

**CITY OF FAIRWAY, KANSAS
ORDINANCE NO. 1758**

**AN ORDINANCE AMENDING THE FAIRWAY DEVELOPMENT
ORDINANCES PERTAINING TO SOLAR ENERGY SYSTEMS;
AMENDING AND REPEALING EXISTING SECTIONS 15-235, 15-298,
AND 15-798 OF THE FAIRWAY DEVELOPMENT ORDINANCES.**

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

SECTION 1. Existing Section 15-235 of the Fairway Development Ordinances is hereby amended to read as follows:

Sec. 15-235. Site plan review.

(a) *Applicants.* The following development activities shall require a site plan review subject to the procedures and criteria contained in the zoning regulations. No building permit shall be issued until the required review and approval of a site plan has occurred.

Development Activity	Preliminary	Final
In the R-1 district, any construction activity that: <ul style="list-style-type: none"> • Adds to or replaces a portion of the principal building on more than fifty percent (50%) of the existing principal building footprint; • Adds an entirely new principal building to a lot; • Adds a solar energy system; or • Any application, regardless of the size or impact of the project, that requests an exception to the Dimension Standards in Section 15-296 or the Site Design Standards in Section 15-297. 	No	Yes
In the R-2P or B-3P districts, a proposed development plan, and any subsequent development according to an approved development plan, requires a site plan as a component of the development plan as specified in Article IV, Division 4.	Yes	Yes
In the B-1 and B-2 districts: <ul style="list-style-type: none"> • Any exterior structural construction activity, alteration or replacement of a structure, except activities that may be considered ordinary maintenance; or • Any site construction activity, such as landscaping, parking, drive aisles, or similar site elements, the extent of which alters or impacts traffic patterns on or around the site, except activities that may be considered ordinary maintenance. 	Yes	Yes
Any request for rezoning or a Special Use Permit	Yes	Yes

(b) *Submittal requirements.*

(1) *Preliminary site plan.* Nine (9) copies of the preliminary site plan shall be submitted to the City Clerk in support of the application for preliminary site plan approval. The preliminary site plan shall contain the information:

- a. A small key map indicating the location of the property within the City, a north arrow and scale.
- b. A title block including:
 - 1. Name and address of the landowner;
 - 2. Name and address of the architect, landscape architect, planner, engineer, surveyor, contractor, or other persons or entities involved in preparation of the preliminary site plan;

3. Original date and date of latest revisions to the preliminary site plan.
- c. With regard to the subject property only:
 1. Existing topography with contours at two foot (2') intervals, and delineating any land areas within the one-hundred-year flood plain.
 2. Proposed location of buildings, building setback lines and other structures, parking areas, drives, walks, screening, drainage patterns, public streets and any existing easements.
 3. Sufficient dimensions to indicate relationship between buildings, property lines, parking areas and other elements of the preliminary site plan.
 4. General extent and character of proposed landscaping.
 5. A description of the proposed use, including information regarding proposed hours of operation.
 - d. With regard to areas within two hundred feet (200') of the subject property:
 1. Any public streets which are of record.
 2. Any drives which exist or which are proposed to the degree that they appear on plans on file with the City, including those serving residential buildings.
 3. Any buildings which exist or are proposed to the degree that their location and size are shown on plans on file with the City. Residential buildings may be shown in approximate location and general size and shape.
 4. The location and size of any drainage structures, such as culverts, paved or earthen ditches or stormwater sewers and inlets.
 - e. Preliminary sketches depicting the general style, size and exterior construction materials of the buildings proposed. Where several building types are proposed on the preliminary site plan, such as apartments and commercial buildings, a separate sketch shall be prepared for each type. Such sketches shall include elevation drawings, but detailed drawings and perspectives are not required.
 - f. A schedule indicating total gross floor area, land area, parking spaces and other quantities relative to the submitted preliminary site plan in order that compliance with requirements of this article can be determined.
- (2) *Additional information required in support of preliminary site plan.*
- a. In addition to the information listed in the previous section, the Planning Commission, Governing Body, or City officer may also require applicants for preliminary site plan approval to submit and/or pay the cost of such technical studies as may be necessary to enable the Planning Commission, Governing Body, or City officer to evaluate the application. Examples of technical studies that may be required shall include, but not be limited to, traffic studies, engineering studies, geologic or hydrogeologic studies, flood studies, environmental impact assessments, noise studies, market studies or economic impact reports. The applicant shall reimburse the City for the cost of all such studies, and the person or firms preparing the studies must be approved in advance by the entity requiring such study. The City may require that the applicant post a deposit in the amount of the estimated cost of such studies, and if the applicant refuses to post the deposit, the City shall be under no obligation to proceed with consideration of the preliminary site plan. Notwithstanding the fact that the Planning Commission did not require submission of any such technical study in support of the application, the Governing Body may require the submission of such studies prior to taking action on the application for preliminary site plan approval. In such case, the persons or firms selected to perform the studies shall be subject to the approval of the Governing Body. If during the public hearing on the application, the Planning

Commission determines the need for such studies, the public hearing shall be continued until such time as such studies have been completed and submitted. If the Governing Body determines the need for such studies, its consideration and approval of the preliminary site plan shall be continued until such time as such studies have been completed and submitted.

- b. The Planning Commission, Governing Body, or City officer shall have authority to require that the applicant for preliminary site plan approval submit proof of having reviewed the preliminary site plan with applicable water, sewer, fire, police, gas and electric utility officials. Proof of such review shall be provided on forms furnished by the City Clerk. The forms shall provide an opportunity for applicable water, sewer, gas and electric officials to provide comments on the existing and future availability and timing of services provided by their respective districts or agencies to the subject property. In order to obtain approval of a preliminary site plan, the applicant must show that adequate water, sewer, fire, gas, police and electric services are presently available to the subject property. If adequate public facilities and services are not presently available at the time of submittal of the application for preliminary site plan approval, as determined by the affected utility company or agency, the preliminary site plan may be denied.
- (3) *Final site plan.* Nine (9) copies of the final site plan shall be submitted in support of the application for final site approval. The final site plan shall contain the following information and meet the following requirements:
- a. A small key map indicating the location of the property within the City, a north arrow and scale.
 - b. A title block including:
 - 1. Name and address of the landowner;
 - 2. Name and address of the architect, landscape architect, planner, engineer, surveyor, contractor, or other persons or entities involved in preparation of the final site plan;
 - 3. Original date and date of latest revisions to the final site plan.
 - c. With regard to the subject property:
 - 1. Finished grades or contours for the entire site at one foot (1') contour intervals.
 - 2. All existing and proposed adjacent public street right-of-way with centerline location.
 - 3. All existing and proposed adjacent public street and public drive locations, widths, curb cuts and radii.
 - 4. Location, width and limits of all existing and proposed sidewalks, including the crossing distance of any crosswalks across right-of-way, private lanes, or internal drive aisles.
 - 5. Location, size and radii of all existing and proposed median breaks and turning lanes.
 - 6. Distance between buildings, between buildings and property lines and between all parking areas and property lines.
 - 7. Location of all required building and parking setbacks.
 - 8. Location, dimensions, number of stories and area in square feet of all proposed buildings.
 - 9. Area of land on the final site plan in square feet and acres.
 - 10. Limits, location, size and material to be used in all proposed retaining walls.
 - 11. Location and dimensions of all driveways, parking lots, parking stalls, aisles, loading and service areas and docks.
 - 12. Location, height, candle power and type of outside lighting fixtures for buildings and parking lots.

13. Location, size, type of material and message of all proposed signs on the subject property, and a written and graphic description of all other existing signs located within one thousand feet (1,000') of the property which is the subject of the application in order to determine compatibility of design.
14. Pertinent peripheral information to include adjacent developments, alignment and location of public and private driveways and streets, medians, and public and semi-public easements.
15. Preliminary drainage design and location and existing drainage facilities.
16. For all R-1 activity defined as a new house or that adds to or replaces a portion of the principal building on more than fifty percent (50%) of the existing principal building footprint, and for all new building construction in the B-1, B-2, B-3P, and R-2P zoned districts, a watershed analysis stamped by a licensed Kansas Engineer shall be required. The watershed analysis shall include, but not be limited to, the following:
 - (i) Baseline watershed level as property exists before any demolition.
 - (ii) Watershed level with proposed changes including new construction, hardscape and specific changes to grades.
 - (iii) Impact to immediate surrounding properties.
 - (iv) A determination that the new construction will not adversely impact adjoining or downstream property.

The Planning Commission may waive the requirement that a watershed analysis be submitted under this subsection for good cause shown by the applicant, which evidence may include: (1) letters from all property owners immediately adjacent stating that they do not object to the applicant's submission of the final site plan without a watershed study, and (2) at least seventy-five percent (75%) of the lot consists of permeable and uncovered surface.

17. Any request for a variance to the minimum permeable surface requirement or a variance or exception to any building setback for new footprint additions will require a watershed analysis meeting the requirements of Subsection (b)(3)c.16 of this section and stamped by a licensed Kansas engineer.
- d. Building elevations including the following:
 1. Elevations of all sides of proposed buildings including notation indicating building materials to be used on exteriors and roofs, and dimensions with sufficient detail to demonstrate compliance with all building design standards of the zoning regulations.
 2. Size, location, color and materials of all signs to be attached to building exteriors.
 3. Location, size and materials to be used in all screening of rooftop mechanical equipment.
 4. Building sections.
 - e. Floor plans indicating dimensions and areas of all floors within proposed buildings.
 - f. Landscaping and screening plans as required by this article, which include:
 1. Size, species, location and number of all existing and proposed landscape materials.
 2. Notation of all areas to be seeded or sodded.
 3. Location, size and materials to be used for all screening, including screening of outside trash enclosure areas.

4. A schedule calculating the sizes and types of different open spaces provided in the final site plan to demonstrate compliance with all landscape and open space design standards of the zoning regulations.
 - g. A parking schedule showing the numbers and dimensions of typical parking spaces, drive aisles, and parking lot landscape areas sufficient to demonstrate compliance with the parking quantity and design standards of the zoning regulations.
 - h. All final site plans are to be drawn to a standard engineer's scale.
 - i. The following additional items shall be submitted in support of the application for final site plan approval:
 1. Deeds of dedication for all rights-of-way or easements required as a result of preliminary site plan approval.
 2. A copy of all covenants and restrictions applicable to the site, if required by the terms of the approved preliminary site plan.
 3. Evidence of satisfaction of any stipulations of the preliminary site plan approval which were conditions precedent to consideration of the final site plan.
 4. Assurances of adequate public facilities.
- (c) *Review procedures.*
- (1) *Preliminary site plan.*
 - a. All preliminary site plans that accompany a rezoning or special use permit application request shall be reviewed in accordance with the procedures for a rezoning request.
 - b. All other preliminary site plans required under this article shall be reviewed by the Planning Commission in a public meeting. The Planning Commission shall submit its recommendation to either approve, deny or require modifications of the preliminary site plan to the Governing Body for final action.
 - c. The Governing Body may:
 1. Approve the recommendation;
 2. Override the Planning Commission's recommendation by a two-thirds ($\frac{2}{3}$) majority vote of the membership of the Governing Body; or
 3. Return the recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove. If the Governing Body returns the Planning Commission's recommendation, the Planning Commission may resubmit its original recommendation giving the reasons or submit new and amended recommendations. Upon the receipt of the recommendation, the Governing Body, by a simple majority, may approve or may revise or amend and approve such recommendation. If the Planning Commission fails to deliver its recommendation to the Governing Body following the Planning Commission's next regular meeting after receipt of the Governing Body's report, the Governing Body shall consider the inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.
 - d. Except as provided below in Subsection (c)(1)e., approval of the preliminary site plan shall authorize the applicant to proceed with the preparation and review process of a final site plan.
 - e. Combination of final plan approval. If an applicant has provided a detailed plan set meeting both the preliminary site plan requirements and final site plan requirements, the review procedures may be combined into one (1) proceeding. If the Planning Commission determines that the preliminary site plan and final site plan submittal requirements and development standards have

been meet, it may recommend approval of the preliminary site plan and approve the final site plan conditioned upon the Governing Body's approval of the preliminary site plan. In this case, final approval shall occur upon the Governing Body's approval of the preliminary site plan.

(2) *Final site plan.*

- a. All final site plans shall be reviewed by staff and placed on the Planning Commission consent agenda for action consistent with the staff recommendation. Any Planning Commission member, upon proper motion and with the concurrence of two (2) additional members, may pull a final site plan from the consent agenda for further discussion and possible Planning Commission action different from the staff recommendations.
- b. If the Planning Commission determines that the proposed final site plan is a substantial deviation from an approved preliminary site plan, the application may not be considered except through re-submittal of a new preliminary and final site plan according to this section. Substantial deviations shall include any changes from an approved preliminary plan that, in a reasonable determination, could result in adverse impacts on adjacent property different in extent or type than those considered under the preliminary site plan review. Examples of substantial deviations may include different locations of buildings, ingress and egress, parking, or different proposed uses.

(3) *Appeal of Planning Commission decision to Governing Body.* In the event that the Planning Commission denies a final site plan, the applicant may request that the application for final site plan approval be submitted to the Governing Body for final decision by filing a notice of appeal with the City Clerk within thirty (30) days of the Planning Commission's decision to deny the final site plan. Following its consideration of the appeal, the Governing Body may:

- a. Approve the recommendation;
- b. Override the Planning Commission's recommendation by a two-thirds ($\frac{2}{3}$) majority vote of the membership of the Governing Body.

(d) *Review criteria.* In considering any application for site plan approval, the review body shall give consideration to the criteria stated below, to the extent they are pertinent to the particular application. In addition, the review body may consider other factors which may be relevant to a particular application.

- (1) Whether the site is capable of accommodating the buildings, parking areas and drives with appropriate open space.
- (2) Whether the plan provides for safe and easy ingress, egress and internal traffic circulation, and adequate access vehicles, pedestrians, and emergency service to all parts of the property and of all buildings and structures on the property.
- (3) Whether the plan is consistent with good land planning and site engineering design principles.
- (4) Whether an appropriate degree of harmony will prevail between the architectural quality and building materials of the proposed buildings and those of the surrounding neighborhood.
- (5) The character of the neighborhood.
- (6) The zoning and use of nearby properties, and the extent to which the proposed use would be in harmony with such zoning and uses.
- (7) The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations.
- (8) The length of time the property has remained vacant.
- (9) The extent to which approval of the application would detrimentally affect nearby properties.

- (10) The extent to which the proposed use and plan would substantially harm the value of nearby properties.
 - (11) The extent to which the proposed use and plan would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.
 - (12) The extent to which utilities and services, including, but not limited to, sewers, water service, police and fire protection, and parks and recreation facilities, are available and adequate to serve the proposed use.
 - (13) The extent to which the proposed use and plan would create excessive stormwater runoff, air pollution, water pollution, noise pollution or other environmental harm.
 - (14) The extent to which there is a need for the use in the community.
 - (15) The economic impact of the proposed use and plan on the community.
 - (16) The ability of the applicant to satisfy any requirements applicable to the specific use imposed pursuant to the zoning district regulations.
 - (17) The gain, if any, to the public health, safety and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.
 - (18) The conformance of the proposed use and plan to the City's Comprehensive Plan, and other adopted planning policies.
 - (19) The recommendation of professional staff, or other professionals retained by the City to evaluate the application.
- (e) *Time limitations on approvals.* If the owner has obtained preliminary site plan approval, but fails to apply for final site plan approval within one (1) year from the date of approval of the preliminary site plan by the Planning Commission, the preliminary site plan approval shall be deemed to have expired, and the owner shall be required to resubmit his plan for preliminary site plan approval. If the owner has obtained final site plan approval, but fails to commence construction of the project within one (1) year from the date of final site plan approval, both preliminary and final site plan approval will be deemed to have expired, and the owner shall be required to resubmit said plan for preliminary and final site plan approval.
- (f) *Applications and review procedures table.* The following table is a summary of the application and review procedures for the zoning regulations under Article 4.

Table 15-235(f)—Applications and Review Procedures Summary

Review Body	Application Type							
	Zoning Text Amendment	Zoning Map Amendment (rezoning)	Preliminary Site Plan Review	Final Site Plan review	Special Review Procedures (See Article 4, Division 4)			
					Preliminary Development Plan	Final Development Plan	Special Use Permit	Board of Zoning Appeals Review
Staff	A RR	A RR	A RR	A RR	A RR	A RR	A RR	A RR
Planning Commission	H RR	H RR	PM RR	PM D	H RR	PM D	H RR	
Governing Body	PM D	PM D	PM D		PM D		PM D	
Board of Zoning Appeals								H D

A = Determination of complete application

RR = Review and/or recommendation

PM = Public meeting

H = Public hearing subject to notice requirements

D = Decision

SECTION 2. Existing Section 15-298 of the Fairway Development Ordinances is hereby amended to read as follows:

Sec. 15-298. Special conditions for uses.

In addition to the general standards for the R-1 Single Family District in this Subdivision II, the applicable supplemental provisions in Division 3, and any applicable special use conditions and procedures in Division 4, the following uses shall be subject to these special conditions in the R-1 district.

- (1) *Home occupation.* The following home occupation standards are intended to permit the establishment of certain incidental and accessory home occupation uses in residential neighborhoods under conditions that will ensure their compatibility with the residential character of the neighborhood. They are intended to permit residents to engage in home occupations that are compatible with residential land uses and to ensure that home occupations do not adversely affect the integrity of residential areas. Accordingly, a home occupation shall be allowed as an accessory use, subject to the following conditions:
 - a. *Use.* The home occupation must be clearly incidental and secondary to the primary residential use of the premises as a dwelling. No more than twenty-five percent (25%) of the total floor area of the principal building, not including garage or basement space, shall be used for the home occupation. If more than one (1) home occupation is operated within the premises, the combined total floor area shall meet this standard. No accessory buildings shall be used in conjunction with a home occupation. No outside storage of any kind related to the home occupation shall be permitted.
 - b. *Change to exterior.* The home occupation must not change the outside appearance of the principal building or provide any visible exterior evidence of the home occupation. No building addition shall be permitted solely for the purpose of accommodating the occupation, and no separate street-side entrance shall be permitted for the exclusive use of the home occupation.
 - c. *Signs.* Exterior signage for the home occupation shall be prohibited.
 - d. *Employees.* The home occupation shall be conducted only by family members residing on the premises with no assistance from other individuals or groups.
 - e. *Hours of operation.* A home occupation may attract business-related traffic only between the hours of 6:00 a.m. and 9:00 p.m.
 - f. *Vehicles.* The home occupation shall not utilize more than one (1) private commercial vehicle limited to ¾-ton capacity.
 - g. *Traffic, parking, sewerage and water.* The home occupation must not generate pedestrian or vehicular traffic, parking, sewerage or water use in excess of what is normal in the residential neighborhood.
 - h. *Deliveries.* Deliveries of materials to and from the premises in conjunction with the home occupation shall not require the use of vehicles other than parcel post or similar parcel service vehicles.
 - i. *Nuisances and hazards.* The home occupation shall not create noise, dust, dirt, heat, smoke, odor, vibration, electrical interference, glare, light, or radio or television transmission

interference that exceeds the levels normally associated with single-family dwellings or any such other nuisance. The home occupation shall not create any hazard to person or property. The production, dumping or storage of combustible, toxic or other hazardous substances shall be expressly prohibited on the site.

- j. *Licenses.* The home occupation and its operator(s) shall have all licenses/permits mandated by any applicable local, state and/or federal laws.
- (2) *Private swimming pools.* Private swimming pools, spas and hot tubs shall be allowed as an accessory use, subject to the following conditions:
- a. All swimming pools, spas and hot tubs shall require a building permit.
 - b. Construction of all swimming pools, spas, hot tubs and any accessory building or structure shall comply with all applicable building code requirements.
 - c. All outdoor swimming pools, spas and hot tubs shall be completely enclosed by a fence or wall not less than five feet (5') nor more than six feet (6') in height, and shall comply with all other applicable fence or wall requirements. In addition, such fence or wall shall be designed to reasonably prevent unauthorized access by children, and shall be provided with self-closing gates equipped with self-latching devices.
 - d. In lieu of the fence or wall requirement, spas and hot tubs may be equipped with a safety cover that shall securely cover the spa or hot tub at all times when not in use and under the supervision of an adult person. The safety cover shall be classified under "Covers for Swimming Pools and Spas" (WBAH) and meet the requirements of the American Society for Testing and Materials (ASTM) Standard F1346-91, Standard Performance Specifications of Safety Covers (as may be amended) or the equivalent. Each safety cover shall bear the classification marking "UL", the word "Classified", a control number, and the product name or the equivalent.
 - e. No swimming pool, spa or hot tub shall be located in front of the front building lines of the principal building or any adjacent dwelling units.
 - f. Subject to any easements, a swimming pool, spa or hot tub may be located anywhere within the interior area of a fence or wall located in compliance with the general fence or wall requirements; provided that the edge of the pool, spa or hot tub shall be not less than six feet (6') from the fence or wall, and further provided that the pool, spa or hot tub shall be not less than twenty feet (20') from any adjacent dwelling unit.
 - g. All swimming pools, spas and hot tubs shall be designed so that any drainage shall comply with the City's NPDES Standards as codified Chapter 12, Article IV, Division 3 (Discharge Restrictions) of this Code (as may be amended). Swimming pools, spas and hot tubs shall not be drained at any time which may cause icing or other hazardous public street or sidewalk conditions.
- (3) *Accessory buildings.* Accessory buildings shall be allowed as an accessory use, subject to the following conditions:
- a. No more than one (1) accessory building shall be allowed per lot or principal building.
 - b. Accessory buildings shall not be designed or used for dwelling purposes.
 - c. No accessory building shall be used in conjunction with a home occupation.
- (4) *Sport courts.* Sport courts accessory to residential uses shall only be allowed subject to a special use permit issued according to the standards and procedures of Chapter 15, Article IV, Division 4.
- (5) *Play structures.* Play structures primarily intended for use by children for recreational purposes, including but not limited to basketball goals, swing sets, jungle gyms, playhouses and slides, shall be allowed as an accessory use, subject to the following conditions:

- a. No play structure shall be located in front of the front building line of the principal building, provided, however, that a single basketball goal or tether ball pole may be located in the front setback when the same is: located on or adjacent to the driveway, not less than twenty feet (20') from the front property line, and not less than three feet (3') from the side property line measured to the nearest component of the basketball goal or tether ball pole including adjustable armature and tether extensions.
 - b. Play structures not exceeding ten feet (10') in height may be located anywhere in the rear yard, and may be located anywhere in any side yard, provided the same is: not less than six feet (6') from any side property line, no less than twelve feet (12') from any street-side side property line, and not located in front of the front building lines of any adjacent dwelling units.
 - c. Play structures exceeding ten feet (10') shall be subject to the setback requirements for an accessory building.
 - d. Playhouses shall not exceed eighty square feet (80 sq. ft.) in footprint and six feet (6') in height. Any enclosed playhouse that exceeds these limitations shall be considered an accessory building and shall be subject to the applicable conditions thereto.
 - e. Notwithstanding the above location requirements, all play structures shall meet any manufacturer recommended setbacks for safety purposes.
- (6) *Emergency generators.* Permanent standby emergency generators shall be allowed as an accessory use, subject to the following conditions:
- a. A building permit is required prior to installation.
 - b. The generator shall be installed in accordance with the National Fire Protection Association (NFPA) 37 Standards for the Installation and Use of Stationary Combustion Engines and Gas Turbines, and shall meet all other applicable building code requirements.
 - c. The generator shall be connected to a natural gas line.
 - d. The generator shall be contained in an enclosed cabinet or housing that provides sound attenuation, and the decibel level shall not exceed seventy-five decibels (75 dBA) at the property line.
 - e. The footprint of the cabinet shall not exceed twelve square feet (12 sq. ft.) and the pad shall not exceed forty-eight inches (48") in any dimension.
 - f. The generator shall be located within the building envelope but no further than five feet (5') from a wall of the principal building and not in a front or side yard, except that alternate locations may be approved by the Building Official or his/her designee for greater than five feet (5') from the wall and up to the minimum additional distance necessary to adequately address any safety and carbon monoxide issues.

Exception. An exception may be granted to this location requirement upon a finding of the following:

1. Special circumstances or conditions affecting the property;
2. Generator is set back from side property line a minimum of twelve feet (12') to meet the sound limitation in subsection (6)d. above;
3. Location will not cause an adverse impact on the adjacent properties;
4. Location will be adequately screened from the street by vegetation, walls, fences or any combination thereof; and
5. Building Official or his/her designee may impose any screening or other condition it deems necessary to mitigate any negative impacts of the proposed location.

In no event shall an exception be granted to locate a generator in any front yard.

- g. The generator shall be used only during emergency situations that result in power failures.
 - h. The generator shall only be tested during daylight hours after 9:00 a.m., and not on any holiday.
- (7) *Accessory structures and streetscape features.* Accessory structures used to animate the streetscape, support neighborhood activities, and serve or provide ornaments for the residential lots, such as mailboxes, bird houses, little free libraries, flag poles or other similar features are permitted subject to the following:
- a. Any structure that is permanently fixed to the ground must meet all applicable building codes.
 - b. No structure may be located in the public right-of-way.
 - c. Permanent structures within the front setback area shall not exceed five feet (5') in height and shall not exceed three cubic feet (3 cu. ft.) of volume, excluding any support structure.
Exception. Flag poles mounted at grade shall not exceed twenty-five feet (25') in height and four inches (4") in diameter. Illumination of the flag shall be directed vertically from the base or top of the pole.
 - d. No structure shall be located in a way that obscures safe ingress and egress of vehicles to the lot, considering visibility, and traffic speeds and volumes on the street.
 - e. Any structure not kept in working condition and maintained shall be removed.
- (8) *Solar energy systems.* Solar energy systems are permitted as an accessory use subject to the following conditions:
- a. All solar energy systems shall be incorporated into a building (which may be either a principal or accessory building) and shall be integrated into the basic form and main structure of such building. Any panel or apparatus that is used to receive, collect or transfer solar energy shall be mounted on the roof of a building and either directly mounted against the roof or stand off up to six inches (6") from the roof. Nothing herein shall apply to windows or window walls.
 - b. All mechanical piping, electrical conduits, motors and similar items which comprise the solar energy system shall be concealed and may be located on the roof or side of the building.
 - c. All parts of any solar energy system shall be in general conformity with the building to which the system is attached, generally compatible with the character of the neighborhood, and situated in a manner that minimizes potential negative impacts on adjacent property or public streetscapes.
 - d. The site plan submitted in support of the application for the solar energy system shall identify any trees that will be removed.
 - e. No solar energy system shall be free-standing or mounted on the ground, provided that the Planning Commission may grant an exception to this condition based on the criteria set forth in subsection (9) below.
- (9) *Exceptions.* Through the site plan process, the Planning Commission may grant exceptions to the special conditions for uses in this Section 15-298, based upon the following criteria:
- a. The exception will equally or better serve the intent statements for this section and the particular standards being altered;
 - b. The exception meets any specific exception criteria identified in the standards, but shall not be granted to allow something that is specifically prohibited in the regulations;
 - c. Any lot design exception is consistent with sound planning, urban design and engineering practices when considering the site and its context within the neighborhood;

- d. Any building design exception is consistent with the common characteristics of the architectural style applied to the overall design of the building;
- e. The requested exception coordinates quality design of the building and site—primarily considering the integrity of the architectural style, the energy performance of the site and building orientation, and the relationship of the internal function of the building to the site, streetscape and adjacent property.

SECTION 3. Existing Section 15-798 of the Fairway Development Ordinances is hereby amended to read as follows:

Sec. 15-798. Defined terms.

For the purpose of this chapter, certain terms and words shall have the specific meaning given below:

Abutting. Having a common border with, or being separated from such a common border by a right-of-way.

Accessory building. A building detached from a principal building located on the same lot and clearly and customarily incidental and subordinate to the principal building or use.

Accessory structure or accessory use. Any structure or use that is:

- (1) Clearly incidental to and customarily found in connection with the principal building or use;
- (2) Subordinate to and serves a principal building or use;
- (3) Contributes to the comfort, convenience or necessity of the occupants of the principal building or use served; and
- (4) Located on the same lot and under the same ownership as the principal building or use served.

Alteration. As applied to a building or structure, is a change or rearrangement in the structural parts of an existing building or structure, or an enlargement, increase in height, or the movement from one (1) location or position to another.

Antenna. For the purposes of this article regarding wireless communication facilities, towers and antennae, "antenna" shall mean any device used to transmit or receive electromagnetic signals for communication purposes. It shall not include antenna and satellite dishes used solely for home television or radio reception purposes, or transmitting and receiving antennae for amateur purposes. It shall include micro-cells and repeaters.

Antenna, micro-cell. A low-power mobile radio service communications facility used to provide increased capacity in high call demand areas or to improve coverage in areas of weak coverage.

Antenna, omni-directional. An antenna that is equally effective in all directions and whose size varies with the frequency and gain for which it is designed (a.k.a. whip antenna).

Antenna, panel. An antenna that transmits signals in specific directions and is typically square or rectangular in shape.

Antenna, repeater. A low-power mobile radio service communications facility that extends coverage of a cell to areas not covered by the originating cell.

