

## **Chapter 18.370 SPECIAL USES**

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### **18.370.010 Statement of intent**

Certain uses of land or buildings may not be appropriate under all circumstances in any zoning district, but may be appropriate where adequate precautions can be taken to assure the compatibility of the use with surrounding uses. It is the intent of this Chapter to allow for such uses by the granting of a special use permit, subject to the same procedures applicable to a rezoning.

(History: Ord. ZRR-2795 §6, 2009; ZRR-1725; ZRR-1637)

### **18.370.020 Special uses designated**

Any building, structure, land or premises may be used, and any building or structure may be erected, constructed, reconstructed, moved or altered, for one or more of the following special uses, subject to approval of a special use permit by the Governing Body and subject to the development and performance standards set forth in Section 18.370.040:

- A. Airports or aviation fields, heliports and helicopter landing pads.
- B. Asphalt plants, concrete plants and foundries.
- C. Assembly halls, community centers or convention centers.
- D. Utility structures including outdoor storage areas accessory to a utility maintenance facility.
- E. Cemeteries, mausoleums or crematories for the disposal of the dead.
- F. Clubs and drinking establishments.
- G. Day care homes, group day care homes, child care centers, preschools or Mother's Day Out programs.
- H. Drive-in theaters.
- I. Group boarding homes for minors or group boarding homes for adults.
- J. Hospitals, nursing or convalescent homes, and continuing care community.

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- K. Hotels, motor hotels or motels.
- L. Keeping of farm animals such as horses, ponies, cows and chickens on a lot or tract of less than three acres in size.
- M. Animal hospitals, large animal veterinarians, or animal kennels.
- N. Mines or quarries, including the removing, screening, crushing, washing or storage of ore, sand, clay, stone, gravel or similar materials.
- O. Nurseries, greenhouses and buildings or areas for the wholesale or retail sale of landscaping supplies, plant materials or landscape maintenance services.
- P. Off-street parking lots/structures of a temporary or permanent nature.
- Q. Oil or gas drilling and production.
- R. Outdoor advertising (poster panels, billboards, recreational sponsor signs or off-site promotional signs).
- S. Penal or correctional institutions.
- T. Radio, television, microwave and communications towers and communication antennas.
- U. Reservoirs, towers, filter beds or water treatment plants.
- V. Residential real estate sales offices.
- W. Sales and display areas for manufactured homes, mobile homes or modular housing.
- X. Solid waste disposal facilities or sanitary sewage plants.
- Y. Sports or recreation facilities of all types, private.
- Z. Taverns, dance facilities, amusement centers and arcades.
- AA. Temporary use of land for commercial or industrial purposes.
- BB. Churches, elementary and secondary schools, and publicly-owned and operated community buildings, museums and libraries.
- CC. The retail sale of building supplies, with outside storage in excess of 20 percent of the ground floor area of the building in a CP-2 District.
- DD. The sale, leasing, rental and servicing of construction equipment and farm machinery.

- EE. Contractor's yard and storage.
- FF. Motor vehicle tow lots (but not salvage yards).
- GG. Sale of used passenger cars in conjunction with a new car dealership.
- HH. Indoor self-storage facilities.
- II. Transportation facilities for public agencies, including but not limited to, school districts, municipal or public transportation agencies, and public utilities.
- JJ. Car wash.
- KK. Wind turbine(s).  
(History: Ord. ZRR-2836 §14, 2010; ZRR-2828 §1, 2009; ZRR-2684 §1, 2007; ZRR-2650 §3, 2007; ZRR-2491 §2, 2004; ZRR-2262 §14, 2001; ZRR-2180 §1, 99; ZRR-2152 §1, 99; ZRR-2079 § 1, 97; ZRR-2004 § 9,96; ZRR-1977 §1,96; ZRR-1916 §2,95; ZRR-1829 §1,94; ZRR-1725; ZRR-1637; ZRR-1477 §1; ZRR-1447 §4; ZRR-1429 §8; ZRR-1304 §11; ZRR-1237 §7; ZRR-1166 §1; ZRR-1106 §1; ZRR-900 §1; ZRR-889 §18.36; ZRR-813 §5; ZRR-412-32; ZRR-412 §20)

**18.370.030 Special uses not permitted**

It shall be presumed that any use listed in Section 18.370.020 shall not be permitted in the City without a special use permit unless that use is also specifically listed as a use permitted by right or as an accessory use in a given zoning district.

