

Ordinance Summary published in the Legal Record on _____ and the full text of the Ordinance made available at www.desotoks.us for a minimum of 1 week from the date of publication

Ordinance No. 2379 Summary

On June 4, 2015, the City of De Soto, Kansas, adopted Ordinance No. 2379, amending Articles 9 and 10 of the De Soto Zoning Regulations to allow for issuance of a Special Use Permit, under certain circumstances, to authorize replacement of an older mobile home or manufactured home for the purpose of upgrading to a newer unit, or replacing a damaged or destroyed unit. A complete copy of this ordinance may be obtained or viewed free of charge at the Office of the City Clerk at City Hall, 32905 West 84th Street, De Soto, Kansas or at www.desotoks.us. This summary is certified by Patrick G. Reavey, De Soto City Attorney pursuant to K.S.A. 12-3001, et seq.

ORDINANCE NO. 2379

AN ORDINANCE ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO REVISE THE TEXT OF THE CITY ZONING REGULATIONS TO ALLOW FOR A SPECIAL USE PERMIT PERTAINING TO REPLACEMENT OF OUTDATED, DAMAGED, OR DESTROYED MOBILE OR MANUFACTURED HOMES

WHEREAS, the City Planning Commission has recommended that the Governing Body amend the City's Zoning Regulations to allow for mobile or manufactured homes to be replaced if authorized by a Special Use Permit; and

WHEREAS, all newspaper notifications were performed and a public hearing was properly held before the City Planning Commission as to the requested text amendment; and

WHEREAS, after review of the proposed text amendment, the Planning Commission recommended that the Zoning Regulations be amended to make the requested changes; and

WHEREAS, with the addition of clarifying language to the proposed text amendment, the Governing Body is supportive of the recommendation from the Planning Commission.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DE SOTO, KANSAS:

Section 1. That Article 9 of the City's Zoning Regulations (incorporated as Appendix C to the De Soto City Code via Section 16-201 of Article 2 of Chapter XVI) is hereby amended to read as follows:

ARTICLE 9. NONCONFORMITIES

1. General.

Nonconformities are of three types: nonconforming, buildable lot or tract, nonconforming structures and nonconforming uses. A definition of each type is as follows:

A. Nonconforming Buildable Lot or Tract: An unimproved lot which is part of a recorded subdivision or a tract of land, the deed to which was recorded prior to the adoption of zoning regulations (November 16, 1978) or prior to annexation into the City, and neither said lot nor tract complies with the lot width or area requirements for any permitted use in the district in which it is located.

B. Nonconforming Structure: An existing structure which does not comply with the height or yard requirements which are applicable to new structures in the zoning district in which it is located.

C. Nonconforming Use: An existing use of a structure or of land which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.

2. Nonconforming Buildable Lot or Tract.

The Building Inspector shall issue a building permit for any nonconforming buildable lot or tract, provided that:

A. Said lot or tract is shown by a recorded plat or deed to have been owned separately and individually from adjoining lots or tracts of land at a time when the creation of a lot or tract of such size and width at such location would not have been prohibited by any zoning regulations, and

B. Said lot or tract has remained in separate and individual ownership from adjoining lots or tracts of land continuously during the entire time that the creation of such lot or tract has been prohibited by the applicable zoning regulations, and

C. Said lot or tract can meet all yard regulations for the district in which it is located, and

D. Said lot or tract can meet minimum standards for sewage treatment as required by the Subdivision Regulations.

3. Nonconforming Structures.

A. Authority to Continue: Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot or tract which does not comply with the applicable yard and height regulations, may be continued, so long as it remains otherwise lawful.

B. Enlargement, Repair, Alterations: Any nonconforming structure may be enlarged, maintained, repaired or remodeled; provided, however, no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure; provided further, existing mobile home parks not meeting the requirements of these regulations shall be declared nonconforming and shall not be permitted to add spaces or make any improvements inconsistent with the terms and conditions of these regulations.

C. Damage or Destruction: In the event that any nonconforming structure is damaged or destroyed, by any means, to the extent of more than 50 percent of its appraised value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located. When a structure is damaged to the extent of 50 percent or less, no repairs or restoration shall be made unless a building permit is obtained and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion.

