

**SUBDIVISION REGULATIONS
FOR THE
CITY OF GARDNER,
KANSAS**

Ordinance 2273

May 19, 2008

(Including Amendments through December 24, 2014)

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* Prior legislation: Code 1990 §§ 17-101 – 17-901 and Ords. 1667, 1719, 1734, 1783, 1805, 1853, 1881, 1926, 1951, 2005 and 2019.

Chapter 17.05 STATEMENT OF INTENT AND DEFINITIONS

Sections:

- [17.05.010](#) Statement of intent.
- [17.05.020](#) Definitions.

17.05.010 Statement of intent.

It is the intent of this title to create standards for the platting and subdividing of land that will yield an accurate and easily accessible public record of parcel and easement boundaries, and a logical and efficient pattern of lots, blocks, easements and the proper location and width of streets and building lines in accordance with the Major Street Map. The requirements for platting are intended to result in a highly accurate description of parcel, easement and right-of-way boundaries; a public record format that is easily accessible and readily understandable; and an approval process that includes an opportunity for public review and comment. The requirements for the subdividing of land are intended to result in: a logical pattern of lots and blocks that are appropriately sized and shaped for the range of uses for which they are zoned, and an efficient pattern of streets which provide safe and convenient access to each parcel and reasonable connections between adjacent subdivisions.

17.05.020 Definitions.

For the purpose of these regulations, certain terms used herein are defined as follows:

“Alley” means a minor way, dedicated for public use, which is used primarily for vehicular access to the sides or rear of lots.

“Applicant” means the person, firm, partnership, joint venture or corporation that seeks to exercise the privilege of engaging in the business of platting real property in the City by applying for plat approval.

“Area” means the gross area of the real property included in a plat for which approval is sought, measured in square feet.

“Block” means a parcel of land entirely surrounded by streets or highways, or as otherwise determined by the City Engineer.

“Building permit” means the City permit required for new building construction and/or additions to buildings pursuant to the Building Code of the City of Gardner. The term “building permit” as used herein shall not be deemed to include permits required for remodeling, rehabilitation or other improvements to an existing structure, or to the rebuilding of a damaged structure, or to permits required for accessory uses.

“City” means the City of Gardner, Kansas.

“City Engineer” means the duly appointed City Engineer of the City or his or her designee.

“Codes Administrator” means the duly appointed Codes Administrator of the City or his or her designee.

“Community Development Director” means the duly appointed Director of Community Development of the City or his or her designee.

“Community Development Plan” means the Comprehensive Plan for the City of Gardner, duly adopted and including subsequent amendments.

“Cul-de-sac” means a street having one end open to traffic and being terminated by vehicular turn-around.

“Director” means the Director of Community Development of the City or his or her designee.

“Easement” means a permanent or temporary grant of right by a property owner to the public, a corporation or other persons of the use of a strip of land for specified purposes. Ownership of the strip of land shall normally remain with the property owner.

“Governing Body” means the Mayor and City Council for the City of Gardner.

“Highway” means a thoroughfare controlled and maintained by the Kansas State Highway Department.

“Improvements” means street pavement, curbs, drainage facilities, sidewalks, utility lines, street markers, trees and bridges.

“Lot” means a portion of a subdivision or an unplatted parcel intended as a unit for transfer of ownership or for development.

“Lot Split” means the division of a lot or parcel into two or more lots or portions thereof.

“Major street” means a street intended to provide for major traffic movements between areas of the City and designated on the City of Gardner’s Community Development Plan as an arterial street.

“Planning Commission” means the members appointed by the Mayor and confirmed by the Governing Body to serve on the Planning Commission.

“Plat” means a recordable final plat giving the location and dimensions of land as one or more lots, blocks, tracts or parcels, and meeting the requirements of the Municipal Code of the City of Gardner and Kansas Statutes.

“Plat, final” means a drawing of a permanent nature showing the precise location and dimension of such features as streets, lots, easements and other elements pertinent to transfer of ownership and prepared for permanent record.

“Plat or plan, preliminary” means a drawing showing the proposed general patterns of streets, lots and land uses within a tract to be subdivided.

“Recordable plat” means a plat capable of being recorded with the Records and Tax Administration (RTA) Office of Johnson County, Kansas.

“Records and Tax Administration (RTA) Office of Johnson County” means the Register of Deeds Office for Johnson County, Kansas.

“Rule exception” means the allowing of a subdivision to deviate from one or more specific standards and requirements of these rules and regulations.

“School district” means the Gardner-Edgerton U.S.D. 231 School District or any other public school district.

“Street, private” means a right-of-way which affords principal means of vehicular access to property abutting thereon, which right-of-way is owned, controlled and maintained by persons other than the public.

“Street, public” means a right-of-way which affords principal means of vehicular access to property abutting thereon, which right-of-way has been dedicated to the public for such use.

“Subdivider” means a person, firm or corporation undertaking the subdividing of land.

