

## **CHAPTER XVI. ZONING AND PLANNING**

- Article 1. City Planning Commission
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### **ARTICLE 1. CITY PLANNING COMMISSION**

- 16-101.       **COMMISSION RE-ESTABLISHMENT.** There is hereby re-established the De Soto City Planning Commission which is composed of seven members of which five members shall be residents of the city and two members shall reside outside the city, but within the designated planning area of the city which is within at least three miles of the corporate limits of the city. The planning commission was originally created by Ordinance No. 323 which was passed and approved on October 26, 1967. (Ord. 322, Secs. 1:10; Code 1998)
- 16-102.       **MEMBERSHIP, TERMS, INTEREST AND COMPENSATION.** The members of the planning commission shall be appointed by the mayor with the consent of the governing body at the first regular meeting of the governing body in May of each year and take office at the next regular meeting of the commission. All members shall be appointed for staggered terms of three years each. The appointments shall be so made that the terms of office of the members residing outside of the corporate limits of the city do not expire within the same year. By the re-establishment of the commission, all current members continue to serve their present terms of office. In case of death, incapacity, resignation or disqualification of any member, appointment to such a vacancy on the commission shall be made of the unexpired term of the member leaving the membership. Should any member have a conflict of interest, either directly or indirectly, in any matter coming before the commission, he or she shall be disqualified to discuss or vote on the matter. The governing body may adopt rules and regulations providing for removal of members of the commission. Members of the commission shall serve without compensation, but may be reimbursed for expenses actually incurred in the performance of their duties as deemed desirable by the governing body. (Ord. 322, Secs. 2:3; Code 1998)
- 16-103.       **MEETINGS, OFFICERS AND RECORDS.** The members of the planning commission shall meet at such time and place as may be fixed in the commission's bylaws. The commission shall elect one member as chairperson and one member as vice-chairperson who shall serve one year and until their successors have been elected. A secretary shall also be elected who may or may not be a member of the commission. Special meetings may be called at any time by the chairperson or in the chairperson's absence by the vice-chairperson. The commission shall adopt bylaws for the transaction of business and hearing procedures. All actions by the commission shall be taken by a majority vote of the entire membership of the commission; except that, a majority of the members present and voting at the

hearing shall be required to recommend approval or denial of an amendment to the zoning regulations, a rezoning amendment or a special use permit. A proper record of all the proceedings of the commission shall be kept. The commission, from time to time, may establish subcommittees, advisory committees or technical committees to advise or assist in the activities of the commission. (Ord. 322, Secs. 2:6; Code 1998)

- 16-104.        **POWERS AND DUTIES.** The governing body and planning commission shall have all the rights, powers and duties as authorized in K.S.A. 12-741 et seq., and amendments thereto, which are hereby incorporated by reference as part of this section and shall be given full force and effect as if the same had been fully set forth. The commission is hereby authorized to make or cause to be made, adopted and maintained a comprehensive plan for the city and any unincorporated territory lying outside of the city but within Johnson County in which the city is located, which in the opinion of the commission forms the total community of which the city is a part. The commission shall also cause to be prepared, adopted and maintained zoning and subdivision regulations on all land within the jurisdiction designated by the governing body. The comprehensive plan and zoning and subdivision regulations are subject to final approval of the governing body by ordinance. Periodically, the governing body may request the commission to undertake other assignments related to planning and land use regulations. (Ord. 322, Sec. 8; Code 1998)
- 16-105.        **BUDGET.** The governing body shall approve a budget for the planning commission and make such allowances to the commission as it deems proper, including funds for the employment of such employees or consultants as the governing body may authorize and provide, and shall add the same to the general budget. Prior to the time that moneys are available under the budget, the governing body may appropriate moneys for such purposes from the general fund. The governing body may enter into such contracts as it deems necessary and may receive and expend funds and moneys from the state or federal government or from any other resource for such purposes. (Ord. 322, Sec. 7; Code 1998)
- 16-106.        **FEES.** Any person appealing from any decision of the planning commission and/or of the building inspector, or any other official of the city charged with the administration of the zoning ordinances of the city, together with its amendments, shall pay a fee of \$25, plus the additional cost of a sum to be determined by the clerk member of the board of zoning appeals, to cover the cost of the publication of the notice of hearing at which time the fee is nonrefundable and may not be recovered once the appeal or application for variance is lodged, and the publication commenced by the clerk member. (Ord. 374, Sec. 1)