D. Moving: No nonconforming structure shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot or tract unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

4. Nonconforming Uses.

A. Authority to Continue: Any lawfully existing nonconforming use or part or all of a structure or any lawfully existing nonconforming use of land, may be continued, so long as otherwise lawful.

B. Ordinary Repair and Maintenance:

(1) Normal maintenance and incidental repair, or replacement, installation or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use.

(2) Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition.

C. Extension: A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity. Such prohibited activities shall include, without being limited to:

- (1) Extension of such use to any structure or land area other than that occupied by such nonconforming use on the effective date of these regulations (or on the effective date of subsequent amendments hereto that cause such use to become nonconforming).
- (2) Extension of such use within a structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of these regulations (or on the effective date of subsequent amendments hereto that cause such use to become nonconforming); provided, however, that such use may be extended throughout any part of such structure that was lawfully and manifestly designed or arranged for such use on such effective date.

D. Enlargement: No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the district in which it is located.

E. Damage or Destruction: In the event that any structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any non-intentional means, to the extent of more than 50 percent of its appraised value, such structure shall not be restored unless such structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located, except for pole signs as described in Exhibit A of Ordinance 2323, dated December 20, 2012, and except for manufactured or mobile homes that are located outside of a mobile home park, which may be replaced upon issuance of a Special Use Permit, in accordance with Section 4.N of Article 10 of these regulations. When such damage or destruction is 50 percent or less, no repairs or restoration shall be made unless a building permit is obtained, and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion.

F. Moving: No structure that is devoted in whole or in part to a nonconforming use and no conforming use of land shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot or tract, unless the entire structure and the use thereof or the use of land shall thereafter conform to all regulations of the zoning districts in which it is located after being so moved.

G. Change in Use: If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may as a special use be changed to another nonconforming use provided that the Board of Zoning Appeals either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accordance with Article 12, Section 2.B Variances. Once a change is made to a more appropriate use, the use shall not be returned to the original use or a less appropriate use.

H. Abandonment or Discontinuance: When a nonconforming use is discontinued or abandoned for a period of 12 consecutive months, such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such land shall comply with the regulations of the zoning district in which such land is located.

I. Nonconforming Accessory Uses: No use which is accessory to a principal non-conforming use shall continue after such principal use shall cease or terminate. See also Article 7 Signs, Sections 9 and 10 for specific regulations concerning nonconforming signs.

J. Nonconforming Residential Uses: Notwithstanding the provisions of Article 12, Section 2.C Granting a Substitution of a Nonconforming Use and Section 2.D Conditions of Determinations, any structure which is devoted to a residential use and which is located in a business or industrial district, may be remodeled, extended, expanded, and enlarged; provided that after any such remodeling, expansion or enlargement, such structure shall not be used to accommodate a greater number of dwelling or lodging units than such structure accommodated prior to any such work.

K. Nonconforming Uses: All existing mobile home or manufactured home parks not meeting the requirements of these regulations shall be declared nonconforming and shall not be permitted to add spaces or make any improvements inconsistent with the terms and conditions of these regulations; except that, any existing manufactured home park developed according to a valid special use permit or other approved development plan, shall become a legal, conforming use under these regulations.

(Ord. 2323)

5. Status of Special Uses.

A. Status of Existing Special Uses: Where a use exists at the effective date of these regulations and is permitted by these regulations only as a special use in the zoning district in which it is located, such use shall not be deemed to be a nonconforming use, but shall, without further action, be deemed a lawful conforming use in such zoning district. Such special use shall not be enlarged or expanded unless a special use application is approved as set out in Article 10 of these regulations.

B. Status of Future Special Uses: Any use for which a special use permit has been issued, as provided in these regulations, shall not be deemed to be a nonconforming use, but shall, without further action, be deemed a lawful conforming use.