(History: Ord. ZRR-2795 §7, 2009; ZRR-1725; ZRR-1637)

**18.370.040 Development and performance standards**

- A. Airports or aviations fields.  
At the time of approval of any permit for an airport or aviation field, the Governing Body may impose such restrictions on land, buildings or structures within an approach or transition plane or turning zone as is necessary to promote safety of navigation and to prevent undue danger from confusing lights, electrical interference or other hazards.
- B. Amusement centers and arcades.
  - 1. The initial special use permit may be granted for a period of up to 12 months, with renewals for a period of up to five years. The Planning Commission and Governing Body may, upon a finding that time restrictions on the permit are not required to protect the public health, safety and welfare, approve an indefinite special use permit for an indoor amusement center and arcade located within an enclosed shopping mall in excess of 400,000 square feet.
  - 2. All facilities shall comply with the requirements contained in Chapter 5.24 of the Code.

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3. On-site parking shall be provided at the rate of one parking space for each two occupants, to be calculated by building code standards. Parking shall be available to be assigned solely to the proposed establishment and cannot be counted for other establishments, except that for shopping centers in excess of 400,000 total square feet the provisions of Section 18.430.140 for shared parking may be applied.
  4. All facilities shall provide enclosed trash structures either inside or outside of the facility of sufficient size to adequately and sanitarly contain all trash produced by the facility. The management shall be responsible for the policing of all trash associated with the operation of the facility.
- C. Clubs or drinking establishments.
1. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.
  2. An initial permit may be issued for a maximum time period of three years. Subsequent renewals may be issued for a maximum time period of five years. Provided, however, that establishments within facilities such as convention centers, hotels, motels, or similar structures determined not to have traffic, parking, noise, litter or other adverse impacts on surrounding properties, may be issued a special use permit for an indefinite time period.
- D. Day care homes, group day care homes, child care centers, preschools and Mother's Day Out programs which are not otherwise permitted as an accessory use or as a permitted use.
1. The property must be zoned District A or residentially zoned property.
  2. The day care operation must have been in existence continually since January 16, 1984.
  3. The day care operation shall be licensed or registered with the State of Kansas and shall comply with all applicable standards set out in Section 18.390.140 B of these regulations. Where the public hearing process clearly indicates that no parking, traffic generation, noise or other adverse impacts are resulting from the facility, the Planning Commission and Governing Body may waive the performance standards referenced above. The Planning Commission and Governing Body may, as a part of any special use permit renewal, require that the number of children and/or employees be reduced until, in their judgment, the adjoining properties are not adversely impacted.
  4. Where the day care operation is operated from a residential dwelling, the owner or operator shall occupy the structure as his or her private residence.

5. No signs identifying the operation shall be permitted on the premises.

E. Mines or quarries.

1. Mines or quarries shall be subject to the development and performance standards set forth in Section 18.310.050 (District M-2).
2. All mines or quarry operations shall be located adjacent, or have direct access over a private haul road, to a thoroughfare capable of handling the expected loads of heavy truck traffic.
3. All above-ground operations shall be located not less than 400 feet from the property line of adjoining commercial or industrial property, 750 feet from the property line of adjoining agricultural or residentially zoned property, and not less than 1,000 feet from the nearest residence existing at the time of commencement of operations.
4. All below-ground operations shall be located not less than 200 feet from the nearest property line, measured laterally.
5. The initial special use permit may be issued for a maximum time period of 10 years, with subsequent renewals issued for a maximum time period of five years.