## **ARTICLE 2. ZONING REGULATIONS**

- 16-201. ZONING REGULATIONS INCORPORATED. There are hereby incorporated by reference as if set out fully herein, the zoning regulations adopted by the governing body of the City of De Soto, Kansas, as prepared by the city and consisting of Ordinance Nos. 508, 636, 835, 872, 892, 900, 901 and 903 and 1077 entitled, "Zoning Regulations of the City of De Soto, Kansas." No fewer than three copies of the zoning regulations, marked "Official Copy as Incorporated by the Code of the City of De Soto" and to which there shall be a published copy of this section attached, shall be filed with the city clerk to be open for inspection and available to the public at all reasonable business hours. (Ord. 508; Ord. 636; Ord. 835; Ord. 872; Ord. 892; Ord. 900; Ord. 901; Ord. 903; 1077; Code 1998)

## **ARTICLE 3. SUBDIVISION REGULATIONS**

- 16-301. REGULATIONS INCORPORATED. There are hereby incorporated by reference, as if set out fully herein, certain regulations governing the subdivision of land located within the City of De Soto, Kansas and certain surrounding area as described therein, as adopted by the governing body of the City of De Soto, Kansas and prepared by \_\_\_\_\_. No fewer than three copies of the subdivision regulations marked "Official Copy as incorporated by the Code of the City of De Soto" and to which there shall be a published copy of this section attached, shall be filed with the city clerk to be open for inspection and available to the public at all reasonable hours. (Code 1998)

## **ARTICLE 4. BOARD OF ZONING APPEALS**

- 16-401. BOARD OF APPEALS. The governing body of the city does hereby create a board of zoning appeals consist of three members. One member shall serve for a term of one year dating from the creation of this board; one member shall serve for a term of two years and the remaining member for a term of three years. Thereafter, all members shall be appointed for terms of three years each. Vacancies shall be filled by appointment for the unexpired term. The members of such board shall serve without compensation. The board shall annually elect one of its members as chairperson, and shall appoint a secretary, who may be an officer or employee of the city. (Ord. 323, Sec. 1)
- 16-402. RULES AND REGULATIONS. The board of zoning appeals hereinbefore created shall adopt rules and regulations in accordance with the provisions of this article creating the board. Meetings of the board shall be held at the call of the chairperson and such other times as the board may determine. The board shall keep minutes of its proceedings showing evidence presented, findings of fact by the board, decisions of the board, and the vote upon each question. Record of all official action of the board shall be filed in its office and shall be a public record. (Ord. 323, Sec. 2)
- 16-403. PROCEDURE. The board of zoning appeals shall administer the details of appeals from or other matters referred to it regarding the application of the zoning

ordinance as hereinafter provided. The board shall fix a reasonable time for the hearing of an appeal or any other matters referred to it. Notice of the time, place and subject of such hearing shall be published once in the official city paper at least 20 days prior to the date fixed for hearing. A copy of the notice shall be mailed to each party to the appeal and to the city planning commission. (Ord. 323, Sec. 3)

16-404. APPEALS. Appeals to the board may be taken by any person aggrieved, or by any officer of the city or any governmental agency or body affected by any decision of the officer administering the provisions of the zoning ordinance. Such appeal shall be taken within a reasonable time as provided by the rules of the board, by filing a notice of appeal specifying the grounds thereof and the payment of the fee required therefor. The officer from whom the appeal is taken, when notified by the board or its agent, shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board shall have power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance. (Ord. 323, Sec. 4)

16-405. VARIANCES AND EXCEPTIONS. The board may when it shall deem the same necessary, grant variances and exceptions to the zoning ordinance on the basis and in the manner hereinafter provided:

(a) Variances. To authorize in specific cases a variance from the specific terms of the ordinance which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the ordinance will, in an individual case, result in unnecessary hardship, and provided that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done. Such variance shall not permit any use not permitted by the zoning ordinance in such district. A request for a variance may be granted in such case, upon a finding by the board that all of the following conditions have been met:

(1) The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.