Section 2. That Article 10 of the City’s Zoning Regulations (incorporated as Appendix C to the De Soto City Code via Section 16-201 of Article 2 of Chapter XVI) is hereby amended to include new Section N., which shall read as follows:

N. Manufactured Home Dwellings on property zoned “R-A” Residential Agricultural, “R-H” Residential Historic, “R-0” Residential Suburban, “R-1” Residential Low Density, and “R-1A” Residential Moderate Density.

Statement of Purpose: The purpose of this section is to allow for the replacement of an older mobile home or manufactured home for the purposes of upgrading to a newer unit, or replacing a damaged or destroyed unit. A Special Use Permit may only be granted for a manufactured home dwelling that is replacing a specific mobile home or manufactured home that existed on a lot or tract within the year preceding the application for the Special Use Permit.

A Special Use Permit may only be approved when it can be determined that the benefit to the City from the replacement of an existing [or one that was removed within the year preceding the application for the Special Use Permit] manufactured or mobile home will:

- sufficiently outweigh possible negative impacts upon surrounding property rights and values,
- provide a significant upgrade to the form, function, appearance, and compatibility from the existing or previously existing dwelling unit,
- outweigh any negative aspects of the proliferation or continuance of manufactured home dwellings to the De Soto community at large.

The applicant shall provide sufficient information so the following issues may be properly evaluated concerning a proposed replacement of an existing [or one that was removed within the year preceding the application for the Special Use Permit] dwelling.

1. Applicability: A Special Use Permit for the replacement of a mobile home or manufactured home dwelling shall only be considered in the following instances:
 - a. In the event of un-intentional damage to or destruction of an existing mobile or manufactured home, as defined in Article 9, Section 4E of these regulations.
 - b. To replace a mobile home or manufactured home currently existing outside of a mobile home park on an individual lot or tract within an R-A, R-H, R-0, R-1, or R-1A zoning district, or meets the requirements set forth in this subsection (b) but was removed from the individual lot or tract within the year preceding the application for the Special Use Permit.
2. Location Restrictions:
 - a. All applicable yard set-back requirements must be met.
 - b. No manufactured home shall be placed within an easement.
 - c. The replacement manufactured home shall be situated on the property as to negate any negative impacts to surrounding properties. A replacement manufactured home should be placed in the same location on the property as the original, providing that adjustments may be made for larger structures or to meet yard requirements.
 - d. Only one manufactured home dwelling may be placed on a lot or tract.
3. General Standards:
 - a. Skirts. Each manufactured home shall be equipped with skirts on all sides, such skirts to be of a material harmonious to the mobile home structure.
 - b. Parking. Off-street parking shall be provided within 60 feet of the manufactured home and shall be maintained at a minimum ratio of two car spaces for each manufactured home.
 - c. Utilities. The water supply shall be connected to the municipal water system and all plumbing shall be constructed and maintained in accordance with the city’s plumbing code. All liquid waste shall be disposed of through the municipal sanitary sewer system. All plumbing shall comply with state and local plumbing laws and regulations. Each manufactured home shall be provided with at least a four inch sewer connection. The sewer connections shall be provided with suitable fittings so that a water tight connection can be made between the mobile home drain and the sewer connection.

- d. Refuse Disposal. All solid waste shall be disposed of by accumulation in containers distributed by the city's contractor and removal at regular intervals by the city's contractor.
- e. Electricity. All electrical installations shall comply with the electrical code of the city. Electrical outlets shall be weather-proof. An electrical outlet supplying at least 115 volts shall be provided with a minimum of 60 ampere individual service.
- f. Fuel. Natural and liquefied petroleum gas for heating and cooking purposes may be used at individual manufactured homes; provided, however, that the installation is connected by copper or other suitable metallic tubing and complies with the fire prevention code of the city.

Section 3. City Staff is authorized to revise other portions of the Zoning Regulations (e.g. Table of Contents, Appendices) to be consistent with the above text amendments.

Section 4. This ordinance shall take effect and be enforced from and after its publication once in the official city newspaper.

PASSED by a 2/3 majority of the Governing Body of the City of De Soto, Kansas on the 4th day of June, 2015.

(Seal)

Timothy J. Maniez, Mayor

ATTEST:

Lana R. McPherson, MMC, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney