

ORDINANCE NO. 2018-3135

AN ORDINANCE AMENDING ARTICLE 2, SECTION 2-3, DEFINITIONS; TABLE 6-1 AND TABLE 6-3 OF ARTICLE 6, RESIDENTIAL ZONED DISTRICTS; TABLE 9-1 OF ARTICLE 9, COMMERCIAL ZONED DISTRICTS; ARTICLE 25, SECTION 25-301, VARIANCES; ARTICLE 26, SECTION 26-701, ADMINISTRATIVE VARIANCES; AND REPEALING ARTICLE 11, HIGHWAY 81 MIXED USE OVERLAY DISTRICT, ALL BEING PROVISIONS IN THE ZONING ORDINANCE FOR THE CITY OF CONCORDIA, KANSAS.

WHEREAS, amendments to the Zoning Ordinance for the City of Concordia have been proposed by the Concordia Planning Commission; and

WHEREAS, the Concordia Planning Commission duly published a notice of public hearing in the Concordia Blade-Empire on February 6, 2018, fixing the public hearing date as February 27, 2018, at 7:00 p.m., and setting out the location of the public hearing and the proposed amendments; and

WHEREAS, on February 27, 2018 at the time and place designated the Planning Commission, with a quorum present, met, held a public hearing and voted to recommend the adoption of the proposed amendments; and

WHEREAS, the Governing Body has considered the recommendations of the Planning Commission and examined the proceedings of the Planning Commission, and find them all in order and conformity with City Ordinances and State Statutes.

NOW, THEREFORE, be it ordained by the Governing Body of the City of Concordia, Kansas:

Section 1. The following definitions in Article 2, Section 2-3, are hereby amended as follows:

Day care facilities. Definitions for the following facilities which provide care for children are established by state law and promulgated by regulations of the Kansas Department of Health and Environment (KDHE), the Kansas Department for Aging and Disability Services (KDADS), and the Kansas Department for Children and Families (DCF). Standards for such definitions may be periodically amended by changes to state regulations and such changes are incorporated by reference herein.

- a. **Adult day care home.** A facility for adults having some or all of the characteristics of homes for the elderly and disabled, whether operated for profit or not, which through its operation provides one (1) or more personal services for five (5) or more persons not related by blood or marriage to the owner or operator, for periods of time of less than 24 hours. Personal services are in addition to housing and food service, and include but are not limited to: personal assistance with bathing, dressing, housekeeping, eating, supervision of self-administered medication, individual or group activities, and assistance in securing health care from appropriate sources.
- b. **Child care center.** A facility operating in accordance with K.A.R. 28-4-420, *et seq.* which provides care and educational activities for 13 or more children two (2) weeks to 16 years of age for more than three and fewer than 24 hours per day including daytime, evening and nighttime care; or which provides before and after school care for school-age children and licensed by the State as a child care center. A facility may have fewer than 13 children and be licensed as a center if the program and building meet child care center regulations as defined by the State of Kansas.
- c. **Day care home.** A home in which care is provided for a maximum of ten (10) children in compliance with the definitions and regulations of the State of Kansas, and licensed by the State as a day care home, in accordance with K.A.R. 28-4-113 *et seq.* or a maximum of 12 children regulated as a licensed group day care home by the State of Kansas in accordance with K.A.R. 28-4-113 *et seq.*

- d. **Family day care home.** A home maintained for the purpose of providing children with daycare away from such children’s homes, for fewer than 24 hours a day, provided that not more than seven (7) children cared for at such place are under kindergarten age and not more than three (3) of the children cared for at such place are less than 18 months of age operated in compliance with the definitions and regulations of the State of Kansas, and licensed by the State as a family daycare home.
- e. **Group day care home.** A home in which care is provided for a maximum of 12 children under 16 years of age, in compliance with the definitions and regulations of the State of Kansas, and licensed by the State as a group day care home. (K.A.R. 28-4-114(f)(1).)
- f. **Preschool.** A daycare facility in compliance with the definitions and regulations of the State of Kansas, and licensed by the State as a preschool which:
 - 1. Provides learning experiences for children who have not attained the age of eligibility to enter kindergarten prescribed in K.S.A. 72-1107(c), and any amendments thereto, and who are 30 months of age or older.
 - 2. Conducts sessions not exceeding three (3) hours per session;
 - 3. Does not enroll any children in more than one (1) session per day; and
 - 4. Does not serve a meal.