(2) The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.

(3) The strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

(4) The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

(5) Granting the variance desired will not be opposed to the general spirit and intent of the zoning ordinance.

(b) Exceptions. To grant exceptions to the provisions of the zoning ordinance in those instances where the board is specifically authorized to grant such exceptions and only under the terms of the zoning ordinance. In no event shall exceptions to the provisions of the zoning ordinance be granted where the use or exception contemplated is not specifically listed as an exception in the zoning ordinance. Further, under no conditions shall the board of zoning appeals have the power to grant an exception when conditions of the exception, as established in the zoning ordinance by the governing body, are not found to be present. In exercising the foregoing powers, the board, in conformity with the provisions of this act, may

reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit. Any person, official or governmental agency dissatisfied with any order or determination of the board may bring an action in the district court of the county in which such city is located to determine the reasonableness of any such order or determination.

(Ord. 323, Sec. 5)

- 16-406. DUTIES; CLERK MEMBER. The clerk member of the zoning board of appeals shall receive all of the appeals or applications for variance filed with the zoning board of appeals and the receipt for the fees provided for in section 16-106, and shall issue a notice of hearing giving at least 20 days from the first publication to the date of hearing; and shall mail a copy of the notice to all interested persons, including the planning commission. (Ord. 374, Sec. 2)

## **ARTICLE 5. FLOODWAYS AND FLOODWAY FRINGE DISTRICTS**

- 16-501. DEFINITIONS. Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

(a) Actuarial or Risk Premium Rates means those rates established by the administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the Act and the accepted actuarial principles. Risk premium rates include provisions for operating costs and allowances.

(b) Appeal means a request or a review of the city administrator's interpretation of any provision of this article or a request for a variance.

(c) Area of Shallow Flooding means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel in unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

(d) Area of Special Flood Hazard is the land in the flood plain within a community subject to one percent or greater chance of flooding in any given year.

(e) Base Flood means the flood having one percent chance of being equaled or exceeded in any given year.

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

(g) Existing Construction means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(h) Flood Insurance Rate Map (FIRM) means an official map of a community, on which the flood insurance study has delineated the flood hazard boundaries and the zones establishing insurance rates applicable to the community.

(i) Flood Insurance Study is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary/Floodway Map and the water surface elevation of the base flood.

(j) Floodway or Regulatory Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

(k) Floodway Fringe is that area of the flood plain, outside of the floodway, that on the average is likely to be flooded once every 100 years (i.e., that has a one percent chance of flood occurrence in any one year).

(l) Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

(m) Highest Adjacent Grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

(n) Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term manufactured home does not include park trailers, travel trailers, and other similar vehicles.

(o) Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

(p) New Construction means structures for which the start of construction or substantial improvement is commenced on or after the effective date of the FIRM.

(q) Start of Construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as cleaning, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

(r) Overlay District is a district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.

(s) Structure means a walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

(t) Substantial Improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing, state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(u) Variance is a grant of relief to a person from the requirements of this article which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship. (Ord. 922, Sec. 1.2)

16-502. LANDS TO WHICH THIS ARTICLE APPLIES. This article shall apply to all lands within the jurisdiction of the city identified on the Flood Insurance Rate Map (FIRM) as numbered and unnumbered A Zones (including AE, AO and AH Zones) and within the Zoning Districts FW and FF established in Section 16-513 of this article. In all areas covered by this article no development shall be permitted except upon a permit to develop granted by the city council or its duly designated representative under such safeguards and restriction and the city council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in sections 16-514, 516:517. (Ord. 922, Sec. 2.1)

16-503. THE ENFORCEMENT OFFICER. The city administrator or his or her designee of the community is hereby designated as the community's duly designated enforcement officer under this article. (Ord. 922, Sec. 2.2)