F. Oil and/or gas drilling or production.

1. Special use permits for oil and/or gas drilling or production may be approved provided that the approval is consistent with the intent and purpose of Chapter 5.51 of the Code as well as the spirit and intent of this Title. In the event of a conflict between the definitions or terms of this Section and Chapter 5.51, the provisions of Chapter 5.51 shall control.
2. In addition to the criteria stated in Section 18.370.040, the Planning Commission and Governing Body shall consider the following criteria in reviewing an application for an oil and/or gas special use permit:
  - a. The development of the natural resources as it relates to the local, regional or national economy.
  - b. The economic conditions as they affect other types of development.
  - c. The effect of approval of the special use permit on existing and future development or development potential of the property.

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- d. The cumulative effect of approval of the proposed permit and other oil and gas special use permits on existing and future development or development potential of the area.
  - e. Past history of the operator with regard to spills, overall safety and compliance with local or state laws.
3. The minimum tract size for special use permits for oil drilling or production shall be 10 acres, including any public street right-of-way. The applicant shall have the written authorization of all owners of the tract. There is no minimum tract size for special use permits for gas drilling or production.
4. No portion of the drilling area shall be closer than 165 feet from any point along the tract line or from public street right-of-way. No drilling or production related activities shall occur within this required buffer area.
5. The maximum depth of any well shall be 1,200 feet below grade unless a greater depth is authorized at the time of the permit approval.
6. In addition to the aforementioned requirements, additional information or conditions may be required, as deemed necessary and proper to protect and promote the public health, safety and welfare, and which requirements are consistent with the intent and purpose of this Chapter, including but not limited to the following:
  - a. Enclosure or burial of the wellhead and/or appurtenances.
  - b. Material types and height of any fencing.
  - c. Noise suppression devices or procedures.
  - d. Hours of operation for drilling equipment delivery, drill pipe storage, racking, servicing, loading of oil, removal of equipment, perforating or fracturing and restoration.
  - e. Routes used by drilling or production related vehicles.
  - f. The capacity number and color of storage or other tanks.
  - g. An environmental impact assessment addressing those areas about which the Planning Commission or Governing Body require additional information, such as noise pollution, water pollution, air pollution, geological impacts or safety and nuisance potential. Any such

environmental impact assessment shall include baseline data against which actual impacts may be evaluated and shall also include the reasonable and preferred procedures and/or equipment for mitigating or abating any and all significant impacts. Any such environmental impact assessment shall be prepared and certified by a professional qualified in the field(s) to which the assessment applies.

- h. Fiscal impact analysis.
7. Any oil and/or gas drilling or production operation shall comply with the development and performance standards set forth in Section 18.310.050 (District M-2).
  8. An initial special use permit for oil and/or gas drilling or production may be granted for a period of up to 10 years, but in no case shall the period granted be less than five years. All subsequent special use permits may be granted for renewal periods of up to 10 years, but in no case shall the period granted be less than one year. A special use permit granted for gas production only may be granted for an indefinite period of time.
  9. The granting of a period for oil and/or gas drilling or production shall not be construed, nor interpreted as implying, that refineries or dehydration or absorption plants are permissible within the permit. Storage tank farms not accessory to the production for which the special use permit has been granted shall not be permitted.
- G. Outdoor advertising.
1. Billboards (including poster panels).
    - a. Zoning: Billboards may be located on property zoned M-1, Industrial Park District, and M-2, General Industrial District, which has frontage on Interstate-35, Interstate-435 or Interstate-635, provided all other conditions of this Chapter are met.
    - b. No billboard shall be located within the following areas, whichever is more restrictive:
      - (1) Within 400 feet of the property line of any residentially zoned property, park, playground, school, hospital or church. Such measurements shall be made as a 400-foot linear measurement along the street frontage on which the billboard is located.

