useful lifespan or in case of abandonment The Commission may, in its discretion, provide for conditions that allow bank financing of a CWECS project, including a mortgage or lien on project assets, but any transfer or assignment of an interest in the CUP will remain subject to prior approval of the Board of County commissioners.*

**b.** Supplemental information. All detailed technical information that supports the proposal should be included in appendices. The following information must be submitted with the application:

- 1) Vicinity Map. Two (2) maps showing project location and vicinity within Douglas County.
- 2) Demonstration of Qualifications to include the following information:
  - i. Name and address of the developer, and
  - ii. Statement from the developer providing relevant information regarding:
    - (a) Qualifications and experience in commercial wind energy development;
    - (b) Environmental management history of the company;
    - (c) Financial information regarding the applicant's ability to construct, operate, and maintain the CWECS; and
    - (d) Financial information regarding applicant's ability to meet the decommissioning escrow-bond requirements. (Note to Applicant: K.S.A. 45-221, Section 33 generally exempts financial information submitted by contractors in qualification statements from being open to the public.)

- 3) Relevant background information on the project, including a general overview of the project location, timeframe and project life, phases of development, and possibilities for future expansion.
- 4) Map of residential uses and structures within 1000' of the site boundary [for each individual wind turbine included in the application];
- 5) Environmental guidelines and industry codes of practice that will be followed if the project is approved.
- 6) An inventory of existing wildlife, endangered and threatened species, wetlands, flora, fauna and geoconservation areas and other biologically sensitive areas within the site.
- 7) Soil Erosion, Sediment Control, and Storm Water Runoff. Applicant shall develop a Soil Erosion, Sediment Control, and Storm Water Runoff Plan, per the approval of the County Public Works Director or his designee.
- 8) Archeological reconnaissance survey within the site that will be impacted by the construction or operation of the CWECS. The survey shall be provided to the State Historic Preservation Office (SHPO) to determine if cultural resources are present. Any unrecorded cultural resources that are found shall be evaluated for integrity and potential listing on the National Register of Historic Places. Undocumented resources that are eligible for listing on the National Register of Historic Places shall be avoided. All archaeological investigations shall meet the SHPO standards and guidelines.
- 9) A transportation route plan to be used for construction shall be coordinated with the Douglas County Department of Public Works. Execution of a road agreement, approved by the Department of Public Works, prior to issuance of a building permit for construction. Dust control plan to be implemented during construction phase and for regular maintenance as needed.
- 10) A plan detailing all off-site construction improvements needed for the project including, but not limited to, the following:
  - i. Requirements for new transportation infrastructure and/or upgraded, realigned, or new roads.
  - ii. Proposed agreement for road maintenance requirements as applicable for the development and continued operation of the CWECS.
  - iii. Changes to electrical substations.
  - iv. Changes to existing power transmission systems, including any upgrades to existing transmission lines within Douglas County.
  - v. Requirements for the realignment of other utilities affected by the project.
- 11) A plan detailing the Mitigation Measures used to demonstrate reasonable efforts to address the following:

- i. Fire Safety: Show how the towers and equipment are protected from fire within the site and from fire originating from outside the site such as with prescribed burning and non-prescribed burning (natural or accidental).
  - ii. High angle rescue.
  - iii. Extraordinary Event response plan: Within 48 hours of the occurrence of an Extraordinary Event, the Applicant shall notify the Director of Zoning and Codes. In the event of extraordinary avian mortality, the Applicant shall, within 30 days of the occurrence, submit a report to the Director of Zoning and Codes, to the Kansas Department of Parks and Wildlife, and to the U.S. Fish and Wildlife Service describing the cause of the occurrences and the steps taken to avoid future occurrences.
  - iv. Noise impact.
  - v. Applicant shall submit proof of having submitted FAA form 7460 (notice to build) at the time of application.
- c. Operation and Maintenance Plan. Operation and maintenance requirements (including frequency of maintenance activities) for the turbines and transmission lines. Width of transmission line easements required, and any restrictions necessary on land use, development, and access within said easement.