16-504. RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES. The boundaries of the floodway and floodway fringe overlay districts shall be determined by scaling distances and the official zoning map or on the Flood Insurance Rate Map or Floodway Map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the enforcement officer shall make the necessary interpretation. In such cases where the interpretation is contested, the board of zoning appeals will resolve the dispute. The regulatory flood elevation for the point in question shall be on the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his or her case to the board and to submit his or her own technical evidence, if he or she desires. (Ord. 922, Sec. 2.3)

16-505. COMPLIANCE. No development located within known flood hazard areas of this community shall be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations. (Ord. 922, Sec. 2.4)

- 16-506. ABROGATION AND GREATER RESTRICTIONS. It is not intended by this article to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this article imposes the greater restrictions, the provision of this article shall prevail. All other articles inconsistent with this article are hereby repealed to the extent of the inconsistency only. (Ord. 922, Sec. 2.5)
- 16-507. INTERPRETATION. In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted under state statutes. (Ord. 922, Sec. 2.6)
- 16-508. WARNING AND DISCLAIMER OF LIABILITY. The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This article does not imply that areas outside floodway and floodway fringe district boundaries or land uses permitted within such will be free from flooding or flood damages. This article shall not create liability on the part of the city or any officer or employee thereof for any flood damages that may result from reliance on this article or any administrative decision lawfully made thereunder. (Ord. 922, Sec. 2.7)
- 16-509. APPEAL. Where a request for a permit to develop or a variance is denied by the city administrator the applicant may apply for such permit or variance directly to the board of zoning appeals. (Ord. 922, Sec. 3.1)
- 16-510. PERMIT REQUIRED. No person shall initiate any development or substantial improvement or cause the same to be done without first obtaining a separate permit for development as defined in section 16-501. (Ord. 922, Sec. 3.1)
- 16-511. ADMINISTRATION. (a) The city administrator or his or her designee is hereby appointed to administer and implement the provisions of this article
- (b) Duties of the city administrator shall include, but not be limited to:
    - (1) Review all development permits to assure that sites are reasonably safe from flooding and that the permit requirements of this article have been satisfied.
    - (2) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
    - (3) Notify adjacent communities and the Kansas Water Resources Board prior to any alteration or relocation of a watercourse, and shall submit evidence of such notification to the Federal Emergency Management Agency.
    - (4) Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood carrying capacity is not diminished.
    - (5) Verify, record and maintain record of the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures.
    - (6) Verify, record and maintain record of the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed.

(7) When floodproofing is utilized for a particular structure the city administrator shall be presented certification from a registered professional engineer or architect. (Ord. 922, Sec. 3.2)

16-512. APPLICATION FOR PERMIT. To obtain a permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every such application shall:

- (a) Identify and describe the work to be covered by the permit.
  - (b) Describe the land on which the proposed work is to be done by lot, block tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or work.
  - (c) Indicate the use or occupancy for which the proposed work is intended.
  - (d) Be accompanied by plans and specifications for proposed construction.
  - (e) Be signed by the permittee or his or her authorized agent who may be required to submit evidence to indicate such authority.
  - (f) Give such other information as reasonably may be required by the city administrator.
- (Ord. 922, Sec. 3.2)

16-513. ESTABLISHMENT OF ZONING DISTRICTS. The mapped flood plain areas within the jurisdiction of this article are hereby divided into the two following districts: a floodway overlay district (FW) and a floodway fringe overlay district (FF) identified in the Flood Insurance Study (and accompanying map(s)). Within these districts all uses not meeting the standards of this article and those standards of the underlying zoning district shall be prohibited. These zones shall be consistent with the numbered and unnumbered A Zones (including AE, AO and AH zones) as identified in the official FIRM and identified in the Flood Insurance Study provided by the Federal Emergency Management Agency. (Ord. 922, Sec. 4.0)

16-514. STANDARDS FOR THE FLOODWAY OVERLAY DISTRICT AND THE FLOODWAY FRINGE OVERLAY DISTRICT. No permit for development shall be granted for new construction, substantial improvements and other improvements including the placement of manufactured homes within all numbered and unnumbered A Zones (including AE, AO and AH zones) unless the conditions of sections 16-515:516 are satisfied. (Ord. 922, Sec. 5.1)

15-415. SAME. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the 100 year flood; however, the water surface elevation was not provided. The unnumbered A zones shall be subject to all development provisions of this article. If flood insurance study data is not available the community shall utilize any base flood elevation or floodway data currently available from federal, state or other sources. (Ord. 922, Sec. 5.2)

16-516. SAME. New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:

- (a) Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(b) New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination.