The term “preschool” shall include all educational preschools, nursery schools, church-sponsored schools, and cooperatives. A “preschool” may have fewer than 13 children and shall operate in compliance with the definitions and regulations of the State of Kansas, and licensed by the State as a preschool.

Group boarding home for adults. A residential dwelling unit for not fewer than five (5) nor more than 10 persons, 18 years of age or over, not constituting a “family” as defined in this section and meeting the criteria administered by KDHE. This definition shall not include an existing or proposed use of a residential dwelling unit which is in compliance with the definition of “group home” as defined in K.S.A. 12-736. Such latter use shall be considered to be a single-family residential use and shall not be considered a “group boarding home for adults”.

Group boarding home for minors. A residential dwelling unit for persons under 18 years of age who do not constitute “family” as defined in this section, who for various reasons cannot reside in their natural home and where 24-hour adult care, supervision and consultation exists under license of the Kansas Department of Health and Environment provided, however, that this definition shall not include an existing or proposed use of a residential dwelling unit which is in compliance with the definition of “group home” as defined in K.S.A. 12-736. Such latter use shall be considered to be a single-family residential use and shall not be considered to be a “group boarding home for minors”.

Group home. Any dwelling occupied by not more than ten (10) persons, including eight (8) or fewer persons with a disability, which is a physical or mental impairment as defined by K.S.A. 12-736, who need not be related by blood or marriage and not to exceed two (2) staff residents who need not be related by blood or marriage to each other or to the residents of the home. Such a dwelling must be licensed as a group home by the Kansas Department for Aging and Disability Services or the Kansas Department of Health and Environment. See also Large group home.

Licensed provider. Shall mean a person or agency who provides mental health services and is licensed by:

- a. The Department for Aging and Disability Services pursuant to K.S.A. 75-3307b or K.S.A. 65-425 et seq., and amendments thereto; or
- b. The Behavioral Sciences Regulatory Board pursuant to K.S.A. 75-5346 et seq. or K.S.A. 74-5301 et seq., and amendments thereto; or
- c. The State Board of Healing Arts pursuant to K.S.A. 65-2801 et seq., and amendments thereto.

Section 2. Article 6, Section 6-301, Table 6-1, is hereby amended as follows:

SECTION 6-3 PERMITTED AND CONDITIONAL USES

6-301. In the residential zoning districts the uses listed in Table 6-1 within the designated zoning districts are permitted uses or conditional uses as designated. Conditional uses require the issuance of a Conditional Use Permit in accordance with the provisions of Article 26. No building or land shall be used and no building or structure shall be hereafter erected, enlarged or altered unless otherwise provided for in these zoning regulations, except as listed in Table 6-1.

<p>Table 6-1 Residential Zoned Districts Permitted and Conditional Uses</p>
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P = Indicates Permitted Uses	C = Indicates Conditional Uses
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	Use	R-1	R-2	R-3
1.	Any public building or land use by any department of the City, County, State or Federal government.	C	C	C
2.	Bed and breakfast inns.	C (10)	C (10)	P (1)/C
3.	Churches and similar places of worship.	P	P	P
4.	Community recreation building owned and operated by a public agency.		P	P
5.	Convents.	P	P	P
6.	Daycare facilities; adult daycare homes, child care centers, daycare homes, family daycare homes, group daycare homes and preschools.	P (3)	P (3)	P (3)
7.	Dormitories for students of community colleges and theological institutions.	C (3)	C (3)	C (3)
8.	Dwellings a. Single Family. b. Two family. c. Three or more families.	P	P	P
			P	P
				P
9.	Fraternal organizations, lodges.	C	C	C
10.	Golf courses.	P (6)	P (6)	P (6)
11.	Group boarding homes for adults.	C (7)	C (7)	P (2)/C (6)
12.	Group boarding homes for minors.	P (5)/C (5)	P (5)/C (5)	P (2)/C (6)
13.	Group homes.	P	P	P
14.	Hospitals and related medical facilities including, but not limited to, medical, dental and health clinics.	C	C	C
15.	Large group homes.	C (3)	C (3)	P (1)/C (4)
16.	Lodging houses.	C	C	P (1)/C
17.	Nonprofit institutions of educational, philanthropic or eleemosynary nature.			P
18.	Nursing homes, rest homes, convalescent homes and similar facilities.		C	P
19.	Raising of crops, trees, shrubs and grasses not sold on the premises.	P	P	P
20.	Rehabilitation houses.			P (2)/C (4)
21.	Safe houses.	P (4)/C (8)	P (4)/C (8)	C
22.	Schools: a. Public and private elementary schools. b. Public and private secondary schools. c. Post-secondary educational institutions.	P	P	P
		C	C	P
		C	C	P
23.	Telephone exchanges, electric substations and similar public utilities.			C