**12-306-44.05 Design Standards.**

The following design standards are applicable to Commercial Wind Energy Conversion Systems Projects (CWECS) and are not intended to be applicable to SWECS. The following design standards may be modified, for a particular project, by the governing body (County Commission) following a public hearing held by the Planning Commission. It is the applicant's burden to demonstrate that the public health, safety, welfare, will be preserved and maintained if the standards are modified.

- a. Setback. This section governs the setback of a tower from adjacent property lines not within the CUP. Interior setbacks of properties within the CUP may be reduced at the discretion of the governing body
  - 1) A setback shall be equal to 110% of the height of tower plus length of blade.
  - 2) No turbine shall be located closer than 1500 feet to a residential structure.
  - 3) Additional or reduced setback requirements may be imposed as conditions to the project, depending on the circumstances.
- b. Lowest point. The rotor blades shall be at least 100 feet above ground level at the base of the tower.
- c. Lighting. All turbines and accessory facilities shall be sited to minimize adverse visual effect on the environment. Towers over 100 feet but less than 200 feet in height must be lit for aircraft safety consistent with the intent of FAA regulations, even if not strictly applicable, but lighting beyond what is necessary for aircraft safety will not be allowed. Towers more



than 200' shall be lit consistent with the Federal Aviation Administration (FAA) design guidelines.

- d. Structure. Structures for wind turbines shall be self-supporting tubular towers painted a neutral color such as a white or pale gray. A lattice structure shall be prohibited.
- e. Logos. Logos or advertisements are prohibited on these structures.
- f. Identification Number. Each structure for wind turbine shall be marked with a visible identification number located no higher than fifteen (15) feet above ground level.
- g. Turbine Access Roads. Access roads shall be shown on the site plan and shall require approval of the County Public Works Director or his designee.
  - 1) Access roads shall be low profile roads so farming equipment can cross them.
  - 2) Where an access road is to cross a stream or drainage way, it shall be designed and constructed per the approval of the County Public Works Director or his designee and comply with applicable FEMA and Kansas Department of Agriculture — Division of Water Resources regulations pertaining to building a structure in a flood zone.

**12-306-44.06 Decommissioning/Restoration/Abandonment Plan.**

Applicant shall submit a Decommissioning Plan describing the manner in which the CWECS will be dismantled and removed from the site at the end of its useful life.

- a. All aboveground components of the CWECS shall be removed.
- b. Foundations shall be removed to four (4) feet below ground level. Remainder of foundation may be left intact.
- c. Access roads shall be removed unless specified by the property owner that they are intended to remain.
- d. Land shall be restored to pre-permit conditions, using either productive top soil or re-seeded in native grasses.
- e. Applicant shall submit documentation showing financial capability to carry out the decommissioning and restoration requirements.
- f. When a completed CWECS project does not produce any electric energy for a period of one (1) year, and there is no demonstrated plan to restore the equipment to operating condition, the Director of Zoning and Codes may notify the landowner and/or holder of the CUP that the CWECS project is deemed abandoned.
- g. If the landowner or holder of the CUP for the CWECS project does not cause the project to resume production of electricity within one (1) year from the date of the notice referenced above, the landowner and the CUP holder shall be jointly responsible to commence and shall complete abatement of the CWECS project as set forth in the Douglas County Zoning Regulations. The Board of County Commissioners may require Applicant (Holder of the CUP) to decommission any commercial abandoned turbine, even if other turbines in the project are active.

- h. At the end of the CWECs's useful life, or if CWECs is abandoned, the site shall be restored in accordance with the requirements of this condition within eighteen (18) months.

**12-306-44.07 Bond Agreement.**

**a. Bond Requirement:**

- 1) Applicant shall obtain a surety bond naming Douglas County, Kansas, as payee in a form and amount as specified by acceptable to the Board of County Commissioners. Applicant shall maintain said bond through the lifespan of the CWECs. Bondholder shall provide the County annual notification of bond status. Bondholder shall provide the County 30-days written notice of any cancellation thereof.
- 2) In the event the Applicant or CUP holder is in non-compliance or default due to non-payment, the County shall have the right to call said bond and use it for decommissioning purposes. Should there be any remaining balance; the County shall have the right to withhold refund payment until the decommissioning process is completed to the County's satisfaction.

**b. Liability on Termination or Expiration:**

- 1) In the event of termination of this CUP for any reason, the CUP holder shall remain liable to the County for any expense incurred by the County that is above and beyond what is covered by the surety bond, escrow account, and/or insurance policy.
- 2) The CUP holder shall remain liable to the County for any unspent funds, the expenditure or use of the funds in a manner or for a purpose not authorized by this agreement and/or damages as a result of any breach of this agreement by the CUP holder.
- 3) The County shall have the right, at any time prior or subsequent to any remedies, including seeking injunctive or other equitable relief, to enforce the provisions of this agreement and/or recover funds, which are unspent, expended or used in an unauthorized manner, or for an unauthorized purpose and/or damages sustained by the County as a result of any breach of this agreement by the CUP holder.

- c. **Non-Liability:** Nothing in this agreement or otherwise shall impose any liability or duty whatsoever on Douglas County or any of its agencies, including, but not limited to, any liability for taxes, wages, or any other employee benefits for any person or entity. Contractors, suppliers, or consultants accepting and relying on documents, materials, and other information from the Applicant or CUP holder will do so on their own responsibility and at their risk.

**12-306-45 WIRELESS FACILITIES**

**12-306-45.01 Purpose.**

The Governing Body recognizes that facilitating the development of wireless service technology benefits both the residents and the economic development of Douglas County. The purpose of these standards is to ensure that residents, businesses, and industry within the county enjoy reliable access to wireless telecommunications networks, while, at the same time, safeguarding the health, safety, welfare, and aesthetics of the county. Accordingly, these standards are intended to ensure that the location, installation, construction, and modification of Wireless Facilities within the unincorporated portion of the county comply with all Federal and State laws and regulations.

## **12-306-45.02 Definitions.**

The following words, terms, and phrases, when used in this Section, shall, except where the context clearly indicates otherwise, have the following meanings:

- a. Accessory Equipment means any equipment serving or being used in conjunction with Wireless Facilities or Wireless Support Structures, including but not limited to utility or transmission equipment, power supplies, generators, batteries, cables equipment buildings, cabinets and storage sheds, shelters, or similar structures.
- b. Antenna means telecommunications equipment that transmits or receives radio waves necessary for the provision of Wireless Services.
- c. Co-location means the mounting or installation of Wireless Facilities, including Antennas, on a building, structure, Wireless Support Structure, utility pole, or other existing structure for the purposes of transmitting or receiving radio waves for telecommunications purposes.
- d. Disguised Wireless Facility means any Wireless Facility that is integrated as an architectural feature of a structure so that the existence of the Wireless Facility is not readily apparent to the casual observer, or any Wireless Support Structure that is disguised to resemble a tree, flag pole, steeple, clock tower, or other similar building element.
- e. Major Modification means any improvement that results in a substantial change to a Wireless Facility or to a Wireless Support Structure. Major modifications include, but are not limited to increasing the height of the Wireless Support Structure by more than ten feet or ten percent, whichever is greater, expansion of the area of Accessory Equipment, and any similar improvement. Co-location of new Wireless Facilities, including Antennas, on an existing Wireless Support Structure shall not be deemed a Major Modification.
- f. Minor Modification means any improvement that results in some material change to a Wireless Facility or a Wireless Support Structure, but of a level, quantity, or intensity that is less than a Major Modification.
- g. Monopole means a single, free-standing, pole-type structure supporting Wireless Facilities, including Antennas.
- h. Ordinary Maintenance means maintenance to ensure that Wireless Facilities, Wireless Support Structures, and Accessory Equipment are maintained in safe operating condition. Ordinary Maintenance shall include, but not be limited to inspections, modifications of Wireless Facilities and Wireless Support Structures to ensure structural integrity, exchanging Antennas or Accessory Equipment on a like-for-like basis, relocating Antennas already in place, or other similar actions that fall short of being a Minor Modification.
- i. Wireless Facility means any equipment at a fixed location that enables wireless telecommunications between user telecommunications devices and telecommunications networks.
- j. Wireless Service Provider means a provider of Wireless Services.
- k. Wireless Service means “personal wireless services,” “personal wireless service facilities,” and “commercial mobile services” as those terms are defined at 47 U.S.C. § 332(c)(7)(C)

and (d), as amended, which are provided to telecommunications devices through the implementation and use of Wireless Facilities.

- I. Wireless Support Structure means any freestanding structure, such as a Monopole, or other self-supporting tower, or other suitable structure designed to support or capable of supporting Wireless Facilities, including Antennas. Wireless Support Structures do not include telephone poles, electrical utility poles, or any towers used for the distribution or transmission of electrical services.

#### **12-306-45.03 Approvals Required.**

- a. Conditional Use Permit. No new Wireless Facility, no new Wireless Support Structure, no Co-location that results in a Major Modification of an existing Wireless Facility or Wireless Support Structure, and no Major Modification of an existing Wireless Facility or Wireless Support Structure shall be allowed in any zoning district of the unincorporated portion of the county absent the issuance, upon application, of a Conditional Use Permit in accordance with the procedures established at Section 12-319-1 of these Regulations, as amended.
- b. Site Plan. No Co-location that is a Minor Modification of an existing Wireless Facility or Wireless Support Structure and no Minor Modification of an existing Wireless Facility or Wireless Support Structure shall be allowed in any zoning district of the unincorporated portion of the county absent approval, upon application, of a Site Plan in accordance with the procedures established at 12-319A of these Regulations, as amended.

#### **12-306-45.04 Terms of Approval; Renewal; Limits.**

- a. Term. Any Conditional Use Permit or Site Plan Approval issued hereunder, assuming all conditions of approval are met and maintained, shall be valid for a period of ten years. Any renewal thereof, which shall be subject to administrative approval, shall be for a period of five years. At the time of renewal, the Owner/Applicant shall demonstrate to the Planning Director that the Wireless Facility or Wireless Support Structure remains in compliance with the original conditions of approval.
- b. Limits. Commencing on the date of issuance of any Conditional Use Permit or Site Plan Approval hereunder, the Owner/Applicant shall have a period of one year in which to commence construction or installation of the Wireless Facility or Wireless Support Structure and shall thereafter diligently pursue construction or installation to its completion. Failure to commence construction or installation within one year of receiving a permit or approval or failure to diligently pursue construction or installation to its completion shall cause the Conditional Use Permit or Site Plan Approval to lapse and to be deemed null and void.

#### **12-306-45.05 Application.**

At the time of application for a Conditional Use Permit or for Site Plan Review for any Wireless Facility or Wireless Support Structure, the Owner/Applicant shall submit the following:

- a. A completed Application, on a form supplied by the Planning Director, signed by the Owner(s) of the subject property or signed by an Applicant if accompanied by written authorization of the Owner(s) granting to the Applicant the authority to submit the Application in behalf of the Owner.
- b. Elevation drawings showing the height of the proposed Wireless Facility including Antennas (and any lightning rod or lightning arrester), and all Accessory Equipment, including any buildings and structures.

- c. A Site Plan, drawn to scale, including:
  - 1) the information required by Section 12-319A-4 of these Regulations, as amended;
  - 2) the location of existing or proposed Wireless Facilities or Wireless Facility Support Structures;
  - 3) the location of other existing or proposed structures;
  - 4) the location of accessory equipment and/or other accessory uses;
  - 5) the location of access road(s), access road surface materials, and any parking area;
  - 6) the height, location, and construction materials of fences or other barriers;
  - 7) a Landscape Plan, in accordance with Section 12-319A-4.10 of these Regulations, as amended;
  - 8) elevation contours; and
  - 9) zoning and uses of properties neighboring the subject property.
  
- d. If the project involves a new Wireless Support Structure, a signed and sealed report from a qualified professional engineer, licensed to practice in the State of Kansas, that includes:
  - 1) the height and design of the proposed Wireless Support Structure;
  - 2) the height for all potential mounting positions for Antennas and the minimum separation distances between Antennas;
  - 3) the capacity of the Wireless Support Structure, including the number and types of Antennas that can be accommodated;
  - 4) a statement that the Wireless Support Structure is designed, in accordance with this Section, to collapse upon itself in the event of failure, including the projected fall zone of any such Wireless Support Structure; and
  - 5) any other information that may be necessary or requested by the Planning Director to evaluate the Application.
  
- e. If the project involves a new Wireless Support Structure, the application shall include:
  - 1) line-of-sight diagrams or photo simulations showing the proposed Wireless Support Structure against the skyline and viewed from at least three different vantage points within the surrounding area;
  - 2) a statement that the Owner/Applicant considered Co-location, where it considered Co-location, and why Co-location would not meet the Owner/Applicant's needs; and
  - 3) a statement that the proposed Wireless Support Structure will be made available to other Wireless Service Providers for Co-location at commercially reasonable rates, or

a statement that the Owner/Applicant is seeking a waiver of the Co-location requirement and why such waiver is being sought.

- f. If the project involves Co-location on an existing structure, a signed and sealed report from a qualified professional engineer, licensed to practice in the State of Kansas, which establishes that the existing building or structure is structurally sound and can safely accommodate the proposed Co-location.
- g. If the project involves a new Wireless Support Structure or a Major Modification of an existing Wireless Support Structure, a fee, not to exceed \$2,000, as established by the Governing Body, which amount shall recapture the County's costs of processing the application.
- h. If the project involves a Co-location or anything else that is not a Major Modification, a fee, not to exceed \$500, as established by the Governing Body, which amount shall recapture the County's costs of processing the application.
- i. If the project involves a new Wireless Support Structure, all owners of record of unincorporated property located within a one-mile radius of the proposed structure must be notified with written notice by the applicant. The applicant shall submit a Certificate of Mailing for the notice required by this Section, and a list of notified property owners at the time of application for a Conditional Use Permit. An application for a Conditional Use Permit for a communication tower shall not be valid without an executed Certificate of Mailing. The notice shall be sent by regular mail, postage pre-paid, by the applicant. The notice shall provide:
  - 1) A brief description and location of the proposed tower;
  - 2) Projected date for construction;
  - 3) The person, with contact telephone number and address, designated by the applicant to respond to questions concerning the proposed tower;
  - 4) The date the Conditional Use Permit application will be submitted to the Planning Office for review and process;
  - 5) A statement with substantially the following information:

Notice of Conditional Use Permit (CUP) Consideration pending before the Lawrence-Douglas County Planning Office.

*This letter is being sent to the owners of unincorporated property for the purpose of informing the property owner(s) and other interested parties about the proposed tower development describe further in this letter. This letter does not grant the recipient and/or property owner any additional legal rights to challenge the proposed development, instead, it is being provided solely to advise property owner(s) of the pending development. For further information, contact the applicant's designated representative or the Lawrence-Douglas County Planning Office at (785) 832-3150.*

- j. The failure to receive the additional notice by a property owner shall not affect the validity of the Conditional Use Permit approval or consideration.

**12-306-45.06 General Standards.**

**a. Co-location:**

- 1) Wireless Support Structures shall be designed to accommodate at least three Wireless Service Providers. The compound area supporting the Wireless Support Structure likewise shall be of adequate size to accommodate Accessory Equipment for at least three Wireless Service Providers.
- 2) Whenever it is economically and technically feasible, and it is aesthetically appropriate, as determined by the Governing Body, the Planning Commission, or the Planning Director, Disguised Wireless Facilities shall be designed to accommodate the Co-location of other Wireless Service Providers.
- 3) Upon written request of the Owner/Applicant, the Governing Body, the Planning Commission, or the Planning Director may waive the County's Co-location requirements if it is determined, as demonstrated by technical evidence presented by the Owner/ Applicant, that Co-location at the site is non-essential to the public interest, that construction of a shorter Wireless Support Structure with fewer Wireless Facilities, including Antennas, will promote community compatibility or interests, or that Co-location would cause interference with other existing Wireless Facilities.

**b. Building Permits:** All new Wireless Support Structures, all major modifications of existing Wireless Facilities, and all Accessory Equipment shall not be installed or constructed without the issuance of a Building Permit in accordance with Chapter 13 of the County Code.

**c. Replacement of Existing Wireless Facilities:** The replacement of any existing Wireless Facility or Wireless Support Structure shall require compliance with the terms of this Section and shall require, as may be pertinent, either approval and issuance of a Conditional Use Permit in accordance with the procedures established at Section 12-319-4.1 of these Regulations, as amended, or approval of a Site Plan in accordance with the procedures established at Section 12-319A of these Regulations, as amended.

**d. Setbacks:**

- 1) A ground mounted tower shall be set back from the nearest property line a distance which is at least equal to the height of the tower, measured from the center of the tower base.
- 2) A tower mounted on the roof of a building or on top of other structures shall be set back either:
  - i. a distance which is at least equal to the total height of the structure and tower from the nearest property line, measured from the center of the tower (similar to a ground-mounted tower), or
  - ii. a distance which is at least equal to the height of the tower above the roof/structure from the edge of the roof.

- 3) **Setback Waiver:** The Planning Commission may recommend and the Governing Body may approve a waiver from these setback requirements if it finds that all of the following conditions are met:
    - i. the waiver will not adversely affect the public health, safety, or general welfare of the community;
    - ii. the waiver will not adversely affect the rights of adjacent property owners or residents;
    - iii. strict application of the provisions of this section would constitute unnecessary hardship on the Owner/Applicant; and
    - iv. the waiver is appropriate under the circumstances.
  - 4) **Additional Setback:** Additional setbacks may be required to contain ice fall or debris from tower failures and/or to preserve the privacy of adjoining residential and public property.
- e. Height:** The height of a tower is unregulated but all towers must comply with FAA regulations.
- f. Separation Requirements:**
- 1) All new Wireless Facilities, except Disguised Wireless Facilities, shall be located a minimum of 1,000 feet from existing Wireless Support Structures. The distance shall be measured from the base of the existing Wireless Support Structure to the base of the proposed Wireless Facility.
  - 2) The Planning Commission may recommend and the Governing Body may grant a waiver from the 1,000-foot separation requirement if the Owner/Applicant demonstrates that a waiver will not adversely affect the public health, safety, or general welfare of the community and that strict application of this section would constitute unnecessary hardship.
- g. Design Standards:**
- 1) **Access:** Access shall be provided to all Wireless Facilities, Wireless Support Structures, and accessory equipment per the approval of the County Public Works Director.
  - 2) **Accessory Equipment:**
    - i. All accessory equipment that are buildings, cabinets, storage sheds, and shelters shall be used only to store equipment and other supplies necessary for the operation of the Wireless Facility or Wireless Support Structure. Equipment not used in direct support of such operation shall not be stored on the site.
    - ii. All accessory equipment that are buildings or structures shall require a Building Permit, and shall conform to Height and Setback restrictions established for the zoning district in which the site is located.



- iii. All Accessory Equipment shall be designed to be compatible with and to blend into its surrounding environment through the use of color, camouflage, screening, landscaping, and architecture.
  - iv. Lighting of Accessory Equipment for basic security purposes is permitted. However, such lighting shall be shielded and shall be directed downward. Floodlights are prohibited.
  - v. The addition of related equipment to any building or structure that is Accessory Equipment shall not increase the height of said building or structure more than 20% of the height of the existing building or structure; or more than the maximum height allowed in the zoning district in which the site is located, whichever is less.
- 3) Antennas:
- i. No Antenna may be attached to any Wireless Support Structure or Co-located on any other structure, unless the Wireless Support Structure or other structure is at least forty feet in height.
  - ii. The addition or Co-location of any Antenna on a Wireless Support Structure or any other structure shall not increase the height of said building or structure (a) more than 20% or (b) more than the maximum height allowed in the zoning district in which the site is located, whichever is less.
  - iii. Antennas Co-located on existing structures shall not be subject to Setback requirements.
  - iv. No antenna may be Co-located on any structure listed in the National Register of Historic Places or the Register of Historic Kansas Places until the State Historic Preservation Officer has been given notice and an opportunity to investigate and comment upon the proposed project.
  - v. To the extent that it is feasible and the engineer's report demonstrates that the roof is structurally sound and can safely accommodate it, any Accessory Equipment to an Antenna Co-located on an existing structure shall be located on the roof of the existing building or structure provided that said Accessory Equipment shall not occupy more than 25% of the total roof area and the Accessory Equipment is shielded from view from neighboring properties and rights of way.
- 4) Cables/Conduit: All cable runs should be through portals and maintained within the Wireless Support Structure. Where cable or conduit is required to be located on the outside of any Wireless Support Structure, the cable or conduit shall be painted or covered by material to match the color of the Wireless Support Structure.
- 5) Color: The color of the tower shall comply with the standards set by the Federal Aviation Administration (FAA) or the County.
- 6) Disguised Wireless Facilities:
- i. A Disguised Wireless Facility must be enclosed, camouflaged, screened, obscured, or otherwise not apparent to the casual observer. A Disguised Wireless Facility must be integrated into another structure as an architectural

facility or must be designed to resemble an object or structure that does not have the appearance of a monopole or other Wireless Facility.

- ii. The Disguised Wireless Facility must meet the requirements of the underlying zoning district, including, but not limited to height, setback, and use restrictions.
- 7) Landscaping: Screening landscaping required for the Wireless Facility shall be maintained by the Owner/ Applicant. In cases where the property is not visible from adjacent properties or rights of way or where landscaping is not necessary, appropriate, or feasible, the Governing Body, the Planning Commission, or the Planning Director may waive this requirement.
  - 8) Lighting and Marking: All lighting necessary to comply with the FAA, FCC, or the County lighting requirements. Lighting shall consist of dual lighting structures with day time strobe lights on medium intensity and night time red lights only. No high intensity strobes or night time strobes shall be permitted. Further, all towers requiring lighting shall provide battery backup or other alternative power source to assure lighting operations during times of power outages.
  - 9) Security and Fencing: Ground-mounted Accessory Equipment and related structures shall be secured and enclosed within fencing not less than six feet in height. Fencing shall be constructed with materials that are designed to be compatible with and to blend in to the surrounding areas. Every Wireless Facility shall be protected from trespass by unauthorized persons to discourage climbing of structures.
  - 10) Signage: No advertising or other display shall be permitted on any Wireless Facility or Wireless Support Structure, unless such is required by the FCC, the FAA , or the County.
  - 11) Wireless Support Structures:
    - i. All new Wireless Support Structures shall be of monopole design. Guyed and lattice towers are prohibited.
    - ii. All new Wireless Support Structures located in districts zoned residential, or located within 500 feet of any property or district zoned residential, shall be Disguised Wireless Facilities as defined in this Section.
    - iii. All Wireless Support Structures shall be designed and constructed such that if a failure does occur, the Wireless Support Structure will collapse on itself and will not collapse on structures at or near the site.
    - iv. No Wireless Support Structure shall, except during construction, have a platform, crow's nest, or like structure surrounding it or attached to it.

**12-306-45.07 Final Decision.**

- a. Time Limits. Within 150 calendar days of receiving an application for a new Wireless Support Structure or within 90 calendar days of receiving any other application hereunder, the County shall:
  - 1) review the application in light of the standards of this Section and applicable provisions of the County Code;

- 2) make a final decision to approve or disapprove the application; and
  - 3) advise the Owner/Applicant by written notice of the County's final decision, which final decision shall be supported by written substantial evidence in the record. Such final decision shall be deemed effective on the date of the written notice.
- b. Commencement of Time. The time limits for final decision shall commence upon the County's acceptance of a complete application. If an application is incomplete, the County shall notify the Owner/Applicant within thirty days of its deficiencies and, in such case, the time limits shall not commence until a complete application has been submitted and accepted. Alternatively, the time limits may commence upon a date agreed upon in writing by the County and the Owner/Applicant.
- c. Effect of Lapse of Time. Unless otherwise agreed upon by the Owner/Applicant and the County, an application shall be deemed approved if (i) the County fails to issue a final decision with the time limits established at subsection g(1) and (ii) the Owner/Applicant provides to the County written notice that the applicable time limits have lapsed.
- d. Appeal. Any party aggrieved by the County's final decision approving or disapproving an application or any party aggrieved by the Owner/Applicant's written notice that the time limits have lapsed may appeal said result to the District Court of Douglas County, Kansas, in accordance with K.S.A. 60-2101(d), as amended.

**12-306-45.08 Miscellaneous Provisions.**

- a. Abandonment and Removal. Any Wireless Facility or Wireless Support Structure that is not operated for a period of one year shall be deemed abandoned. The Owner/Applicant shall remove any abandoned Wireless Facility or Wireless Support Structure at his, her, or its expense within 180 days after abandonment.
- b. Interference. All Wireless Facilities shall be constructed, installed, operated, and maintained in accordance with all applicable federal, state, and local laws, resolutions, and regulations so as not to interfere or cause interference with existing telecommunications, including but not limited to radios, televisions, computers, and City and/or County emergency broadcast systems.
- c. Nonconforming Wireless Facilities. Wireless Facilities and Wireless Support Structures that were legally permitted on or before the effective date of this Ordinance shall be considered lawful nonconforming structures.
- 1) Major Modifications and Minor Modifications to nonconforming structures shall be permitted in accordance with the provisions of this Section.
  - 2) Replacement of any nonconforming structure shall be with a structure that complies with the provisions of this Section. If any nonconforming facility or structure is damaged by more than 60% of its fair market value, it shall only be replaced by a conforming facility or structure if it is legal to do so.
  - 3) Ordinary Maintenance. Ordinary Maintenance, as defined herein, shall be exempt from the permitting and approval requirements of this Section.

**12-306-45.09 Exemptions.**

The provisions of this Section shall not apply to the following:

- a. Any Wireless Facility, including Amateur and Receive-only Antennas, that are:
  - 1) less than 75 feet in height;
  - 2) located in the Rear Yard of a residentially zoned Parcel; and
  - 3) Owned and operated by a federally licensed amateur radio operator.
  - 4) Wireless Facilities that are exempt under this Subsection shall not be considered, be deemed available, or be used for Co-location.
- b. Broadcast Towers; and/or
- c. Satellite Dishes.

**12-306-46 RETAIL SALES**

There shall be no slaughtering of animals or poultry on the premises of any retail store.

**12-306-47 SCHOOLS AND COLLEGES**

**12-306.47.01 Standards that apply in the LI and GI Districts**

Only Vocational/technical schools are permitted within these Districts

**12-306-48 CLUSTER HOUSING (Reserved)**