“Subdivision” means the division of a lot, tract or parcel of land into two or more lots, plots, sites or other division of less than 40 acres, including a resubdivision of land and vacation of streets, lots and alleys. The creation of a street, alley or other public way by dedication shall be deemed a subdivision. For the purposes of this definition, “lot splits” as defined and regulated in this title are excluded from the definition of “subdivision”.

“Tax” means the excise tax levied by this title.

“Tax rate” means the rate of taxation applied to the area of real property expressed in dollars per square foot.

Chapter 17.10 PROCEDURE

Sections:

17.10.010	Submission for recommendation and approval.
17.10.020	Building permits.
17.10.030	Preliminary plat.
17.10.040	Final plat.
17.10.050	Time limitation for recording.
17.10.060	Conditions stated on plat.
17.10.070	Preliminary development plan as substitute for preliminary plat.
17.10.080	Minor subdivisions.
17.10.090	Lot splits.

17.10.010 Submission for recommendation and approval.

- A. All final plats of subdivisions within the corporate limits of Gardner and as defined herein shall be submitted to the Planning Commission for its consideration and its recommendation shall then be submitted to the Governing Body for its official consideration and action.
- B. Except as otherwise provided in this chapter, no subdivision may be created nor any plat recorded with the Johnson County Records and Tax Administration (RTA) Office until both a preliminary and final plat have been submitted and approved in accordance with the provisions of this title. Approval of a preliminary plat does not constitute acceptance of the subdivision, but authorizes preparation of the final plat. No improvements shall take place within the platted area prior to the submittal and approval of construction plans by the City Engineer.

17.10.020 Building permits.

- A. No building permits shall be issued for unplatted property unless the platting procedures of this chapter are waived by the Planning Commission and Governing Body.
- B. Criteria for waiving the requirement for final platting a property for the issuance of a building permit:
 1. Building permits for interior improvements to a structure, including basement finishes;
 2. Building permits for decks, porches and fences and other minor nonstructural additions to a building;
 3. Building permit for a mobile home setup;
 4. Reconstruction of a structure destroyed by not more than 50 percent of its appraised valuation through fire, explosion, act of God or the public enemy;
 5. Reconstruction of a structure destroyed by more than 50 percent of its appraised valuation through fire, explosion, act of God or the public enemy, when the size and footprint of the replacement structure is substantially the same as the original structure;
 6. One-time expansion of the usable square footage of an existing structure by less than 10 percent;
 7. Construction of a residential ancillary structure of less than 400 square feet in size.

17.10.030 Preliminary plat.

- A. A preliminary plat of the proposed subdivision shall be prepared by the subdivider or his agent and submitted to the Planning Commission prior to preparation of a final plat for a record. The Commission shall satisfy itself that the proposed street pattern and land use will conform to the Community Development Plan, zoning ordinance and other local standards.
- B. The Planning Commission shall adopt by resolution a document outlining submission requirements for preliminary plat applications. This document shall require a specific number of copies of the preliminary plat, outline what information must be shown on the plat, and shall list

additional documents or information required to be submitted in support of the application. The Community Development Director or designee may also require additional technical studies not listed on the application as may be necessary to enable the Planning Commission to adequately evaluate the application. The Community Development Director or designee shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn.

- C. The Commission shall approve or deny the preliminary plat as submitted or may approve the plat as submitted subject to specified changes. Upon denial, the subdivider may appeal the Commission's decision to the Governing Body who may affirm or reverse the same. Upon approval, any objector may appeal the Commission's decision to the Governing Body who may affirm or reverse the same.
- D. Approval of the preliminary plat does not constitute acceptance of the subdivision, but authorizes preparation of the final plat. No grading for streets or construction of improvements shall take place in the subdivision prior to the submittal to and approval of construction plans by the City Engineer.
- E. Approval of the preliminary plat is effective for one year, unless the Planning Commission grants an extension. If a final plat is not submitted for approval within one year of the approval of the preliminary plat, the preliminary plat must be re-submitted to the Commission.

17.10.040 Final plat.

- A. After the preliminary plat has been approved by the Planning Commission, or by the Governing Body on appeal, a final plat for record shall be prepared and submitted to the Planning Commission and, upon approval, to the Governing Body for final approval. The final plat may contain all or a portion of the area contained in the preliminary plat. The final plat must conform to the street patterns, lot size and pattern and other conditions of the preliminary plat as approved.
- B. The Planning Commission shall adopt by resolution a document outlining submission requirements for final plat applications. This document shall require a specific number of copies of the final plat, outline what information must be shown on the plat, and shall list additional documents or information required to be submitted in support of the application. The Community Development Director or designee may also require additional technical studies not listed on the application as may be necessary to enable the Planning Commission to adequately evaluate the application. The Community Development Director or designee shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn.

17.10.050 Time limitation for recording.

- A. Any plat of a subdivision of land approved by the Governing Body shall be recorded within 24 months after approval.
- B. Any plat not recorded within 24 months from the date of acceptance of easements and rights-of-way by the Governing Body shall be null and void.

17.10.060 Conditions stated on plat.

All conditions to approval of a subdivision by the Planning Commission which run with the land or the acceptance of dedications of land by the Governing Body, and all rule exceptions granted by the Planning Commission, shall be clearly stated on the final plat prior to its recording by appropriate City officials.

17.10.070 Preliminary development plan as substitute for preliminary plat.

Where property has been zoned to a planned zoning district, an approved preliminary development plan may substitute for a preliminary plat where said preliminary development plan contains all information required for preliminary plats.

17.10.080 Minor subdivisions.

Minor subdivisions may be presented by combining the preliminary and final plat. For purposes of this section, a "minor subdivision" shall mean a subdivision containing not more than three lots.

17.10.085 Replat

Previously platted lots may be administratively adjusted by consolidation or division to result in four (4) or fewer platted lots provided that no new street or easement is proposed to be created, vacated, or dedicated.

- A. Platted lots are eligible only one time for approval of a consolidation or division through a replat process and any further division or consolidations of the originally platted lots or newly created lots shall be processed through the preliminary and final plat, or minor subdivision processes.
- B. All lots produced by a replat shall conform to all minimum standards of this title and other applicable titles of the City Code and shall have direct access to an existing street.
- C. Applications for replats shall be accompanied by five (5) copies of a drawing to scale depicting previously platted lots, proposed lots, existing utility easements and any other information required for recording at the Johnson County Records & Tax Administration.
- D. All applications for replats shall be acted upon by the Business and Economic Development Director or designee within thirty (30) days after receipt of a complete application. A recorded copy of the replat shall be provided to the Business and Economic Development Director or designee. Denial of an application for a replat by the Business and Economic Development Director or designee may be appealed to the Planning Commission, which shall act on the appeal within thirty (30) days following the filing. All decisions of the Planning Commission shall be final.

17.10.090 Lot splits.

- A. A previously platted or unplatted lot or parcel may be divided as a lot split by either metes and bounds description or by platting or replatting. If such a lot is to be divided by metes and bounds description, it may only be divided one time and by only one new dividing lot line, and shall not again be divided without replatting. Any such lot split need not comply with the procedures set out in this title for platting. All lots produced by a lot split shall conform to all minimum standards of this title and other applicable codes of the City. Two-family dwellings which otherwise comply with the ordinances of the City may be divided at the party wall as to ownership and owned as separate dwelling units by separate owners and such ownership shall not constitute violation of the lot and yard requirements of Title 18 Zoning. No building permit shall be issued for a lot produced by a lot split until the lot split has been reviewed and approved by the Community Development Department in accordance with Chapter 17.10, Procedure.
- B. Lots zoned for industrial purposes may be divided into two or more tracts without replatting such lot; provided, however, that the lot so produced shall conform to all minimum standards of this title and other applicable codes of the City.

17.10.100 Applications for Lot Splits.

Applications for lot splits shall be accompanied by five (5) copies of a drawing to scale depicting the lots, structures and existing utility easements located on any part of the lot being split, together with the precise nature, location, dimensions and legal descriptions of the new lots to be created. In addition, prior to submittal, applications for lot splits shall be signed by the various public or private utilities and the City's Public Works Director to establish the existence of adequate public easements and facilities to serve the resulting lots.

17.10.110 Consideration of Lot Splits.

- A. The application shall be approved if it is determined that the lot has not been previously split, that the new lots so created conform to the requirements of this ordinance, and that adequate street

rights-of-way and easements exist to serve the properties. No lot split shall be approved if any of the following conditions exist:

1. A vacation of streets, alleys, utility easements or other public reservations is required or proposed;
 2. The split will result in a lot without access to a street or with access that impacts the safe conduct of traffic;
 3. Such action will result in a lot being split into more than two (2) tracts, except as may be otherwise provided by Section 17.10.090.
- B. For those lot splits which result in significant increases in service requirements (e.g., utilities, schools, or traffic controls), or which will interfere with maintaining existing service levels (e.g., additional curb cuts or repaving), or which propose private easements for access or utilities, review of the lot split by the Public Works Department may be required. Such determination shall be made by the Community Development Director or designee.
- C. The Community Development Director or designee may make such additional requirements as are deemed necessary to carry out the intent and purpose of existing land development regulations and Governing Body policies where such requirements are reasonably related to the development of the properties. Such requirements may include, but are not limited to, installation of public facilities, dedication of right-of-way and easements, and submission of covenants for the protection of other landowners in the original subdivision.
- D. All applications for lot splits shall be acted upon by the Community Development Director or designee within thirty (30) days after receipt of a complete application. If the application is approved, the Community Development Director or designee shall sign and furnish a certificate of approval to be affixed to the lot split survey, and a certified copy shall be filed by the applicant with the Community Development Department and the Register of Deeds of Johnson County. Denial of an application for a lot split by the Community Development Director or designee may be appealed to the Planning Commission, which shall act on the appeal within thirty (30) days following the filing. All decisions of the Planning Commission shall be final.