(c) Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(d) All utility and sanitary facilities be elevated or flood proofed up to the regulatory flood protection elevation.

(e) That until a floodway has been designated, no development, including landfill, may be permitted with Zones A1-30 and AE on the city's FIRM unless the application for the land use has demonstrated that the proposed use, when combined with all other existing and reasonably anticipated uses, will not increase the water surface elevation of the 100-year flood more than one foot on the average cross section of the reach in which the development or landfill is located as shown on the Flood Insurance Rate Study incorporated by reference.

(f) Storage, Material and Equipment.

(1) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.

(2) Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

(g) Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, be required to assure that (1) all such proposals and consistent with the need to minimize flood damage; (2) all public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage; (3) adequate drainage is provided so as to reduce exposure to flood hazards; and (4) proposals of redevelopment (including proposals for manufactured home parks and subdivisions) of five acres or 50 lots, whichever is lesser, including within such proposals the regulatory flood elevation.

(Ord. 922, Sec. 5.3)

16-517. FLOODWAY FRINGE OVERLAY DISTRICT (Including AO and AH Zones); PERMITTED USES. Any use permit in section 16-519 shall be permitted in the Floodway Fringe Overlay District. No use shall be permitted in the district unless the standards of section 16-514 are met. (Ord. 922, Sec. 6.1)

16-518. SAME; STANDARDS FOR THE FLOODWAY FRINGE OVERLAY DISTRICT.  
(a) Require new construction or substantial improvement of any residential structure to have the lowest floor, including basement, elevated to or above the base flood elevation.

(b) Require new construction or substantial improvements of nonresidential structures to have the lowest floor, including basement, elevated to or above the base flood elevation or, together with attendant utility and sanitary facilities, to be floodproofed so that below such a level the structure is water tight with walls substantially impermeable to the passage of water and with structural components

having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in section 16-511(b)(7).

(c) Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings have area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(d) Within AH zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

(e) Manufactured Homes

(1) All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with state and local building codes and FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:

(A) Over-the-top ties be provided at each of corner of the home, with five additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side;

(B) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side;

(C) All components of the anchoring system be capable of carrying a force of 4,800 pounds; and

(D) Any additions to the manufactured home be similarly anchored.

(2) Require that all manufactured homes to be placed within Zones A1-30 and AE on the community's FIRM, be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevations; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of 16-518(e)(1).

(Ord. 922, Sec. 6.2)

16-519. FLOODWAY OVERLAY DISTRICT; PERMITTED USES. Only uses having a low flood damage potential and not obstructing flood flows shall be permitted within the floodway district to the extent that they are not prohibited by any other ordinance. All encroachments, including fill, new construction, substantial improvements and other developments must be prohibited unless certification by a professional registered engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge. No use shall increase the flood levels of the regulatory flood elevation. These uses are subject to the standards of sections 16-514 and 16-517. The following are recommended uses for the floodway district.

- (a) Agricultural uses such as general farming, pasture, nurseries, forestry.
- (b) Residential uses such as lawns, gardens, parking and play areas.

- (c) Non-residential areas such as loading areas, parking, airport landing strips.
  - (d) Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.
  - (e) In Zone A unnumbered, obtain, review and reasonably utilize any floodway data available through federal, state or other sources or section 16-516(g) of this article, in meeting the standards of this section.
- (Ord. 922, Sec. 7.0)

16-520. VARIANCE PROCEDURES. The board of zoning appeals as established by the city shall hear and decide appeals and requests for variances from the requirements of this article. (Ord. 922, Sec. 8.1)

16-521. SAME. The board of zoning appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the city administrator in the enforcement or administration of this article. (Ord. 922, Sec. 8.2)

16-522. SAME. Any person aggrieved by the decision of the board of zoning appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this article, and:

- (a) The danger that materials may be swept onto other lands to the injury of others;
  - (b) The danger to life and property due to flooding or erosion damage;
  - (c) The susceptibility of proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (d) The importance of the services provided by the proposed facility to the community;
  - (e) The necessity to the facility of a waterfront location, where applicable;
  - (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (g) The compatibility of the proposed use with existing and anticipated development;
  - (h) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
  - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (j) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
  - (k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (Ord. 922, Sec. 8.3:4)

16-523. CONDITIONS FOR VARIANCES; GENERAL. General, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing sections 16-524:527, have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases. (Ord. 922, Sec. 8.51)

- 16-524. SAME. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historical Places, without regard to the procedures set forth in the remainder of this section. (Ord. 922, Sec. 8.52)
- 16-525. SAME. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result. (Ord. 922, Sec. 8.53)
- 16-526. SAME. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. (Ord. 922, Sec. 8.54)
- 16-527. SAME. Variances shall only be issued upon (1) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances cause fraud and/or victimization of the public, or conflict with existing local laws or ordinances. (Ord. 922, Sec. 8.55)
- 16-528. SAME. Any applicant to whom a variance is granted shall be given a written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (Ord. 922, Sec. 8.56)
- 16-529. NON-CONFORMING USE. A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this article may be continued subject to the following conditions:
- (a) If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this article. The utility department shall notify the city administrator in writing of instances of non-conforming uses where utility services have been discontinued for a period of 12 months.
  - (b) Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as non-conforming uses. (Ord. 922, Sec. 9.1)
- 16-530. SAME. If any non-conforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this article. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the national register of historic places or a state inventory of historic places. (Ord. 922, Sec. 9.2)
- 16-531. PENALTIES FOR VIOLATION. (a) Violation of the provisions of this article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants or variances or special exceptions) shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall upon conviction thereof be fined not more

than \$100 and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

(b) Nothing herein contained shall prevent the city or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 922, Sec. 10.0)

16-532. AMENDMENTS. The regulations, restrictions, boundaries set forth in this article may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the city. At least 20 days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the Federal Emergency Management Agency. The regulations of this article are in compliance with the National Flood Insurance Program Regulations. (Ord. 922, Sec. 11.0)

#### **ARTICLE 6. EXCISE TAX ON PLATTING AND BUILDING**

16-601. PURPOSE AND AUTHORITY. The excise tax levied by this article on the act of platting real property or building in the city has for its purpose the raising of general revenues to be used for transportation improvements in the city. The city's authority to levy this excise tax is derived from Charter Ordinance No. 12, Article 12, Section 5(b) of the Kansas Constitution and K.S.A. § 12-137 and 12-138. (ord. 1052, Sec. 1

16-602. LEVY AND PAYMENT OF TAX. (a) A tax is hereby levied on the act of platting real property and building in the city. The tax rate shall be \$0.14 per square foot of land which is the subject of the plat or building permit.

(b) Every applicant platting property shall pay to the city, after governing body approval but prior to execution by the mayor and prior to recordation of an approved plat with the register of deeds, a tax equal to the area of the real property (square footage) included in the plat multiplied by the current tax rate, less any applicable credits. Every applicant for a building permit shall pay to the city, after city staff approval, but before receiving a building permit, a tax equal to the area of the real property (square footage) which is the subject of the building permit multiplied by the current tax rate, less any applicable credits. The area of real property shall be finally determined by city staff. If multiple plats shall be filed in phases, the fee shall be due prior to each individual plat being recorded. No building permit shall be issued until the excise tax has been paid to the city for the lot in question. In the case of single family residential plats, the excise tax shall be paid at the time each lot is sold by the developer. No building permit shall be issued until the excise tax has been paid to the city for the lot in question. After 75% of the lots of the plat in question are sold, the developer shall pay the excise tax on the balance of the lots remaining, at the tax rate then applicable, prior to the issuance of any additional single family residential building permits.

Regardless of the multiplied tax total, no single-family residential building permit which is not part of a subdivision plat, shall be obligated to pay more than \$10,000.

(c) No approved plat subject to this tax shall be recorded until the applicant has paid the tax in full except for those single family lots subject to the provisions of subsection (b) above.

(d) No building permit subject to this tax shall be issued until the applicant has paid the tax in full.

(e) All taxes collected shall be deposited by the city clerk in the city's general fund.

(Ord. 1141, Sec. 1)

16-603. PLEDGE OF REVENUES. All revenues received from the tax are hereby pledged to transportation improvements of the city. (Ord. 1052, Sec. 3)

16-604. CREDITS/EXEMPTIONS. The excise tax paid on a final plat or building permit pursuant to this article shall be credited in full for:

(a) Land within any final plat approved prior to the effective date of Ordinance No. 1141, if the following shall have occurred:

(1) A development agreement regarding the land within such approved final plat or the subject of a single family residential building permit has been executed by the owner and accepted by the city providing for contribution by the owner of monies for street improvements or actual street improvements; and

(2) Any final contribution or construction required by such agreement or previous city code has been paid or provided to the city.

(b) Payments previously made pursuant to this article for the same land as part of a final plat.

(c) Any replat of platted land which does not increase the gross area of the property being replatted except for single-family development in which the previous plat was granted pursuant to the residential cap in subsection (b) above. In such cases, the applicant will pay for the square footage of the land which is the subject of the replat which does not include the land which contains the original homestead land. In the case of non-platted land or lot splits, that portion of land split from the original homestead tract shall be charged at a square footage times current tax rate.

(d) Land permanently dedicated on a final plat to the city or other public, governmental body, or acts of platting or building by the City of De Soto, Kansas.

(e) Developer construction of all or a portion of collector or arterial roads if approved by the governing body and reflected in the city's comprehensive plan, to the extent that such construction shall reduce the city's future costs to construct collector or arterial roads.

(f) Land dedicated for public right of way for arterial and collector roads,

(g) No excise tax shall be required for a building permit for remodeling or expansion of an existing single family structure or for an accessory structure located on property with a single family structure, unless the square footage of the expansion exceeds 50% of the existing single family structure.

(h) The rebuilding of a single family structure destroyed more than 50% by an Act of God.

(Ord. 1052, Sec. 4)

16-605. ADJUSTMENT TO TAX RATE. The governing body shall periodically review the tax rate at such time as it deems necessary or appropriate; provided, however, that a

formal review shall take place not less frequently than in January of every year.  
(Ord. 1141, Sec. 1)

16-606. APPEALS. Any person aggrieved by any decision of the city officer administering the provisions of this code may appeal such decision to the city governing body. The appeal must be filed in writing with the city clerk within 30 days of the final decision by city staff as to the applicability or amount of the excise tax to be applied. The governing body shall have the power to hear and decide appeals where it is alleged that there is an error in the interpretation, application, calculation by the city officer enforcing the provisions of this excise code. (Code 1998, Ord. 1052, Sec. 6)

16-607. INTERPRETATION. This Article shall be construed as follows:

- A. Liberal Construction: The provisions of this Article shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, and welfare of the City and its citizens.
- B. Conflict: In the event of any conflict between other City ordinances and this Article, the provisions of this Article shall be deemed to be controlling, provided, however, that unless expressly provided herein, this Article is not intended to amend or repeal any existing City ordinance or regulation which shall continue in full force and effect.
- C. Invalidity: If any section, subsection, sentence, clause, phrase, or portion of this Article is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase, or portion of this Article shall be deemed to be a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions of this Article nor impair or nullify the remainder of this Article which shall continue in full force and effect. If the application of any provision of this Article to any person, firm, partnership, joint venture, corporation, school district or other governmental entity, is declared to be invalid by a court of competent jurisdiction, the intent of the City is that such decision be limited to that particular circumstance immediately involved in the controversy, action or proceeding in which such decision of invalidity was rendered. Such decision shall not affect, impair, or nullify this Article as a whole or the application of any provision of this Article to any other person, firm, partnership, joint venture, corporation, school district or other governmental entity.