

ZONING AND PLANNING ORDINANCE

Ordinance No. 38

AN ORDINANCE DIVIDING THE CITY OF ANDOVER INTO ZONES OR DISTRICTS, AND REGULATING AND RESTRICTING THE LOCATION OF TRADES AND INDUSTRIES, AND THE LOCATION, ERECTION, ALTERATION AND REPAIR OF BUILDINGS DESIGNED FOR SPECIFIED USES, AND THE USES OF LAND WITHIN EACH DISTRICT, AND AUTHORIZING THE BOARD OF ZONING APPEALS TO GRANT EXCEPTIONS AND VARIATIONS FROM THE STRICT APPLICATION OF PROVISIONS OF THE ZONING ORDINANCE UNDER CERTAIN CONDITIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ANDOVER, KANSAS:

Section 1. USE DISTRICTS OR ZONES. For the purpose of regulating and restricting the location, erection, alteration and repair of buildings designed for specific uses, and the uses of the land within each district or zone, all of the City of Andover, Kansas, is hereby divided into two classes of use districts termed and designed respectively as: Commercial and Residential. The Commercial district shall be constituted of and include the following tracts in said city. West of Eldorado Street and north of South Street. All of blocks 1, 4 and 5, Lots 6 to 16 inclusive; blocks 2, 3 and 6, east half of reserve 1, parcels between Market Street and Frisco Railroad, parcel east of Main Street between Harrison Street and Frisco Railroad, west of Eldorado Street and south of South Street, Lots 1 to 9 inclusive, block 6, east of Eldorado Street. All of blocks 1 and 2, parcel of land between South Street and Kansas Turnpike inside the city limit.

The Residential district shall be constituted of and include all the remaining lots and blocks in said city.

No building or premises shall be erected, used, altered or repaired except in conformity with the regulations herein prescribed for the respective use and area district in which such building or premises are located.

Section 2. BUILDING INSPECTOR. The Mayor shall appoint a building inspector to receive and examine Requests for Building Permits.

Section 3. APPROVAL OF DEVELOPMENT PLATS. The owner or owners of any tract of land which they propose to develop or subdivide shall submit to the City Planning Commission any proposed plan of such developments as provided by law.

Section 4. BUILDING PERMITS. No one shall start erection, construction, reconstruction, conversion, alteration, enlargement, extension, razing, or moving of any building or part thereof within the city before application has been made for a Building Permit therefor and the Building Permit granted, and no such permit shall be issued unless the plans, specifications and intended use conform in all respects to the provisions of this ordinance and any amendments thereto hereafter enacted. Each application for a building permit shall be accompanied by a plan in duplicate, drawn to scale, showing the dimensions of the lot to be built upon, the size and location of the building to be erected, and such other information as may be deemed necessary for the proper enforcement of this ordinance. One copy of such plan shall be returned to the owner when approved. Blank forms shall be provided by the enforcing officer for the use of those applying for such building permits. A careful record of all such applications and plans shall be kept in the office of the enforcing officer.

Section 5. ISSUANCE OF BUILDING PERMITS. Action shall be taken upon any application for a building permit within ten (10) days, unless said Council shall postpone action thereon for good cause shown, which cause shall be entered in Minutes of said Council Meeting and shall in any event, approve or disapprove any application within a maximum of thirty (30) days.

Section 6. BUILDING PERMIT FEES. The fee for building permit shall be to wit: Where the cost of construction or alteration or addition does not exceed \$1,000.00, the fee shall be One Dollar (\$1.00); where the cost is more than \$1,000.00 and not over \$1,500.00, the fee shall be One Dollar and Fifty Cents (\$1.50); where the cost is more than \$1,500.00 and not over \$2,000.00, the fee shall be Two Dollars (\$2.00); if the cost exceeds \$2,000.00, the fee shall be at the rate of One Dollar (\$1.00) per One Thousand Dollars (\$1,000.00). All fees are to be paid at the time of issuance of permits.

Section 7. DEFINITIONS. Certain words in this Ordinance are defined for the purposes hereof as follows:

(a) A "non-conforming use" is one that does not comply with the regulations of the use district in which it is situated.

(b) "Public Notice" of a hearing or proceeding means thirty days notice of the time and place thereof printed in the official city newspaper.

(c) An "accessory use or building" is a use or building or portion of the principal building customarily incident to and located on the same lot with another use or building, including a private garage, private storage building or private shop.

(d) A "front yard" is an open unoccupied space on the same lot with the building, between the front line of the building and front line of the lot.

Section 8. BUILDINGS IN COMMERCIAL DISTRICT. No person shall construct or erect, place or move or cause to be constructed, erected, placed or moved upon any ground included in the "Business" district as defined in Section 1 hereof, any building or structure or any addition to any building or structure unless the same be constructed of brick, concrete, sheet metal, aluminum or other equally non-combustible material, and have an approved fire resistant roof, and no building shall be constructed in the Commercial district containing a wooden frame.

Section 9. BUILDINGS IN RESIDENTIAL DISTRICT. No person shall construct or erect, place or move or cause to be constructed, erected, placed or moved upon any ground included in the "Residential" district in said city as defined in Section 1 hereof, any buildings or structures or any addition to any buildings or structures except for the use of a private residence or a private garage which residence shall contain at least 700 square feet of livable floor space, be of permanent construction, conforming with good building practices, and shall be constructed of materials and finished to substantially equal or better quality than the houses in the immediate neighborhood of such constructed or altered residence, and which garage shall not exceed twenty-six (26) feet in width, thirty-two (32) feet in length nor sixteen (16) feet in height at the peak of the roof or eight (8) feet in height at the eaves. In the "Business" or "Residential" districts, any building or premises may be used for such purposes as are permitted in the "Business" district or "Residential" district.

Section 10. USE DISTRICT EXCEPTIONS. The City Council may, in the event of property being platted which was undeveloped at the time this Ordinance was passed, and in other specific cases, after public notice and hearing and subject to such conditions and safeguards as the Council may establish, determine and interpret the application of the use district regulations herein established as follows:

(a) Permit the extension of a building or use into an adjoining use district immediately adjacent thereto but not more than fifty (50) feet beyond the boundary line of the district in which such building or use is authorized.

(b) Permit the extension of a non-conforming use or building existing upon the lot or tract occupied by such use or building at the time of the passage of this Ordinance.

(c) Permit in a use district any use deemed by the Council in general keeping with the uses authorized in such district.

(d) Grant, in undeveloped sections of the city, temporary and conditional permits, for not more than two year periods, but not renewable, for structures and uses that do not conform to the regulations herein prescribed for the respective use districts in which they are to be located.

(e) Permit the location in any use district of any use, provided such use in such location will not, in the judgment of the council, substantially and permanently injure the appropriate use of neighboring property, providing the petitioning applicant for such permit files with the City Clerk the consents, duly acknowledged, of the owners of eighty percent (80%) of the area of the land deemed by the council to be immediately affected by the proposed use.

Section 11 NON-CONFORMING USES. A non-conforming use existing at the time of the passage of this ordinance may be continued, but shall not be extended except as authorized by the preceding section, provided that the extension of any use to any portion of a building, which portion was arranged or designed for such non-conforming use at the time of the passage of this ordinance, shall not be deemed the extension of a non-conforming use. A building, designed or devoted to a non-conforming use at the time of the passage of this ordinance, may not be re-constructed or structurally altered to an extent exceeding in the aggregate during any ten (10) year period, forty percent (40%) of the assessed value of the building unless the use of said building is changed to a conforming use. A non-conforming use may not be changed unless changed to a more conforming use of the district in which situated. A non-conforming use if changed to a conforming use may not thereafter be changed back to any non-conforming use. A non-conforming use if changed to a more restricted non-conforming use may not thereafter be changed unless to a still more restricted use to conform to the use of the district.

Section 12. FRONT AND SIDE YARDS IN RESIDENTIAL DISTRICT. The depth of the front yard measured back from the front lot line of said lot shall be not less than thirty (30) feet; and there shall be a side yard of not less than six (6) feet in width on each side of any building except a detached garage, which shall be located entirely to the rear of the residence, and a side yard of not less than three (3) feet in width on each side of any detached garage which shall be located entirely to the rear of the residence. Any building or buildings erected or constructed adjacent to or between other buildings or dwellings shall be in line with the side facing the street.