Chapter 17.15 PLANNING STANDARDS

Sections:

17.15.010	Generally.
17.15.020	Major Street Map.
17.15.030	Street arrangement.
17.15.040	Protection from flooding.
17.15.050	Drainage.
17.15.060	Relation to adjoining streets and land.
17.15.070	Dead-end streets.
17.15.080	Block lengths.
17.15.090	Pedestrian walkways.
17.15.100	Thoroughfares and streets.
17.15.110	Lot arrangement and sizes.
17.15.120	Lots on collector streets and arterial thoroughfares.
17.15.130	Average depth of residential lots.
17.15.140	Width of residential lots.
17.15.150	Planned zoning districts.

17.15.010 Generally.

Care should be exercised in the design and laying out of streets, lots and other elements that good planning principles are followed, efficient use is made of land and that natural assets such as trees and topography be retained wherever practical.

17.15.020 Major Street Map.

For the purposes of establishing standards for all streets and building or setback lines on existing and proposed major streets within the City and prohibiting any new building being located within such building or setback lines, the Governing Body, pursuant to the authority of K.S.A. 12-765, established the Major Street Map with the adoption of the Community Development Plan. Said ordinance adopting the Community Development Plan and incorporating by reference the Major Street Map, with its supplementary documents, sets forth the major street plan for the City and shows, to the extent possible, the location and width of existing or proposed major streets or highways and building or setback lines.

17.15.030 Street arrangement.

Provisions must be made for the extension of any existing dead-end streets. Off-center street intersections with any offset of less than 150 feet between centerlines will not be approved.

17.15.040 Protection from flooding.

Subdivision proposals shall be designed to assure that all such proposals are consistent with the need to minimize flood damage, that all public utilities and facilities (such as sewer, gas, electrical and water systems) are located, elevated and constructed to minimize or eliminate flood damage and that adequate drainage is provided so as to reduce exposure to flood hazards.

17.15.050 Drainage.

Proposed streets must conform to existing topography as nearly as possible, in order that drainage problems may be reduced. Surface drainage across residential lots or along the side or rear lot lines shall be avoided wherever practical. Where such surface drainage on residential lots is necessary, easements shall be provided and the City may require installation of pipe, masonry or rip-rap, flumes or inlets, or such other protective devices in order that adjacent or surrounding property or the welfare of the public shall not be endangered and maintenance will be kept at a minimum.

17.15.060 Relation to adjoining streets and land.

The system of streets designated for the subdivision must connect with any streets already platted to the boundary from abutting subdivisions. At reasonable intervals streets must be continued to the boundaries of the tract subdivided, so that future abutting subdivisions may connect therewith.

17.15.070 Dead-end streets.

Dead-end streets will not be approved unless such dead-end streets are provided to connect with future streets in adjacent land, but cul-de-sacs may be permitted where a vehicular connection is not essential. Such cul-de-sacs shall provide proper access to all lots, shall not be more than 800 feet in length, and a turn-around shall be provided at the closed end, with an outside right-of-way line radius of at least 50 feet.

17.15.080 Block lengths.

In general, intersecting streets determining block lengths shall be provided at such intervals as to serve cross traffic adequately and to meet existing or future streets. Where no existing streets or plats control, the blocks shall not exceed 1,320 feet in length.

17.15.090 Pedestrian walkways.

In blocks where substantial pedestrian traffic may occur, such as adjacent to schools, the Commission or the Governing Body may require pedestrian walkways through blocks. Such walkways shall be 10 to 15 feet in width, shall be adequately fenced and contain a concrete walk the entire length. Such walkways shall be dedicated to the public in the same manner as streets.

17.15.100 Thoroughfares and streets.

- A. For the purpose of facilitating the movement of traffic, certain streets are designated in the Community Development Plan as thoroughfares. A copy of this Plan shall be on file in the office of the Planning Commission, and reference shall be made to this Plan before any preliminary subdivision plat is approved.
- B. Standards for thoroughfares shall be as follows:
 - 1. Arterial thoroughfares: Minimum right-of-way width – 120 feet.
 - 2. Collectors and service road thoroughfares: Minimum right-of-way width – 60 feet (except that an 80-foot right-of-way shall be provided for a distance of 200 feet from the centerline of an arterial road intersection).
 - 3. The remainder of the streets in the City shall be classed as local streets and shall have the following requirements:
 - a. Minimum right-of-way width in residential areas – 50 feet.
 - b. Minimum right-of-way width in industrial areas – 60 feet.
- C. When a proposed subdivision abuts a thoroughfare, or is bounded by a line that will in the future lie in a thoroughfare, or is divided by a thoroughfare, as shown in the Community Development Plan, then the owner of that subdivision shall dedicate, without charge, any land within such subdivision that is necessary to provide conformity with the foregoing standards, such dedication to be shown on the preliminary plat and final plat.