- (2) Within 200 feet of the property line of any residentially zoned property, park, playground, school, hospital or church. Such measurements shall be made as a 200-foot radial distance 360 degrees around the location of the proposed billboard.
  - (3) A billboard located within a parking lot shall not cause a reduction in the number of required parking spaces, nor be located so as to interfere with normal circulation patterns.
- c. Spacing: All billboards shall maintain a minimum spacing of 1,200 feet from existing billboards along interstate or adjacent frontage road rights-of-way. The 1,200 spacing dimension shall be measured along the side of the roadway where the sign is proposed regardless of the direction from which the sign may be viewed. All billboards existing within the City at the time of the adoption of this resolution shall be used as the beginning point for such 1,200 foot minimum spacing measurements.
  - d. Size and Shape: No billboard within the City shall exceed 672 square feet in size. The shapes of all proposed billboards shall comply with representations shown on Exhibit "A" attached to Resolution No. 2907. Deviations from the standard billboard shapes represented in said Exhibit "A" shall not be permitted.
  - e. Height: No billboard shall exceed 30 feet in height above the right-of-way grade from which it is viewed. In cases where the grade at the location of the proposed billboard is higher than the right-of-way grade adjacent to which it is located, the Planning Commission and Governing Body may require the overall height of the billboard to be lowered.
  - f. Lighting: All billboards shall be indirectly illuminated or nonilluminated and comply with all building codes of the City. Billboards may be lit only from dusk to 12 a.m. midnight.
  - g. No billboard shall be permitted to be mounted, attached or affixed to a building rooftop or the walls of any building.
  - h. All billboards shall maintain the required front yard building setback from adjacent right-of-way equal to that required of any structure built within the zoning district in which the billboard is located.
  - i. The area around any billboard and its supports shall be kept clear of debris, and all scrub brush, tall grass and weeds shall be cleared away to a distance of a ten foot radius from the billboard and supports.

- j. Any landscaping approved as part of a special use permit allowing a billboard shall be replaced to original species and size during the next appropriate planting season.
  - k. No more than one double-faced billboard shall be permitted per pole and/or location for which a special use permit is approved.
  - l. No special use permit for any billboard shall be granted for more than three years, with a 60 day time limit for removal in the event the permit is not renewed.
2. Off-site promotional signs.
- a. Off-site promotional signs for developments may be permitted for each project of up to 10 acres in area. For projects of more than 10 acres, one off-site promotional sign for each additional 20 acres or portion thereof shall be permitted. No project shall have more than three such signs. A project shall mean a unit of development under one development plan, one financing package and one identifying name. An entire residential subdivision shall be deemed a project even though several builders may be involved.
  - b. Off-site promotional signs shall be permitted for a maximum period of three years, beginning with the issuance of the first building permit on the project. Such signs shall be removed immediately upon termination of the 3-year period regardless of the extent of project completion or occupancy.
  - c. Projects constructed in phases shall be considered as only one project with respect to the 3-year limitation, except that in the case of a division into two or more developments, each having a separate owner-developer financing status, each development shall be considered a project.
  - d. Off-site promotional signs shall be limited to single-family subdivisions, duplex and apartment or townhouse complexes.
  - e. Off-site promotional signs may have a maximum height of 11 feet, maximum length of 16 feet, may be flood-lighted and shall be well-designed and maintained throughout the life of the sign.
3. Recreational sponsor signs.
- a. Signs shall be permitted only on the inside surface of the perimeter fencing around an athletic field or on a scoreboard associated with an athletic field. The placement of all signs shall be in accordance with a sign

plan, approved by the Governing Body as part of the special use permit, which indicates the location and approximate height of all potential signs.

- b. Signs shall be oriented toward the playing field so that they are visible to participants and spectators, and shall not be positioned so that they can be readily viewed from surrounding streets or adjacent properties.
- c. Signs shall not be illuminated except when the playing field or scoreboard is in use.
- d. Sign permits shall not be required.

H. Residential real estate sales offices.

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

I. Taverns and dance facilities.

- 1. No permit shall be granted unless the distance between the walls of the facility within which the operation is located and the property line of the nearest residentially zoned property is in excess of 200 feet.
- 2. On-site parking shall be provided at the rate of one parking space for each two occupants, to be calculated by building code standards. Parking shall be available to be assigned solely to the proposed establishment and cannot be counted for other establishments except in the case of shopping centers in excess of 300,000 total square feet. The Governing Body may as a part of the required special use permit approve shared parking not solely available to the facility provided the following criteria are met:
  - a. The shared parking shall not exceed more than 50% of the total required parking;
  - b. The business that parking is shared with shall be closed during any period of the day that such shared parking is being used to meet the requirements for an increased occupant load as specified in the special use permit;

- c. Legal documentation acceptable to the City ensuring the facility's ability to have access to the shared parking for the term of the proposed special use permit shall be submitted with the application;
  - d. All shared parking shall be located on property abutting the land containing the facility;
  - e. The facility shall be posted with two alternate occupant loads, which shall specify the hours when each load is in effect. The first load shall be based on the parking solely available to the facility. The alternate load shall be based on the parking solely available to the facility, together with the shared spaces.
3. All facilities shall provide enclosed trash structures either inside or outside of the facility of sufficient size to adequately and sanitarly contain all trash produced by the facility. The management shall be responsible for the policing of all trash associated with the operation of the facility.
  4. The initial special use permit may be granted for a period of up to 12 months, with renewals for one-year periods thereafter provided all standards of performance are being met.
  5. Taverns shall also be subject to the requirements contained in Chapter 5.12 of the Code.
- J. Temporary uses of land for commercial or industrial purposes.  
Special use permits for temporary uses of land for commercial or industrial purposes may be granted for a period not to exceed two years, subject to renewal for one or more periods of time not to exceed a maximum of two years for each renewal. Any stored equipment or material shall be removed from the site on the date of expiration of the special use permit. This provision shall not be used as a means of seeking approval for occupations which are not permitted as accessory uses in residential districts under Chapter 18.390.
- K. At the time of approval of any special use permit, the Governing Body may impose such restrictions as to height or bulk of buildings or structures, yard and lot area requirements, parking requirements, open space or landscaping requirements, fencing requirements or other requirements determined to be reasonably necessary for the protection of the public health, safety and welfare of the neighborhood and the community at large. Further, the Governing Body may require that the applicant submit a final development plan for approval by the staff, Planning Commission or Governing Body prior to the issuance of any building or site development permit.

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- L. Except where a longer or shorter time has been stated for a specific special use, and except as provided below, the maximum time period for any special use permit, or any extension thereof, shall be 10 years. In cases of extreme hardship, the Governing Body may consider granting a permit, or extension thereof, for such period as is warranted under the circumstances.
- M. Renewal of a special use permit is not a matter of right. The same discretion shall attach to a decision to renew a special use permit as existed in the original decision to grant or deny that permit; provided, however, that in considering the decision to grant or deny renewal, any factor which would be relevant to consideration of revocation shall also be relevant to consideration of renewal.
- N. Retail sale of building supplies, with outside storage in excess of 20 percent of the ground floor area of the building in a CP-2 District.

Approval or disapproval shall be based on the following criteria in addition to the criteria specified in Section 18.140.150 E:

- 1. The compatibility of the open storage area to the surrounding or proposed land use of adjacent properties.
  - 2. The size of the open storage area in relation to the size of the main retail structure.
  - 3. The amount of storage area under roof.
  - 4. The amount, type, and quality of screening of the open storage area.
  - 5. The ability of emergency vehicles to enter and maneuver through the site.
- O. Communication facilities, towers and antennas.
    - 1. The definitions in Section 18.395.020 shall apply to Special Use Permits for communication facilities.
    - 2. Each application for a special use permit for a communications tower shall follow the process and submit the required information listed in Section 18.395.050.
    - 3. A request for a Special Use Permit for a communication facility shall use the location criteria in Section 18.395.060.
    - 4. A Special Use Permit for a communication facility shall be subject to the performance standards listed in Section 18.395.070.

5. An initial request for a Special Use Permit shall be limited to five (5) years. At the time of renewal the applicant shall demonstrate, to the satisfaction of the City, that a good faith effort has been made to cooperate with other communication service providers to establish co-location at the facility. Good faith effort shall include, but is not limited to, timely response to co-location inquiries from other providers and sharing of technical information to evaluate the feasibility of establishing co-location. Failure to demonstrate that a good faith effort has been made may result in the denial of the request for renewal.
- P. Sale of used passenger cars in conjunction with a new car dealership.
1. The property must be zoned District CP-2 or C-2.
  2. The net site area of the used car facility shall not exceed 50 percent of the net site area of the new car dealership.
  3. The property line of the used car facility must be within 300 feet of the property line of the new car dealership that it will operate in conjunction with.
  4. A site plan must be submitted which clearly defines the location of all used vehicle display areas, as well as employee and customer parking.
  5. The new car dealership must be a licensed "new vehicle dealer" and the used car facility must be a licensed "used vehicle dealer" under the laws of the State of Kansas. The used car facility must be licensed to the same person as the new car facility.
  6. The used car facility must use, and maintain on all signage, the same trade name and the same manufacturers' brand name as the new car dealership, with the addition of the words "used cars" or their equivalent.
  7. The operation of the used car facility must be governed by an agreement with the same first or second stage manufacturer or distributor as the new car dealership.
  8. Documentation of compliance with these performance standards must be submitted with the application for a special use permit.
  9. The initial special use permit shall be for up to ten years. Any subsequent renewals may be for a period not to exceed ten years. Criteria for said renewals shall include, but not be limited to, whether or not the maintenance and appearance standards, and the manner of display of vehicles, of the used car facility have been equal to or greater than the new car dealership.

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- Q. Animal hospital means a building or group of buildings used primarily for providing acute or emergency in-patient services within a completely enclosed building for the diagnosis, treatment, or medical and surgical care of sick or injured animals operating on a not less than twenty-four hours, seven days a week basis. Such hospitals may include related facilities such as laboratories, out-patient department, and staff offices; provided, however, that such related facilities must be incidental and subordinate to the main use and must be an integral part of the hospital operation and does not include any outdoor facilities such as kennels, non-medical boarding, pet runs and enclosures unless specifically approved as part of the special use permit.
- R. Indoor self-storage facilities
1. Indoor self-storage facilities shall only be permitted in the C-2, CP-2, C-3 or CP-3 districts.
  2. In consideration of the special use permit request, the Planning Commission and Governing Body shall consider the prominence of the proposed location in relation to surrounding commercial development, the potential impact of the storage facility on the character and economic vitality of those surrounding developments, and the appropriateness of the Land Use Intensity Guidelines.
  3. The storage facility shall not adversely alter the architectural design of a shopping center, and shall conform to the Shopping Center Design Guidelines.
  4. At the final development plan stage, the applicant shall demonstrate that the facility can be converted without major structural changes into a space suitable for a generic retail business.
  5. All operations shall be within a fully enclosed climate controlled building. Overhead doors or other means that directly access storage space from outside the building are prohibited.
  6. Setbacks shall be provided as required by the underlying zoning district.
- S. Transportation facilities
1. Preliminary and final site plan approval shall be required for all transportation facilities. Preliminary and final site plans shall include, but not be limited to, the following: adequate employee parking areas for the facility, parking and storage areas for all buses and other vehicles, structures for administration, maintenance and repairs, and screening of the facility.

2. All parking and vehicle storage areas shall be screened from view from all adjacent public streets and adjacent property. The screening technique and materials are subject to review and approval by the Planning Commission and Governing Body.
3. All maintenance and repair of any vehicles shall be conducted inside of a permanent structure.
4. All inoperable vehicles shall be stored inside a permanent structure or removed from the facility.
5. Transportation facilities shall not have a common property line with property identified as low-density or very-low-density on the City's Future Development Plan map.

T. Car wash

1. A special use permit for a car wash shall only be allowed for property zoned CP-2, Planned General Business District.
2. A car wash shall meet the requirements of the Commercial Design Guidelines and Standards, Site Design Standards, and the Architectural Design Standards.
3. The location for a car wash shall not have a common property line with property identified as low-density-residential or very-low-density-residential on the Future Development Plan Map.
4. A car wash shall be a tunnel type, fully enclosed building. The car wash shall clean a moving vehicle by using employees or by an automated system.
5. All mechanical equipment for the car wash system and vacuums shall be internal to a fully enclosed building. Vacuum bays shall be covered by a roof structure. Vacuum bays may be self-serve drive-in bays.
6. The entrance and exit to the car wash shall be 200 feet from any residentially zoned property. Provided, however, that the distance restriction may be reduced or waived by the Planning Commission or the Governing Body at the time of preliminary and final development plan approval where the residentially zoned property is not designated on the Future Development Plan Map as being within a residential category. In determining to what degree the 200-foot distance should be reduced, if any, the Planning Commission or Governing Body shall consider the same factors referenced in Section 18.270.050 A1.

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7. No amplified speaker used for the kiosk or pay station shall be located within 200 feet of any residentially zoned property. Provided, however, that the distance restriction above may be reduced or waived by the Planning Commission or the Governing Body at the time of preliminary and final development plan approval where the residentially zoned land is not designated on the Future Development Plan Map as being within a residential category. In determining to what degree the 200-foot distance should be reduced, if any, the Planning Commission or Governing Body shall consider, but not be limited to the factors listed in Section 18.270.050A1, a through d.

### U. Wind turbine(s)

1. Each application for a special use permit for a wind turbine or wind turbines shall be accompanied by the following information:
  - a. Preliminary development plan (see Section 18.140.190).
  - b. Turbine information, including type, model, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each wind turbine being proposed, tower and electrical transmission equipment.
  - c. Meteorological tower information, if applicable, including location, height, and appearance.
  - d. Digital pictorial representations of “before and after” (photo simulation) views from key viewpoints as may be appropriate.
  - e. The Director, Planning Commission, or Governing Body may require additional technical studies deemed necessary to fully evaluate the application, such as a shadow/flicker model, noise study, geotechnical report, or wildlife impact study.
2. A request for a special use permit for a wind turbine(s) may be approved for an indefinite period of time.
3. Height – The maximum height which may be approved for a wind turbine is 150 feet. Height shall be measured from average grade at the tower base to the highest point of the wind turbine structure, including blades, if applicable. A lightning rod, not to exceed 10 feet, shall not be included within the height limitations. The maximum height which may be approved for a roof-mounted wind turbine shall be equal to one-half the height of the building, not to exceed 20 feet. Height shall be measured from the surface of roof on which the turbine is mounted to the highest point of the wind turbine structure, including blades, if applicable.

4. Minimum lot size – Ground-mounted wind turbines shall be located on property a minimum of one-half acre in size.
5. Setbacks – All wind turbines, other than roof-mounted wind turbines, shall be setback a distance equal to the height of the wind turbine, including blades, if applicable, from all property lines.
6. Separation requirements – When two or more ground-mounted wind turbines are located on one lot, they shall be separated by a distance equal to the overall height of one wind turbine system, including blades, if applicable.
7. The Planning Commission or Governing Body shall have the ability to grant a deviation from these standards subject to Section 18.150.070 (H). In support of a deviation request from these requirements, the applicant shall submit detailed information illustrating the need for the deviation.
8. Color/Finish – Wind turbines, including the towers, shall be painted a non-reflective, non-obtrusive color or a color that conforms to the environment and architecture of the community.
9. Tower design – All tower structures shall be of self-supporting, monopole construction unless attached to a structurally reinforced roof where such support is not warranted. No lattice structures shall be permitted.
10. Blade size – The diameter of the blades for a ground-mounted horizontal-axis, propeller-style wind turbine system shall be limited to one-third the height of the tower.
11. Lighting – Wind turbines shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA) or other applicable authority.
12. Signage – Signs shall be limited to the appropriate warning signs (e.g. electrical hazard or high voltage) placed on the wind turbine tower(s), electrical equipment, and the wind turbine. Commercial advertising is strictly prohibited.
13. Federal and State regulations – All wind turbines shall meet or exceed current State and Federal standards and regulations.
14. Building code compliance - All wind turbines shall meet or exceed the current standards expressed in the adopted building codes. A building permit is required prior to the installation of any wind turbine.

15. Utility connections – Reasonable efforts shall be made to locate utility connections from the wind turbine(s) underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider. For electrical transformers with a footprint greater than two (2) square feet in area, landscaping shall be provided where necessary to substantially screen the structure from public view and/or the view of adjacent homeowners. Maintenance of all landscaping shall be the responsibility of the property owner.
16. Electrical wires – All electrical wires associated with a wind turbine shall be located underground except for those wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires.
17. Safety shutdown – Each wind turbine shall be equipped with both manual and automatic overspeed controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, furling, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
18. Minimum blade clearance – The blade tip clearance for a ground-mounted, horizontal-axis, propeller-style wind turbine shall, at its lowest point, have a ground clearance of not less than 30 feet.
19. Noise – The noise emitted from any wind turbine shall not exceed the noise level limits set out in Chapter 7.08, except during short-term events such as utility outages and severe windstorms.
20. Utility notification – No building permit for a wind turbine shall be issued until a copy of the utility company’s approval for interconnection of a customer-owned generator has been provided. Off-grid systems shall be exempt.
21. Removal of abandoned wind turbines – Any wind turbine that is not operated for energy production for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such wind turbine shall remove the same within ninety (90) days of a receipt of notice from the governing authority notifying the owner of such abandonment. If such wind turbine is not removed within said ninety (90) days, the governing authority may remove such wind turbine at the owner’s expense.

22. Screening – Equipment associated with a roof-mounted wind turbine shall be permitted on the roof so long as it is screened from view in accordance with Section 18.450.100. The roof-mounted wind turbine itself shall be exempt from the screening requirement for optimum functionality of the turbine.

(History: Ord. ZRR-2836 §15, 2010; ZRR-2795 §8, 2009; ZRR-2684 §2, 2007; ZRR-2491 §3, 2004; ZRR-2420 §21, 2003; ZRR-2285 §18, 2001; ZRR-2180 §2, 99; ZRR-2152 §2, 99; ZRR-2079 §2, 97; ZRR-2004 §10, 96; ZRR-1916 §3, 95; ZRR-1867 §1, 94; ZRR-1858 §1, 94; ZRR-1829 §2, 94; ZRR-1725; ZRR-1637)

### **18.370.050 Revocation of special use permits**

#### **A. Basis for revocation**

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

1. Non-compliance with any applicable requirement set forth in Section 18.370.040.
2. Non-compliance with any special conditions imposed at the time of approval of the special use permit.
3. Violation of any provisions of the Code pertaining to the use of the land, construction or uses of buildings or structures or activities conducted on the premises by the permittee or agents of the permittee.
4. Where conditions in the neighborhood have changed to the extent that approval of the permit would be clearly unwarranted if being applied for at the time of revocation.
5. Violation of any other applicable Code provisions or any state or federal law or regulation by the permittee or agents of the permittee, provided that such violations relate to the conduct or activity authorized by the special use permit or the qualifications of the permittee or its agents to engage in such conduct or activity.

#### **B. Procedure for revocation**

1. The Governing Body may initiate revocation proceedings by a majority vote of the members present and voting at the meeting.
2. Unless the permittee and landowner agree in writing that the permit may be revoked, the Governing Body shall hold a public hearing to consider the revocation of the special use permit.

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

6. An appeal of any decision of the Governing Body to revoke a special use permit may be filed in the District Court of Johnson County, Kansas, pursuant to K.S.A. 12-760, or amendments thereto. Any appeal taken shall not suspend the order of revocation during the pendency of the appeal unless so ordered by the District Court.

(History: Ord. ZRR-2795 §9, 2009; ZRR-2454 §11, 2003; ZRR-1725; ZRR-1637)

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