

ARTICLE 2. INTERPRETATION, CONSTRUCTION AND DEFINITIONS

100 Rules of Interpretation.

- A. Overlapping or Contradictory Regulations. Where the conditions imposed by the provisions of these regulations are either more restrictive or less restrictive than comparable conditions imposed by any other provision of any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.
- B. Private Agreements. The provisions of these regulations are not intended to abrogate any lawful and valid easement, deed restriction, covenant or other private agreement of legal relationship; provided, that where the requirements of these regulations are more restrictive or impose higher standards or regulations than such private agreements, the requirements of these regulations shall govern. The City does not have the responsibility to enforce such private agreements.
- C. Cumulative Limitations. The provisions of these regulations are cumulative and additional limitations upon all other laws and ordinances heretofore passed or which may be passed hereafter governing any subject matter set forth in the provisions of these regulations.
- D. Unlawful Subdivisions. A subdivision of land which was not lawfully existing at the time of the adoption of these regulations shall not become or be made lawful solely by reason of the adoption of these regulations.
- E. Vesting of Development Rights. For the purpose of single-family residential developments according to K.S.A. 12-764, as amended, development rights in such land use shall vest upon recording of a final plat of such land after January 1, 1992. If construction of a principal structure is not commenced on such land within five years of recording a final plat before July 01, 2009, the development rights in such land shall expire and, thus, all revisions to zoning or subdivision regulations becoming effective during the period vested shall then apply to such platted land. For such plats recorded on or after July 01, 2009, such construction must take place within 10 years to be vested.

101 Rules of Construction.

- A. The language set forth in these regulations shall be interpreted in accordance with the following rules of construction:
 - 1. The singular number includes the plural and the plural the singular.
 - 2. The present tense includes the past and future tenses and the future tense includes the present tense.
 - 3. The word "**shall**" is mandatory while the word "**may**" is permissive.

4. The word "**City**" means the City of Burlington, Kansas.
 5. The word "**County**" means Coffey County, Kansas.
 6. The word "**Clerk**" means the City Clerk, unless otherwise identified as the County Clerk.
 7. The words "**County Engineer**" mean the officially appointed engineer for Coffey County.
 8. The words "**Planning Commission**" mean the Burlington City Planning Commission.
 9. The words "**the Governing Body**" mean the Mayor and City Council of the City of Burlington, Kansas, unless otherwise identified as the Board of County Commissioners of Coffey County, Kansas or the applicable township trustees who are cooperating in the installation of improvements. (See Section 7-101.)
 10. The words "**Planning Area**" mean the City plus a perimeter area outside of and around the city limits all within Coffey County designated by the City in their comprehensive development plan as the official study area for planning purposes.
 11. The words "**Comprehensive Plan**" mean the Comprehensive Development Plan for the Burlington Planning Area of Coffey County, Kansas, which has been adopted by the Planning Commission, approved by the Governing Body and includes, among other elements, plans for land use, transportation, utilities and community facilities.
 12. The words "**subdivision jurisdiction**" mean the area as described in Section 1-103 for which the extraterritorial jurisdiction of these regulations is applicable for purposes of subdividing land. Such jurisdiction cannot exceed the boundary of the Planning Area.
- B. Any word or phrase which is defined in this Article or elsewhere in these regulations shall have the meaning as so defined whenever used in these regulations, unless such definition is expressly limited in its meaning or scope.
- C. Words or terms not herein defined shall have their ordinary meaning in relation to the context as defined in a dictionary or by statute.

102 **Definitions.** The following definitions shall be used in the interpretation and construction of these regulations:

ACCELERATION LANE: An added roadway lane which permits integration and merging of slower moving vehicles into the main vehicular stream of traffic.

ACCESS CONTROL: The limitation of public access rights to and from properties abutting streets or highways. Access control is used on major streets and highways, when necessary, to preserve high-quality traffic service and to improve safety.

AGRICULTURE: The use of a tract of land under one ownership for growing crops, pasturage, horticulture, nurseries, truck farms, dairying or the raising of poultry or cattle and other livestock, except feedlots, and including the structures necessary for carrying out farming operations and the dwelling(s) of those owning and/or operating the premises. The feeding or disposal of community or collected garbage shall not be deemed an agricultural use, nor shall riding academies, livery or boarding stables, dog kennels, or commercial or hydroponic greenhouses; however, forested and non-producing open space land are considered as agricultural.

APPLICANT: A person submitting an application for approval of a preliminary and/or final plat or a lot split.

BENCH MARK: Surveying mark made in some object which is permanently fixed in the ground showing the height of that point in relation to sea level.

BENEFIT DISTRICT: A defined area established by a city or county under state statutes by a petition of the property owner(s) within which certain stated public improvements are provided such as, but not limited to, water supply, sewage disposal, streets and roads, drainage and other improvements.

BLOCK: A series of lots or tract of land bounded by streets, public parks, cemeteries, railway rights of ways, waterways, city limits or a combination thereof.

BUILDING SETBACK LINE: A line on a lot or other parcel of land indicating the limit beyond which buildings or structures may not be erected or altered and establishing the minimum open space to be provided. Such line may be more, but not less restrictive than applicable zoning or other regulations.

CURB CUT: The opening along a curb line at which point vehicles may enter or leave a roadway. (See City ordinance for curb cuts.)

DECELERATION LANE: An added roadway lane that permits vehicles to slow down and leave the main vehicular stream of traffic.

DEDICATION: A gift or donation of property by the owner to a governmental unit. The transfer is conveyed by a plat or a written separate instrument. The act of dedicating is completed with a formal acceptance by the governing body.

DESIGN STANDARDS: The basic land planning principles established as guides or requirements for the design and layout of subdivisions as described in these regulations.

DETENTION POND: A storage facility for the temporary storage of storm water runoff. The storm water may be released by gravity or by mechanical means at such time as downstream facilities can handle the flow.

DEVELOPER'S AGREEMENT: See Subdivider's Agreement.

EASEMENT: A public dedication or private grant by a property owner of the specific use of a strip of land or portion of land by others.

ENGINEER: A professional engineer licensed by the State of Kansas or licensed to practice in the State of Kansas who designs or engineers and inspects public improvements in connection with the approval of plats and construction of related improvements. (See LAND PLANNER and LAND SURVEYOR.)

FLAG LOT: A lot, tract or parcel of land that provides minimum frontage to a road or street by a narrow strip of land for a driveway and whose main body of land lies to the rear of the property which is adjacent to the road or street. When such lots are permitted, a building setback line must be shown on the recorded plat which is not less than that required by applicable zoning regulations. (See Section 6-106 for Access.)

FRONTAGE: The property on one side of a street between two intersecting streets (crossing or terminating) measured along the line of the street; or with a dead-end street, all property abutting one side of such street measured from the nearest intersecting street and the end of the dead-end street.

HOMEOWNERS' ASSOCIATION: A community association, other than a condominium association, that is organized in a subdivision in which individual owners share common interests, ownership and responsibilities for costs and upkeep of common open space, reserves, facilities or infrastructure and may enforce certain covenants and restrictions. The incorporation document shall contain provisions for the ownership and maintenance of the common open space, reserves, facilities and infrastructure as are reasonably necessary to ensure their continuity, care, conservation and maintenance, and to ensure that remedial measures will be available to the City if such responsibilities are permitted to deteriorate or are not maintained in a condition consistent with the best interest of the subdivision or the City. If the City finds it necessary to carry out the obligations required to maintain such responsibilities in order to avoid having them become a public nuisance, the costs shall be assessed against the properties within the development and shall become a tax lien on said properties. When a subdivision is comprised of both homeowners and other users of the land such as commercial, the association may be called an "Owners' Association".

IMPROVEMENTS, PUBLIC: Any street, roadway, alley, sidewalk, planting strip, cross walkway, off-street parking area, electric, sanitary sewer, storm sewer, drainage ditch, water main or other facility for which a governing body may ultimately assume the responsibility for maintenance and/or operation.

LAND PLANNER: A professional architect, engineer, landscape architect or surveyor licensed by the State of Kansas or licensed to practice in the State of Kansas who is responsible for the design and preparation of a preliminary plat. (See ENGINEER and LAND SURVEYOR.)

LAND SURVEYOR: A licensed land surveyor registered in the State of Kansas or licensed to practice in the State of Kansas who is responsible for the survey and preparation of the final plat. (See ENGINEER and LAND PLANNER.)

LOT: A portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or for development.

1. **LOT, DOUBLE FRONTAGE:** A lot, two opposite lot lines of which abut upon streets which are more or less parallel.
2. **LOT, REVERSE FRONTAGE:** A lot whose rear lot line also serves as the street line for a limited access highway or street.

LOT DEPTH: The distance between the midpoint of the front lot line and the midpoint of the rear lot line.

LOT LINE: The boundary line of a lot.

LOT SPLIT: The dividing of a lot in a recorded plat or replat of a subdivision into not more than two parcels which creates an additional lot and meets the criteria established within these regulations. A lot split is not created by the transfer or sale of a lot plus a portion of an adjacent lot or the combining of portions of two lots to form a lot which is equal to or larger than the other platted lots in the block so long as an additional lot is not created. (See Article 9 for Procedure for Approval of Lot Splits.)

LOT WIDTH: The distance on a horizontal plane between the side lot lines of a lot, measured at right angles to the line establishing the lot depth at the established building setback line.

MINIMUM PAD ELEVATION: The lowest ground elevation completely surrounding a structure or the lowest flood proofed opening into a structure. This elevation is expressed in city datum or mean sea level.

MONUMENT: A device used to mark and identify the corners in the boundaries of subdivisions, blocks and lots and the points of curves in the street rights of way. Usually such devices are made of a metallic bar or tube and may or may not be in concrete.

OWNER: Any individual, firm, association, partnership, corporation, trust, or any other legal entity having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under these regulations.

PARKING STRIP: That portion of street right of way that is unpaved and which is located between the back of a curb and the street right of way line. Such strip provides right of way for the installation of public utilities (typically gas and water lines), street signs, street lights, sidewalks, driveways, traffic control devices, fire hydrants, street furniture, street trees and other ancillary uses. The parking strip should not be confused with parking lanes that are often provided for as part of street pavement.

PEDESTRIAN WAY (CROSSWALK): A right of way across a block or providing access within a block to be used primarily by pedestrians.

PETITION: A legal instrument which serves as the basis for initiation of a public improvement project. A petition is frequently used during the platting process to guarantee the construction of certain improvements, e.g., street paving, water and sewer lines, drainage, etc. A petition is valid if its signatures are more than 50% either by area within the benefit district or by ownerships. Petitions are also used to initiate the vacation of streets, alleys, easements, other public reservations and plats. (See Section 7-103A for improvement petitions and Section 10-103 for vacation petitions.)

PLAT: A map or drawing on which the subdivider's plan of the subdivision is presented and which he or she submits for approval and intends to record in final form: (See LOT SPLIT.)

1. **SKETCH PLAN:** A map or plan of a proposed subdivision made prior to the preparation of the preliminary plan to enable the subdivider to save time and expense in reaching tentative general agreements by a discussion of the form and objectives of their regulations.
2. **PRELIMINARY PLAT:** A tentative map or plan of a proposed subdivision of land showing the character and general details of the proposed development.
3. **FINAL PLAT:** A formal document by drawing and writing representing a subdivision which is prepared in accordance with these regulations to be placed on record with the County Register of Deeds.
4. **REPLAT:** A new plat or a revision to a subdivision or portion thereof for which a final plat has previously been recorded. The approval of a replat is processed in the same manner as a final plat.

RESERVE: An area of property within a subdivision which is platted for specific uses, e.g., open space, landscaping, entry monuments, recreational facilities, utilities, drainage, floodway, etc. Typically, future ownership and maintenance responsibilities for a reserve is set forth by a restrictive covenant which provides that a homeowners or lot owners association will hold title to the reserve and therefore be responsible for the reserve's maintenance. The restrictive covenant may provide for ownership and maintenance to be tied to the ownership of an adjacent lot. Ownership and maintenance is not assigned to an individual, partnership or corporation except in the case of a reserve platted for possible future sale to a public body for a public facility. (See Section 6-102 for Land for Public Facility Sites and Section 6-103 for Land for Open Space.)

RESTRICTIVE COVENANTS: Contracts entered into between private parties which constitute a restriction on the use of private property within a subdivision for the benefit of property owners and to provide mutual protection against undesirable aspects of development which would tend to impair stability of values. Such restrictions may be set forth in a deed. Restrictions are also placed of record by separate instruments including homeowner association agreements. Restrictive covenants usually run with the land. (See Section 2-100B for Private Agreements.)

RESUBDIVISION: The subdivision of a tract of land which has previously been lawfully subdivided and a plat of such prior subdivision duly recorded. Sometime referred to as a "replat." (See PLAT for REPLAT.)

RIGHT OF WAY: The area between boundary lines of a street, alley or other easement of access.

ROADWAY: That portion of a street, alley or highway right of way which has been graded, surfaced or otherwise improved for use by vehicular traffic, exclusive of sidewalks, driveways and related uses.

SCREENING: Berm, fencing or evergreen vegetation maintained for the purpose of concealing from view the area behind such berm, fencing or vegetation. When fencing is used for screening, it shall be not less than six nor more than eight feet in height, unless otherwise provided. (See Section 6-111E for screening easement.)

SIDEWALK: That portion of a street or pedestrian way, paved or otherwise surfaced, intended for pedestrian use only. (See PEDESTRIAN WAY [CROSSWALK].)

STREET: The entire right of way width between the boundary lines of every way which provides for public use for the purpose of vehicular and pedestrian traffic, and the placement of utilities and including the term "road", "highway", "lane", "place", "avenue", "alley" or other similar designation.

1. **ALLEY:** A right of way along the side of or in the rear of lots which affords a secondary means of access to and from streets and such lots.
2. **ARTERIAL:** A street of considerable continuity which is primarily a traffic artery for intercommunication among large areas and which provides access to abutting properties only as a secondary function.
3. **COLLECTOR:** A street supplementary to the major street system and a means of intercommunication between this system and smaller areas which is used for both through traffic and for access to abutting properties.
4. **CUL-DE-SAC:** A short street with one end open to traffic and being permanently terminated by a vehicular turnaround at the other end.
5. **DEAD END:** A street having only one outlet for traffic.

6. **EXPRESSWAY:** Any divided street or highway with no access from abutting property and which has either separate or at-grade access from other public streets and highways. Such streets have a minimum of four traffic lanes.
7. **HALF-STREET:** A portion of the right of way of a street, usually along the edge of a subdivision where the remaining portion of the street is intended to be provided in another subdivision.
8. **LOCAL:** A street intended primarily for access to abutting properties and of limited continuity within a neighborhood.
9. **MARGINAL ACCESS OR FRONTAGE ROAD:** A local street which is parallel with and adjacent to a limited access highway or arterial street and which provides access to abutting properties and protection from fast through traffic on the parallel streets.

STREET WIDTH: The shortest distance between lines delineating the right of way of a street.

SUBDIVIDE LAND: To partition a parcel of land into two or more parcels, tracts, lots or sites for the purpose of transfer of ownership or development, whether immediate or future, when such parcel exists as a unit or contiguous units under a single ownership.

SUBDIVIDER: The owner, or any other person, firm or corporation authorized by the owner, undertaking proceedings under the provisions of these regulations to subdivide land.

SUBDIVIDER'S AGREEMENT: A contractual agreement signed and notarized by the subdivider and the applicable governing body which is conditioned upon acceptance of the final plat for the dedications thereon with primary concern for the design, installation, inspection and financing or guarantees for public improvements. When the owner of the land being subdivided authorizes other parties to undertake the platting procedure, the "Subdivider's Agreement" may also be called a "Developer's Agreement". (See Section 7-104A for Agreement and Guarantees for Installation of Required Improvements.)

SUBDIVISION: Either an act of subdividing land as defined in this section or a tract of land subdivided.

SUBDIVISION ADMINISTRATOR: Also known as the Zoning Clerk. (See Section 3-101 for Duties of Subdivision Administrator.)

TURNAROUND: An area at the closed end of a street with a single common ingress and egress within which vehicles may reverse their direction

VISION TRIANGLE: A triangular area at the intersection of streets maintained in such a manner as to provide a safe and open line of vision for drivers of vehicles approaching the intersection. Within the vision triangle, no one shall install, construct, plant, park or maintain any sign, fence, hedge, shrubbery, tree, natural growth or other obstruction which would materially impede vision between the heights of 33 inches and eight feet above the street level. Such restrictions shall not apply to official traffic signs, signals and utility poles. (See Section 6-111C for vision triangle easement and City Zoning Regulations for definition of VISION TRIANGLE.)

WATERCOURSE: A stream of water having a course, current and cross-section.

WETLAND: A land area that is saturated by surface water or ground water at frequencies and durations sufficient to support a prevalence of plant life typically adapted for life in saturated soil conditions and as defined in Section 404, Federal Water Pollution Control Act of 1972 as amended, and delineated on maps prepared by the U.S. Fish and Wildlife Service and as field verified by on-site inspection.

ZONING DEFINITIONS: Designing a plat utilizes numerous design criteria embodied in the definitions for various words and planning concepts contained in applicable Zoning Regulations. Some of them used often in the platting process and not otherwise defined herein are:

BULK REGULATIONS; DENSITY; FENCE; FLOOR AREA; LANDSCAPING; LOT AREA; LOT; LOT COVERAGE; LOT, INTERIOR; LOT LINE, FRONT; LOT LINE REAR; LOT LINE, SIDE; LOT OF RECORD; LOT SIZE REQUIREMENTS; LOT, THROUGH; LOT, CORNER ZONING; YARD; YARD, FRONT; YARD, REAR; YARD, SIDE.

Utilizing such design criteria as defined for the preparation of a plat is important to coordinate the subdividing of land with applicable City or County Zoning Regulations. (See Section 1-101 for Purpose.)