Permitted Uses Footnotes:

(1) When having nine (9) or fewer sleeping rooms.

- (2) When having twenty (20) or fewer residents, including staff.
- (3) Subject to State of Kansas licensure requirements.
- (4) When having six (6) or fewer sleeping rooms.
- (5) When having eight (8) or fewer residents plus no more than two (2) staff.
- (6) Excluding miniature and pitch and putt courses and commercially operated golf driving ranges.

Conditional Uses Footnotes:

- (1) Hospitals to be situated on a lot, plot or parcel of land five (5) acres or larger.
- (2) (Reserved)
- (3) For group homes having more than ten (10) residents, including staff.
- (4) For facilities having more than twenty (20) residents, including staff.
- (5) When having more than ten (10) residents, including staff.
- (6) When having more than twenty (20) residents, including staff.
- (7) When having fewer than twenty (20) residents, including staff.
- (8) When having seven (7) or more sleeping rooms.
- (9) If property contains at least 500 sq. ft. of ground lot area per occupant.
- (10) When having four (4) or fewer sleeping rooms. See also section 6-12.

Section 3. Article 6, Section 6-602, Table 6-3, is hereby amended as follows:

6-602. Yard Regulations. Front, side and rear yards shall conform to Table 6-3.

TABLE 6-3

MINIMUM YARD REGULATIONS

District	Front (1) (feet)	Side (2) (feet)	Rear (3) (feet)
R-1	15	6	20
R-2	15	6	20
R-3	15	6	20

Footnotes:

- (1) Front yards on arterial or collector streets shall comply with Article 24.
- (2) Where a lot is located at the intersection of two or more streets, there shall be a setback from the side street of the lot of one-half of the required front yard setback; except that when lots have been platted facing said side street, the setback from the side street shall be no less than five (5) feet less than the required front yard setback of the lots platted on the same street.
- (3) Or twenty (20) percent of the depth of the lot whichever is less; provided, in no case shall the rear yard be less than ten (10) feet.

Section 4. Article 9, Section 9-3, Table 9-1, is hereby amended as follows:

SECTION 9-3 PERMITTED AND CONDITIONAL USES

9-301. In the commercial zoning districts the uses listed in Table 9-1 within the designated zoning districts are permitted uses or conditional uses when so designated. Conditional uses require the issuance of a Conditional Use Permit in accordance with the provisions of Article 26. No building or land shall be used and no building or structure shall be erected, altered or enlarged, which is arranged, intended or designed for other than one of the uses indicated in the following Table 9-1.