17.15.110 Lot arrangement and sizes.

All plats shall be subject to the following regulations regarding residential lot pattern.

17.15.120 Lots on collector streets and arterial thoroughfares.

The number of lots facing on collector streets shall be kept to a minimum in each subdivision. The street pattern shall be so designed that the side lines of lots abut collector streets wherever land shapes and topography permit. Residential lots shall not face on arterial thoroughfares.

17.15.130 Average depth of residential lots.

Residential lots shall have a depth of not less than 115 feet.

17.15.140 Width of residential lots.

Residential lots shall have a minimum width of 70 feet measured at the building line and shall contain a minimum of 8,000 square feet, except that lots otherwise containing sufficient lot area as required in the zoning ordinance may have a width at the front lot line of not less than 35 feet; provided, that a minimum

of 60 feet is available at the front building line when such lots front on a cul-de-sac with a right-of-way having a 50-foot radius.

17.15.150 Planned zoning districts.

When development within a subdivision is to proceed under a planned district as set forth in District RP-1 through M-P-2 in the zoning ordinance, the normal pattern of lots and blocks need not be included on the plat, but any parcels and tracts set aside for such planned development must be of a shape and topographic contour to allow flexibility of design of the planned development.

Chapter 17.20 MASTER LANDSCAPE/SCREENING PLAN

Sections:

17.20.010	Purpose.
17.20.020	Required.
17.20.030	Landscape easement.
17.20.040	Design.
17.20.050	Maintenance.
17.20.060	Irrigation.
17.20.070	Approval.
17.20.080	Subdivision entrance and other decorative structures.

17.20.010 Purpose.

The purpose of the master landscape/screening plan is to increase privacy, mitigate noise, reduce glare and enhance the aesthetics of the streetscape through the use of fences, walls, berms and professional landscaping to separate residential units from thoroughfare streets.

17.20.020 Required.

- A. In any subdivision located within the R-1, R-2 or equivalent planned zoning district, a master landscape/screening plan shall be required along that portion of the subdivision adjacent to an arterial street.
- B. The width of the landscape tract or easement shall be in addition to the minimum required lot depth, lot width and yard setback requirements of the zoning district.
- C. For nonresidential development permitted in an R-1 or R-2 zoning district and approved by site plan, the landscape and screening requirements may be incorporated into the approved landscape plan of the proposed development, and a separate dedicated landscape easement or tract of land with deed restrictions is not applicable.
- D. The landscape area shall be constructed so that drainage and utility placements are not impaired and so that the required minimum landscape area is not located within a utility easement.
- E. Such improvements shown on the approved master landscape/screening plan shall be considered a subdivision improvement and completion of the improvements shall be required prior to the issuance of building permits for any lots within the affected final plat covered by the master landscape/screening plan.
- F. In cases when the planting of landscape material may be inappropriate due to weather, the developer may submit an escrow payment or an irrevocable letter of credit, of up to two years, equal to the value of the landscaping material as outlined in bids from the developer's landscape installer or contractor. Said letter or escrow shall be held by the City until such time as all landscaping is installed per the approved plan.

17.20.030 Landscape easement.

- A. A landscape easement shall be shown on each preliminary and final plat which is subject to these regulations. Said landscape easement shall be immediately adjacent to the public arterial right-of-way and shall be a minimum of 15 feet wide as measured at all points along the thoroughfare. The width of the landscape easement shall be in addition to the minimum required lot depth, lot width, lot and yard setback requirements of the zoning district.
- B. As an alternative, a separate landscape tract of the same 15-foot dimension and subject to the same language outlined above may be utilized instead of the landscape easement.

17.20.040 Design.

- A. Landscaping. The approved master landscape/screening plan shall contain the following landscaping materials as a minimum for each 100 linear feet or portion thereof of thoroughfare frontage:

1. Three shade trees with a minimum caliper of two inches as measured six inches above the ground.
 2. Two evergreen trees with a minimum size of six feet in height.
 3. One ornamental tree with a minimum size of 10 feet in height.
 4. The above landscaping materials may be deviated from provided an alternative list of materials is approved by the Community Development Director or his or her designee which achieves comparable screening and buffering.
 5. For each tree preserved within the easement or separate tract which meets or exceeds the minimum size requirements outlined above and is part of an alternative plan provided for above, a one-to-one credit shall be given against the minimum tree requirements of this section.
- B. Fences/Walls. Fences or walls are not required as part of the master landscape/screening plan. In cases when the developer of the subdivision chooses to install a fence or wall the following standards shall apply: All types of fences installed by the developer, except wrought iron, split rail or similar see-through fence/wall types must be located one foot inside the boundaries of the separate tract or landscape easement along the residential lot side of the tract. Wrought iron or similar see-through fences may be installed by the developer anywhere within the landscape easement or separate tract, except they may be no closer than five feet from the right-of-way line of the abutting thoroughfare.
- C. Berms. Berms are not required as part of the master landscape/screening plan. In cases when the developer of the subdivision chooses to install a berm the following standards shall apply:
1. The slope of all installed berms shall not exceed three to one;
 2. All berms shall be consistent with good engineering and landscape architectural design; and
 3. The grading plan for berms within the separate tract or landscape easement shall be consistent with the approved subdivision grading plan and shall be approved by the City Engineer.

17.20.050 Maintenance.

Where landscape or screening tracts, or private greenways, parks, or common open space areas are indicated on a proposed final plat, assurance by document shall be provided identifying the organization (e.g., a homes association) that will be the legal entity having permanent responsibility and authority for the installation, maintenance and repair of said areas, as well as for the payment of all expenses, including taxes and special assessments. The documents must also address or prohibit the extension of private fences into the designated landscape area. Said documents or deed restrictions shall be recorded with the Records and Tax Administration Office of Johnson County concurrently with the recording of the final plat.

17.20.060 Irrigation.

Landscape areas shall be irrigated as necessary to maintain required plant materials in good and healthy condition. Irrigation systems shall comply with the following standards:

- A. All landscape areas shall be provided with a readily available water supply with at least one outlet within 100 feet of the plants to be maintained. The use of nonpotable water for irrigation purposes shall be encouraged.
- B. No permanent irrigation system is required for an area set aside on approved plans for preservation of existing natural vegetation.
- C. Temporary irrigation systems installed pursuant to acceptable Xeriscape landscape practices may be used to meet the standards of this section. Xeriscape means to landscape using vegetation that is drought-tolerant or water-conserving in character.

- D. Irrigation systems shall be continuously maintained in working order and shall be designed so as not to overlap water zones, or to water impervious areas.
- E. Whenever practical, irrigation systems shall be designed in zones to apply water onto shrub and tree areas on a less frequent schedule than those irrigating grass areas. When technically feasible, a rain-sensor switch shall be installed on systems with automatic controllers.
- F. No irrigation system shall be installed or maintained abutting any public street which causes water from the system to spurt onto the roadway or to strike passing vehicular traffic.
- G. The use of irrigation-quality effluent or reused water shall be encouraged.

17.20.070 Approval.

All plans submitted in compliance with these regulations shall be approved by the Community Development Director or his or her designee. All decisions made by the Director may be appealed to the Planning Commission in writing within 30 days of the decision.

17.20.080 Subdivision entrance and other decorative structures.

Where one or more entrance or street structures or ornaments, such as monuments, pillars, fences, walls, statuary or other decorative features, are to be installed in a permanent fashion, the location, size and design shall be included with the street plans submitted to the City Engineer for approval. This submission shall also include a copy of the bylaws or other documentation of the association which will have permanent responsibility for maintenance. Such bylaws or other documentation shall contain language which will, in the opinion of the City Engineer, assure proper maintenance of such structures by such association.

Chapter 17.25 REQUIRED IMPROVEMENTS

Sections:

- [17.25.010](#) Prerequisite to building permit – Bond.
- [17.25.020](#) Streets.
- [17.25.030](#) Walks.
- [17.25.040](#) Storm drainage.
- [17.25.050](#) Sanitary sewers and other utilities.
- [17.25.060](#) Street signs.
- [17.25.070](#) Peripheral street improvements.

17.25.010 Prerequisite to building permit – Bond.

- A. Certain improvements shall be installed within the subdivision before building permits are issued for buildings on abutting lots or, in lieu of actual installation, benefit districts may be used for the required improvements. As an alternative to the above procedures, the developer may provide performance bond or other surety acceptable to the Governing Body assuring that the required improvements will be installed within a reasonable time.
- B. All improvements shall be installed in compliance with the specifications of the City of Gardner and maintenance bond shall be required by the Governing Body. Improvements shall be required as set out in this chapter.

17.25.020 Streets.

All streets in the subdivision shall be paved. No grading or other construction shall take place within a street right-of-way until the construction plans have been approved by the City Engineer. All street construction shall conform to the specifications of Gardner and compliance therewith shall be confirmed by the City Engineer prior to the acceptance by or release of surety by the Governing Body.

17.25.030 Walks.

- A. All sidewalks shall be of portland cement concrete, or other surface as approved by the City Engineer, and shall comply with specifications of the City of Gardner. Sidewalks shall be located in the platted street right-of-way as directed by City staff. Walks shall also be installed in any pedestrian easements, as may be required by the Governing Body. The City Engineer shall have the authority to direct sidewalk placement due to extenuating circumstances while maintaining the intent of this chapter.
- B. All sidewalks shall be installed per the following:

Local Street	both sides – 4' wide sidewalk
Collector Street	both sides – 4' wide sidewalk
Arterial Street	both sides – 5' wide sidewalk

17.25.040 Storm drainage.

Culverts, storm sewer inlets, rip-rap slopes, stabilized ditches and other improvements shall be installed to handle storm water adequately. Such improvements may be a part of a benefit district, may be installed by the subdivider prior to building permit issuance on abutting land, or installation may be guaranteed by performance as may be negotiated with the Governing Body.

17.25.050 Sanitary sewers and other utilities.

The subdivider shall be responsible for the proper installation of all utilities, including sanitary sewers, and connection to approved treatment facilities, water supply approved by the Kansas Department of Health and Environment, electricity, and telephone service. Such utilities shall be installed in accordance with the specifications and minimum standards of the controlling utility company or public agency.

17.25.060 Street signs.

The subdivider shall be responsible for the cost of installation of all labor and materials for the installation of street signs at all intersections within the subdivision. Such street signs shall follow the street names designated on the approved final plat and shall comply with the specifications of the City of Gardner. The City will procure the materials and install the street signs.

17.25.070 Peripheral street improvements.

The subdivider will be responsible for one-half of all peripheral streets which may border the subdivision. The subdivider's responsibility shall be limited to the dedication of one-half of the recommended rights-of-way as described in these subdivision regulations.

Chapter 17.30 EXCISE TAX

Sections:

17.30.010	Purpose and authority.
17.30.020	Levy and payment of tax.
17.30.030	Pledge of revenues.
17.30.040	Deductions and exception from area.
17.30.050	Credits against excise tax.
17.30.060	Procedures of calculating tax and credits.

17.30.010 Purpose and authority.

The excise tax levied by this chapter on the act of platting real property in the City has for its purpose the raising of general revenues to be used for general City projects or general fund operations as approved by the Governing Body during the adoption of the City's annual budget. The City's authority to levy this excise tax is derived from Article 12, Section 5 of the Kansas Constitution and K.S.A. 12-137 and 12-138.

17.30.020 Levy and payment of tax.

A tax is hereby levied on the act of platting real property in the City. The tax rate shall be in an amount per square foot of the area as established by the Governing Body by resolution. The area shall be determined by the Director in the manner set forth herein. Every applicant shall pay a tax equal to the area times the tax rate to the City before the Mayor signs an approved recordable plat. No plat shall be recorded until the applicant has paid the applicable tax. The tax shall be paid in cash or by certified check. The tax payments received shall be deposited in the City's street improvement reserve fund.

17.30.030 Pledge of revenues.

All revenues received from the excise tax are pledged solely for the purpose of funding the improvement of major streets in the City of Gardner. At the discretion of the Governing Body, other revenues as may be legally utilized for such purpose may be deposited into the street improvement reserve fund. The City may issue and utilize general obligation bonds or other certificates of indebtedness as are within the authority of the City in such manner and subject to such limitations as may be provided by law in furtherance of the financing and provision of the improvement of major streets. Funds pledged toward the retirement of bonds or other certificates of indebtedness may include the excise tax and other City (and non-City) funds and revenues as may be allocated by the Governing Body.

17.30.040 Deductions and exception from area.

For the purposes of calculating the tax, the area shall not include:

- A. Land dedicated through the subject plat and accepted by the City as public right-of-way for an arterial street as designated on the major street plan.
- B. Any replat of previously platted land area which was approved by the City and recorded prior to January 5, 2000, and where the replat does not increase the density or intensity of the approved land uses will be exempt from the payment of the excise tax levied hereunder.
- C. Any replat of previously platted land area which was approved by Johnson County and where the replat does not increase the density or intensity of the approved land uses will be exempt from the payment of the excise tax levied hereunder.
- D. Any replat of previously platted land area where excise tax has already been previously paid will be exempt from the payment of any additional excise tax levied hereunder.
- E. Land designated on the plat as public park land to be dedicated to and accepted by the City, and to be reserved for public recreational use or public open space.
- F. Land area platted by the school district that is to be utilized as public recreational use or public open space.

- G. Land included in the plat identified as a separate lot, block, tract or parcel to be owned and maintained by a homes association and used exclusively for recreational use or private open space for the benefit of the members of the homes association; provided, that the Governing Body finds and determines that the location, area, configuration, topography, proposed landscaping and improvements, and use of the land is such that it is in the public interest to exclude the land from the area for the purposes of determining the amount of the tax. Land to be excluded under the foregoing provisions may be left unimproved as part of an open space plan approved by the Governing Body.
- H. Land area that is part of a developer's agreement with the City to pay for the construction of the major street by the creation of benefit districts and the square foot assessments to be levied upon the land will equal at least the tax rate.

17.30.050 Credits against excise tax.

An applicant shall receive a credit against the tax due for:

- A. The amount of any payment to the public improvement street development fund/account made pursuant to the requirements of Ordinance 1805 in effect from April 19, 1995, through January 4, 2000, for a tract of land included in the plat for the cost of construction to City standards of a major street.
- B. The reasonable cost, or a portion thereof, paid or incurred, or to be incurred, by the applicant, or the applicant's predecessors in interest or ownership, for construction to City standards of a major street abutting and serving land included in the plat, where such construction was required by the City as a condition for approval of a plat, and where such construction was inspected and accepted by the City, and where evidence of the costs and the reasonableness thereof sufficient to the satisfaction of the City Engineer was submitted to the City.
- C. In the case of a replat of a recorded plat, where said replat increases the area in the recorded plat, the credit shall be the amount of any tax, or portion thereof, paid by the applicant, or the applicant's predecessors in interest or ownership, for the previously recorded subdivision.

17.30.060 Procedures of calculating tax and credits.

- A. Under no circumstances shall a credit be given in excess of the amount of tax calculated to be due on the plat.
- B. The decision of the Director on the area or on the amount of the credit may be appealed to the Governing Body by the applicant prior to consideration of the plat by the Governing Body. The notice of appeal shall be in writing filed with the City Clerk and shall state with particularity the decision being appealed and the manner in which and the reason why the applicant believes the area or credit was incorrectly calculated and what the applicant believes are the correct calculations. The Governing Body's consideration of an appeal shall be limited to determining the accuracy of the calculated area or credit.
- C. The tax rate shall be based on the date the final plat is acted upon by the Governing Body.

Chapter 17.35 PARK AND RECREATION LANDS

Sections:

- [17.35.010](#) Dedication or fee required.
- [17.35.020](#) Fee in lieu of dedication.
- [17.35.030](#) Exception from.

17.35.010 Dedication or fee required.

At the time of final plat approval, the Governing Body shall determine whether to accept park dedication or have the subdivider pay a fee in lieu of park dedication or a combination of dedication and fee.

17.35.020 Fee in lieu of dedication.

- A. In lieu of the dedication of all or part of the park area required by this section, the Governing Body may require that a subdivider contribute to the general fund of the City a sum of money deemed appropriate by the Governing Body. The Governing Body shall establish by resolution the amount of the fee in lieu of dedication of park land; such fee shall be set in accordance with a schedule established by the Governing Body, which schedule shall establish the fee based on the proposed use of the property to be assessed on a per dwelling unit basis. The fees shall be paid prior to issuance of any building permit.
- B. The fee in lieu of dedication shall be paid into the City treasury at the time the plat is filed with the office of register of deeds. Alternatively, at the option of the developer, the fee may be paid on a per dwelling unit basis to the City treasury at the time of issuance of building permit on each individual lot or dwelling unit. No building permit shall be issued for a lot or dwelling unit on which a park fee is required until such fee has been paid.

17.35.030 Exception from.

Property owned and developed by the school district shall be exempt from the dedication of park land or fee in lieu of dedication provisions.

Chapter 17.40 RULE EXCEPTIONS

Sections:

[17.40.010](#) When made.

17.40.010 When made.

The standards and procedures required herein shall be interpreted and applied literally in the case of all subdivision plats submitted after May 21, 1990. In case, however, of hardship caused by size, location or configuration of land, topography or other factors which affect a specific tract or subdivision or portion thereof, the subdivider may request a rule exception from one or more of the requirements contained herein. A rule exception may be requested, on forms provided, at the time of filing the preliminary or final plat. A rule exception must be approved by the Planning Commission and the Governing Body; provided, that in its judgment, such action will not violate the public interest, unnecessarily burden the City of Gardner, or will annul the intent and purpose of these regulations.

Chapter 17.45 APPEALS

Sections:

[17.45.010](#) To whom made.

17.45.010 To whom made.

Any decision of the Planning Commission or administrators of this title on matters contained herein may be appealed to the Governing Body of the City of Gardner, and the Governing Body may reverse or affirm such decision.

Chapter 17.50 FILING FEES

Sections:

[17.50.010](#) Designated.

17.50.010 Designated.

Fees shall be paid by all persons or corporations submitting applications for preliminary plats, final plats, and lot splits in an amount as established by the Governing Body by resolution. The fees shall be paid at the time any application is submitted to the Community Development Department.

Chapter 17.55 PENALTIES

Sections:

[17.55.010](#) Penalty for violations – Actions.

17.55.010 Penalty for violations – Actions.

The violation of any provision of this title is a misdemeanor, and any person, firm, association, partnership or corporation convicted thereof shall be punished by a fine not to exceed \$500.00; and the City of Gardner, Kansas, shall further have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing any provisions of this title and to abate nuisances maintained in violation thereof; and in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation, or to prevent the occupancy of the building, structure, or land. Each day any violation of this title shall continue shall constitute a separate offense.