

ARTICLE 01

TITLE AND APPLICABILITY

DIVISION 01.000 TITLE

This Ordinance shall be known as the "Paola Land Development Ordinance."

DIVISION 01.100 APPLICABILITY

All development within the City of Paola and unincorporated land within Paola's Community Growth Area established by intergovernmental agreement with Miami County specified in Section 01.110 shall fully comply with the terms of this Ordinance. Exempted developments are listed in Section 01.120.

SECTION 01.110 TYPES OF DEVELOPMENT

- A. **The use of any building, structure, land, or water.** Every use shall specifically require a zoning and occupancy permit for the construction, modification, use, or occupancy of any lot, parcel, building, or structure as specified in this Ordinance.
- B. **Any disturbance of land, soil, vegetation, or waterways.** Altering land for development or other purposes shall conform to this Ordinance's standards and require a permit prior to commencing work.
- C. **Any division of land or land development.** Whether by metes and bounds, subdivision, or land development, all development designs and layouts shall comply with this Ordinance's regulations.
- D. **Agricultural lands within the Community Growth Area.** This Ordinance's regulations treat the use of agricultural land within the Community Growth Area as a type of development distinguished from those set out in A, B, or C above. Section 01.122 establishes under which circumstances the use of agricultural land constitutes development subject to these regulations.

SECTION 01.120 EXEMPTIONS

- A. **Single-Family Development on Lots of Record.** Single-family development on a single lot of record with deed or certificate of survey recorded prior to this Ordinance's adoption date may occur within five years from the date of this Ordinance's adoption notwithstanding the limitation imposed by other provisions of these regulations. Such lot must be in separate ownership and not of continuous frontage with other lots under the same ownership, and shall meet the following conditions:
 - 1. This provision shall not apply if the lot of record is located in the BP or TA districts.
 - 2. For purposes of this provision, the minimum lot area may be reduced by no more than 30%.
 - 3. For purposes of this provision, the minimum lot width may be reduced by no more than 20%.

4. All front, rear, and side yard requirements shall be met unless a variance for such has been approved by the Board of Zoning Appeals.
 5. The lot must meet access spacing requirements unless an exception is granted per Section 11.233 "Exceptions on Access Standards" (Ordinance 2783, 08/21/01).
 6. if two or more lots or a combination of lots and portions of lots with a continuous frontage and single ownership are lots of record with deeds recorded prior to this Ordinance's adoption date and if all or part of the lots with no buildings do not meet the requirements established in the district for lot area and width, the land involved shall be considered an undivided parcel and lot of record for the purpose of these regulations and no portion of the parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by these regulations.
 7. All other requirements of these regulations shall be met.
- B. Conditionally Approved Developments.** Any Planned Unit Development (PUD) approved prior to this Ordinance's adoption date, shall be governed by the regulations under which it was approved. If changes to the PUD are requested, approving such changes shall require revising the plan to conform to this Ordinance as closely as feasible, subject to a Conditional Use Permit.
- C. Vesting of Development Rights.** When a use does not fall into one of the exempted categories (A. or B. above), the following rules on the vesting of development rights shall apply:
1. Any single-family residential development shall be vested for five (5) years from the date of recording of a final plat of such land. If construction does not begin within five (5) years of the recording date of the plat, the development rights shall expire.
 2. Projects other than single-family developments that have received all required building permits prior to this Ordinance's effective date shall have six (6) months from this Ordinance's effective date to begin construction and complete substantial amounts of work, in accordance with valid permits, in order to become vested. If construction is not commenced within six (6) months, the building permit shall expire and the development shall proceed only in compliance with the provisions of this Ordinance.
 3. Surveyed lots with single family residential dwellings on them, or for which single-family dwelling building permits have been validly issued, as of the effective date of this Ordinance, shall comply with the land use regulations in effect at the time the building permit was issued. Surveyed lots with common or multiple ownership shall be subject to the provisions of Section 01.120A.
- D. Land Disturbance.** Land disturbances of less than one thousand (1,000) square feet, not involving any bufferyard, resource, or conservation area, are not regulated by this Ordinance.
Note: The Uniform Building Code or State Law may require permits.
- E. Other Exemptions.** Other Sections of this Ordinance that specifically exempt a use from that Section shall apply only to the specific exemption.

- F. **Lots Requiring No New Access.** A subdivision of lots larger than thirty-eight (38) acres, with one thousand (1,000) feet of frontage, and not requiring a new public right-of-way for access to any lot is not regulated by Article 14 of this Ordinance.
- G. Any use approved under a valid Special Use Permit (SUP) approved by the City prior to effective date of this Ordinance shall be allowed to continue as a City-approved Conditional Use Permit (CUP), subject to the following:
1. Continued compliance with any conditions established by the City, unless expressly waived by the City.
 2. A Conditional Use Permit will lapse upon a finding of discontinuance by the Planning Commission. A finding of discontinuance requires evidence of: (a) discontinuance of the use permitted under the Conditional Use Permit for at least six (6) consecutive months and (b) intent to discontinue the use permitted.
 3. The use permitted under a Conditional Use Permit may be increased or expanded by no more than ten (10) percent without having to obtain a new Conditional Use Permit, following all the procedures of these regulations. Expansion shall be determined by the zoning administrator as follows: For a use which primarily or exclusively involves utilization of a structure, or structures, on the basis of floor area of such structures; and for all other uses, on the basis of land area. Expansion, whether of structures or land, for purposes of this Section shall be cumulative in their measure, relating back to the size of the use allowed under the Conditional Use Permit when first approved.
- H. **County Approved Conditional Use Permits in Community Growth Area.** Any use approved under a valid Conditional Use Permit approved by Miami County prior to the subject property becoming subject to the City's regulations as part of the Community Growth Area shall be allowed to continue as a City-approved Conditional Use Permit, subject to the following:
1. Continued compliance with any conditions established by the County, unless expressly waived by the City.
 2. A Conditional Use Permit will lapse upon a finding of discontinuance by the Planning Commission. A finding of discontinuance requires evidence of: (a) discontinuance of the use permitted under the Conditional Use Permit for at least six (6) consecutive months and (b) intent to discontinue the use permitted.
 3. The use permitted under a Conditional Use Permit may be increased or expanded by no more than ten (10) percent without having to obtain a new Conditional Use Permit, following all the procedures of these regulations. Expansion shall be determined by the zoning administrator as follows: For a use which primarily or exclusively involves utilization of a structure, or structures, on the basis of floor area of such structures; and for all other uses, on the basis of land area. Expansion, whether of structures or land, for purposes of this Section shall be cumulative in their measure, relating back to the size of the use allowed under the Conditional Use Permit when first approved.
 4. Notwithstanding any other provision of these regulations to the contrary, whenever a new Conditional Use Permit is issued as a result of an increase or expansion of a use per Subsection H.3. of this Section, the standards set out in these regulations which must be adhered to with respect to the land included within the new Conditional Use Permit shall

not be applicable to the land or structure subject to the Conditional Use Permit when first approved. It is the intent of this subsection to prevent the approval of a Conditional Use Permit under H.3. of this Section from resulting in the application of standards in these regulations to land or structures previously made subject to a Conditional Use Permit.

- I. **Nonconforming Uses in the Community Growth Area as Conditional Uses.** Any legal nonconforming which results from the establishment of the Community Growth Area shall become a conditional use of the zoning district in which the use is located if the property owner applies for a Conditional Use Permit within six (6) months of the date of adoption of these regulations. Upon submission of the application within the six-month period and a determination of legal nonconforming use status, the City shall issue a Conditional Use Permit and shall not limit the term of the permit without the consent of the applicant. Unless otherwise provided in the Conditional Use Permit, the nonconforming use as a conditional use shall be subject to Subsection H of this Section.

SECTION 01.121 SPECIAL AGRICULTURAL LANDS.

- A. It is the intent of these regulations that certain land in agricultural production not be forced to convert to non-agricultural use, against the desires of the owner, as the result of assessments levied following the establishment of improvement districts created for sewer, water, street or other public improvements which provide little benefit, and no service, to such property so long as it continues to be used exclusively for agricultural purposes.
- B. The provisions of this section are (a) supplemental to Resolution No. 3-14-95 "A Resolution Establishing the Development Policy for the Financing of Improvements within the City of Paola, Kansas" and (b) may be utilized only by the owner of any parcel of land meeting the following conditions: 150 or more contiguous acres in size, held in common ownership as of July 1, 1997; in agricultural use, as defined in these regulations; and located within the Community Growth Area. Such land is hereinafter referred to as "special agricultural lands".
- C. When the City is requested to establish an improvement district whose boundaries may contain special agricultural lands, the owner of special agricultural land may either petition for or consent to inclusion of such land within the proposed improvement district, or may provide written notice to the City that: (1) the owner objects to such land being placed in the proposed improvement district, in which case the City shall proceed to create the proposed improvement district only in accordance with the provisions of subsection D of this section; or (2) the owner consents to inclusion of such land in the improvement district on the condition that assessments are deferred in accordance with K.S.A. 12-6,110 or K.S.A. 1996 Supp. 12-6a19.
- D. Upon receiving a written objection from the owner of special agricultural lands, as provided in subsection C of this section, and upon finding that such special agricultural lands lie in close proximity to, or along the route of, the proposed public improvement, the City Council shall not create the requested improvement district unless:
- (1) The City Council finds that the special agricultural lands will not be benefited by the project proposed to be financed by means of the proposed improvement district, and therefore will not be included within the proposed improvement district, because that

- portion of the public improvement lying upon, or in the proximity of the special agricultural lands has been completed, or will be completed, without the necessity of the establishment of an improvement district or levy of special assessments; or
- (2) The City Council finds that the special agricultural lands will not be benefited by the project proposed to be financed by means of the proposed improvement district, and therefore will not be included within the proposed improvement district, because: a. that portion of the improvement lying upon or in the proximity of the special agricultural lands has been completed, or will be completed, without the necessity of the improvement district or levy of special assessments, and b. the owner has conveyed to the City of Paola an agricultural easement which restricts the land to agricultural use only, restricts or prohibits utilization of the proposed public improvement, and establishes the terms and conditions for future connection to or utilization of the public improvement to be financed by the creation of the proposed improvement district. The terms and conditions of the agricultural easement shall include: setting benefit fees or connection fees; and provisions for the payment of the amount of the assessment, including principal and interest which would have been levied against the property had it been originally included in the improvement district. An agricultural easement must be granted to the City, in a form acceptable to the City, whenever City funds will be used to pay for any portion of the costs of public improvements lying upon or in the proximity of special agricultural lands.

- E. The City Council shall not approve the establishment of an improvement district comprising any special agricultural lands except in accordance with the provisions of this section.

SECTION 01.122 AGRICULTURAL USES WITHIN THE COMMUNITY GROWTH AREA

Applicability of the regulations to land used for agricultural purposes and lying within the Community Growth Area depends on the type of agricultural use, as detailed in this Section. Notwithstanding any other provision in these regulations, all land used for agricultural purposes shall be subject to the provisions of Article 5 of these regulations.

1. Agricultural uses not otherwise subject to this Ordinance's regulations include:
 - A. Any current agricultural use or farmstead, as defined in Section 21.230, existing prior to this Ordinance's adoption date; and
 - B. Land cultivated as cropland.
2. In order to protect public health, safety and welfare, all other agricultural uses within the Community Growth Area not expressly exempted in Section 01.122A are subject to this Ordinance's regulations.

DIVISION 01.200 REFERENCES TO MIAMI COUNTY'S COMPREHENSIVE PLAN

No provision in these regulations which references documents, resolutions, reports, plans or other documents adopted by Miami County shall be construed as intending to preempt, restrict or limit in any

manner whatsoever the authority of Miami County to maintain or undertake planning for land within the Community Growth Area.