**Table 9-1
Commercial Zoned Districts
Permitted and Conditional Uses**

- P =** Indicates Permitted Uses
- C =** Indicates Conditional Uses

Use		C-1	C-2	C-3	C-4
1.	Ambulance service.	P	P	P	P
2.	Amusement places, indoor.			P	P

3.	Animal hospitals			P (1)	P (1)
4.	Any public building or land use by any department of the City, County, State or Federal government.	C	C	C	C
5.	Artists, authors, composers, studios and galleries.	P	P	P	P
6.	Auditoriums, exhibition halls, fairgrounds, stadiums and similar uses.			P	P
7.	Automobile wash services.			P	P
8.	Bowling alleys.		C	P	P
9.	Churches, similar places of worship.	P	P	P	P
10.	Convenience stores.		P (2)	P	P
11.	Daycare facilities: child care centers, daycare homes, family daycare homes, group daycare homes and preschools.	P	P	P	P
12.	Dry cleaners-laundries, including self-service.			P	P
13.	Dwellings: a. When dwelling unit(s) located on ground floor of commercial structure, such must not exceed 50% of structure's floor area.	C		C	P
	b. When dwelling unit(s) located on other than ground floor of commercial structure.	P		P	P
14.	Electric-telephone substations.		P	P	P
15.	Food catering service, lockers-storage.			P	P
16.	Fraternal-civic-social organizations.	P	P	P	P
17.	Funeral, crematory and mortuary services.		P	P	P
18.	Furniture repair, upholstering.			P	P
19.	Garden supplies-nurseries, greenhouses.			P	P
20.	Golf driving ranges			C	C
21.	Health and exercise spas, gymnasiums.	P	P	P	P
22.	Hospitals, clinics, laboratories.	P	P	P	P
23.	Hotels-motels.		C	P	P
24.	Industrial laundry and linen supply services.			C	C
25.	Kennels-boarding and breeding.			C	C
26.	Miniature golf.		P	P	P
27.	Mini-storage, self-storage.		C	C	C
28.	Mobile home sales.			P	P
29.	Monument sales.			P	P
30.	Motor vehicle repair.			P (3)	P (3)
31.	Motor vehicle body shop, provided all work shall be performed and all materials shall be stored within an enclosed building.			C	C
32.	Nursing homes, rest homes, convalescent homes and similar facilities.	P	P	P	P
33.	Offices: professional-business-educational-industrial-religious-philanthropic-public.	P (4)	P	P	P
34.	Printing, including newspaper publishing.			P	P
35.	Private clubs.		P (5)		P (5)
36.	Race track and courses-vehicle and animal.			C	C
37.	Radio and television broadcasting studios (without transmission towers).	P	P	P	P
38.	Radio or television broadcasting studios (with transmission towers).		P	P	P
39.	Radio, television or telephone transmitting station or towers, subject to further regulations set out in Article 12.		C	C	C
40.	Recreation centers.			P	P
41.	Recreational vehicles-trailers, equipment sales.			P	P
42.	Research-development-testing.			P	P
43.	Restaurants.		P	P	P
44.	Retail sales and rental of goods and merchandise including, but not limited to: antiques; apparel; appliances; bakeries; bicycles;	P	P	P	P

	books and stationery; building materials; carpet and other floor coverings; cigarettes; clocks; farm machinery and supplies; food and groceries; furniture; hardware; heating, plumbing, and air conditioning equipment; jewelry; liquor; musical instruments; motor vehicles, parts and supplies; pet shops; pharmacies, photographic supplies and cameras; office equipment and supplies; and service stations.				
45.	Retail sales of services including, but not limited to: banks; barber and beauty shops; building contractors, including air-conditioning, heating, plumbing and electrical; cleaning and repair; diaper services; interior decorating; lawn care and landscaping; locksmith; message service; outdoor advertising; pet grooming; photocopying and blueprinting; and stenographic, duplicating and mailing services.	P	P	P	P
46.	Schools: a. Public and private elementary schools. b. Public and private secondary schools. c. Postsecondary educational institutions. d. Business & training / vocational schools.	C	C	C	C
		C	C	C	C
		P	P	P	P
		C	C	P	P
47.	Storage or warehousing, except for products of a highly explosive, combustible or volatile nature.			C	C
48.	Taverns, bars and drinking establishments.			P (5)	P (5)
49.	Telephone exchanges, electrical substations, cable T.V. or similar public utility uses.	C		C	C
50.	Theaters, indoor.		P	P	P
51.	Theaters, outdoor.			C	C
52.	Travel trailer parks.			C (6)	
53.	Truck wash services.			C	C
54.	Wholesale establishment.			C	C

Permitted and conditional uses footnotes:

1. Providing all services, runs and pens are within an enclosed building.
2. Including the self-service dispensing of gasoline and related petroleum products, providing there is no motor vehicle repair or service.
3. Provided all work shall be performed within an enclosed building.
4. Provided that no goods wares or merchandise shall be prepared for sale or sold on the premises.
5. Provided not located within 200 feet of a church, school or hospital.
6. Subject to requirements set out in Section 9-11.

Section 5. Article 25, Section 25-301, is hereby amended as follows:

SECTION 25-3 VARIANCES

25-301. The board shall have the power to authorize in specific cases a variance from the specific terms of these regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning regulations in such district.

- a. The applicant must show that his or her property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the district zoning regulations, or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually prohibit the use of his or her property in the manner similar to that of other property in the zoning district where it is located.
- b. Variances from these regulations may be granted only in the following instances:

1. To vary from the applicable lot area and width, height and yard regulations.
 2. To vary from the applicable off-street parking and loading requirements.
 3. For certain detached accessory structures in floodplains, as provided in Section 19-4, a.7 of these regulations.
- c. A request for a variance may be granted, upon a finding of the board that all of the following conditions have been met. The board shall make a determination on each condition, and the finding shall be entered in the record:
1. The variance requested arises from a condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by action of the property owner or applicant.
 2. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
 3. The strict application of the provisions of the zoning regulations of which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
 4. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
 5. The granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.
- d. In granting a variance, the board may impose such conditions, safeguards and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations.
- e. Whenever the board grants a variance the results of such action will be recorded with the Register of Deeds of Cloud County by the secretary, after the passage of the thirty (30) day appeal period.

Section 6. Article 26, Section 26-701, is hereby amended as follows:

SECTION 26-7 ADMINISTRATIVE VARIANCES

26-701.

- a. Except where variances are expressly prohibited by the Regulations, any requirement under these Regulations which may be varied from in accordance with the provisions of Section 25-3 may be submitted to the Zoning Administrator with a request for an administrative variance.
- b. Except as authorized in subsection c. of this Section, no application for an administrative variance may reduce the requirement sought to be varied from by an amount greater than ten percent (10%).
- c. The Zoning Administrator, as the Floodplain Administrator, may approve, disapprove, modify and approve, or refer directly to the Board of Zoning Appeals, an application for a variance for wet flood proofing for accessory structures under 400 square feet in ground floor area.
- d. The Zoning Administrator may approve, disapprove, modify and approve, or refer directly to the Board of Zoning Appeals, an application for administrative variance.
- d. Any final decision by the Zoning Administrator on an application for an administrative variance may be appealed to the Board of Zoning Appeals.

Section 7. Article 11, Highway 81 Mixed-Use Overlay District, is hereby repealed in its entirety.

Section 8. This ordinance shall be summarized for publication as follows:


On April 18, 2018, the City of Concordia adopted Ordinance No. 2018-3135, amending the Zoning Ordinance section for child and adult care facilities, making

certain floodplain changes, and eliminating the Highway 81 Mixed Use Overlay District (HMOD). The complete text of this ordinance may be obtained and viewed free of charge at the office of the city clerk. A reproduction of this ordinance will be available for not less than one week following the publication of this ordinance at the website address of the City of Concordia, <http://www.concordiaks.org>. This summary is certified by the city attorney to be legally accurate and sufficient.


Section 9. This Ordinance shall take effect and be in force from and after its passage and publication in the official city newspaper as provided by law.

PASSED by the City Commission this 18th day of April, 2018.

(Seal)


Sam J. Saceo
Mayor


ATTEST:



Stacey Smith
City Clerk

ORDINANCE CERTIFICATE

I hereby certify that the foregoing is an original ordinance; that said ordinance was passed on the 18th day of April, 2018; that the record of the final vote on its passage is found on page ___ of the minutes journal; that the ordinance summary was published in the Concordia Blade-Empire on the 20th day of April, 2018.


_____, City Clerk