Section 13. ACCESSORY USES IN RESIDENTIAL DISTRICT. A store, trade or business shall not be permitted as an accessory use except that the office of a physician, surgeon, dentist, musician or other professional person, or a cosmetologist, may be located in the dwelling or apartment used by such physician, surgeon, dentist, musician or other professional person, or cosmetologist, as his private residence, and except that any person carrying on a customary home occupation may do so in a dwelling or apartment used by him or her as his private residence, provided no persons other than members of his own family or household are employed in such occupation and no sign exceeding two feet square in area containing the name and occupation of the occupant of the premises shall be

permitted in any residential district. In a dwelling or apartment occupied as a private residence, one or more rooms may be rented or table board furnished provided no window display or sign board is used to advertise such use exceeding in size that described in this paragraph.

Section 14. No trailer parks shall be allowed within the city without approval of the city council.

Section 15. PUBLIC AND SEMI-PUBLIC USES. The following uses may be located in any use district where they will not seriously injure the appropriate use of the neighboring property, provided their location is passed on and approved by the city council:

- (1) School, City Hall, Public Library, Community Building, or Public Playground.
- (2) Public Auditorium, Church, Hospital.
- (3) Lodge Hall, Public Recreation Building or Private Club, or Funeral Home.

Section 16. BUILDINGS DESTROYED BY FIRE. Nothing in this ordinance shall prevent the restoration of a building wholly or partly destroyed by fire, explosion, act of God, or act of the public enemy, subsequent to the passage of this ordinance or prevent a change of such existing use under the limitations in Sections 10 and 11, except in such part of this city where by ordinance fire resistant or fireproof structures are required.

Section 17. COMPLETION AND RESTORATION OF EXISTING BUILDINGS. Nothing herein contained shall require any change in the plans, specifications, construction or designated use of a building for which a building permit has been heretofore issued, and the construction of which shall have been diligently prosecuted within a reasonable time from the date of such permit.

Section 18. CITY BUILDING INSPECTOR TO ENFORCE. It shall be the duty of the city building inspector to examine applications for building permits and to make his recommendation to the council as to the issuance thereof, to inspect all construction and to determine whether such construction is in accordance with the written application for the permit, and to report all violations of this Ordinance to the Police Judge.

Section 19. PENALTY FOR VIOLATION. The owner or owners of any building or premises or part thereof where anything in violation of this ordinance shall be placed, or shall exist or be maintained, and any architect, builder or contractor who may be employed to assist in the commission of any such violation and any person, or corporation, who shall violate or maintain any violation of any of the provisions of this ordinance,

or shall fail to comply therewith, or with any requirements thereof, or who shall build in violation of any detailed statement or plans submitted thereunder, shall, for each and every violation or non-compliance, be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than \$500.00; and each day during which violation shall continue shall constitute a separate offense, provided, however, that nothing herein contained shall impose a limit or deprive the city of any other remedy which might be available to it.

Section 20. EXCEPTIONS AND VARIANCES BY BOARD OF ZONING APPEALS. The Appeals Board shall have power to grant exceptions and variances from the strict application of the provisions of the Zoning Ordinance, provided; however, that in the matter of granting exceptions and variances, the Governing Body shall not assume jurisdiction unless it first finds that the following conditions are present:

- (1) That the exception or variance desired arises from some condition which is not ordinarily found in the same Zoning District;
- (2) That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
- (3) That the strict application of the terms of the Zoning Ordinance would constitute unnecessary hardship upon the property owner;
- (4) That the exception or variance desired is not against the public interest.

Before the Appeals Board considers the granting of an exception or variance, notice shall be given by mail to all owners of property within a distance of 200 feet of the property concerned, of the time, place and character of the proposed hearing.

Section 21. OFF-STREET PARKING.

- (a) All dwellings erected shall have a minimum of one (1) off-street parking space on the lot.
- (b) Any building erected, enlarged, or converted to be used as a two-family or more dwelling unit shall be provided with a minimum of one (1) parking space on the lot for each dwelling unit.
- (c) Any variance granted in the residential district for buildings with other than residential use shall have parking space requirements as follows: for commercial buildings, a minimum of one (1) parking space for each 250 sq. ft. of floor area, for assembly buildings, (1) one parking space for each five (5) seats.

Passed and approved the 10th. day of April, 1965