Antenna, slim-line. A panel antenna which mounts directly to and parallel with a monopole or alternative tower structure.

Antenna support structure. Any pole, telescoping mast, tower tripod, or any other structure which supports a device or antenna used in the transmission or receipt of radio frequency energy.

Architectural relief. A structural building element that breaks up a wall plane by creating a projection or recession of at least eighteen inches (18") and occurring cumulatively over at least twenty-five percent (25%) of

the wall plane requiring relief. Examples include dormers projecting from a roof, projecting front porches, or projections or recessions in the facade building line.

Architectural style. The individual personality of a building that emerges from a collective interaction of aesthetics, as they relate to use, construction, time-period, geographical location and regional character. Architectural style is characterized by the features that make a building or structure notable or historically identifiable and may include such elements as form, massing/volume, scale, patterns of doors/windows, rooflines, building materials, building ornamentation and method of construction. Architectural style is established by the site design standards for building façade, materials and massing set forth in Section 15-297(b). Examples of architectural styles within the City of Fairway include Cape Cod, Ranch, English Tudor, French Provincial, Mid-Century Modern, California Contemporary, English Country, Bungalow, Bauhaus International, Victorian Farmhouse, Colonial and combinations of these architectural styles.

Block. The land area bounded by the centerline of intersecting public streets, or where public streets do not provide a complete boundary, the centerline of intersecting public streets and private lanes.

Block faces. The area made up of the building line or street edge along a single side of a block.

Board or Board of Zoning Appeals (BZA). The Board of Zoning Appeals of the City, as authorized by statute and established by this article.

Building. A structure having a roof, supported by columns or walls, whether or not completely enclosed.

Character. The "look and feel" of buildings and neighborhoods within the City of Fairway, as established by the dimension standards, site design standards and special conditions for uses set forth in Sections 15-296 through 15-298.

- (1) The character of a building depends upon its capacity to express a particular function and status. Aesthetic components such as unity, composition, style, contrast and scale together make up the character of a building. The character of a building is reflected in terms of architectural style, function, treatment of openings, scale of elements, proportion, materials and technology of construction.
- (2) The character of a neighborhood is an amalgam of various elements that give neighborhoods their distinct "personality." These elements include activities and land use, urban design, landscape patterns, streetscape, general building heights, setbacks, visual resources, historic resources, socioeconomic conditions, architectural style, traffic and/or noise.

Co-location. Placement of wireless communication facilities, towers or antennae by more than one (1) wireless service provider on a single tower or alternative tower structure.

Disability. Disability means, with respect to a person:

- (1) A physical or mental impairment which substantially limits one (1) or more of such person's major life activities;
- (2) A record of having such an impairment; or
- (3) Being regarded as having such an impairment. Such term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802).

Drive aisles. Areas within a parking lot which provide access to parking spaces or other vehicle storage and service points on the lot.

Dumpster. Any container used for the collection of big item or bulk refuse, rubbish or waste disposal, which is placed upon any real property, and is typically rented to owners or occupants of real property for their use by a collector or contractor (whether or not appropriately permitted by the City under Article 1 of Chapter VI of this Code), and is delivered or can then be transported to another location by an appropriate truck, tractor trailer or other motorized equipment.

Effective radiated power (ERP). The product of the antenna power input and the numerically equal power output gain.

Encroachment. An extension beyond a required or established line. To advance beyond the usual or proper limits established by zoning regulations or other City codes.

EPA. Environmental Protection Agency.

Façade. The exterior of the architectural face of a building lying between the grade and the lowest level of the roofline (also referred to as the elevation). A façade shall be considered as an entire composition of a building elevation and may involve multiple wall planes. (See wall plane.)

Family. Any number of people occupying a single dwelling unit living together as a single housekeeping unit, related by blood, marriage, formal adoption, in a legal foster family relationship, or other recognized housekeeping unit entitled by law to the benefits of single-family residential surroundings, plus not more than two (2) additional people not so related.

FAA. Federal Aviation Administration.

FCC. Federal Communications Commission.

Floor area. The total of all gross horizontal areas of the interior floors in a building measured from the exterior face of exterior walls or from the centerline of party walls. Floor area shall exclude any space where floor-to-ceiling height is less than five feet (5'). Floor area shall also exclude stairs, equipment rooms, garages, and floors below the ground floor, except when used or intended to be used for human habitation.

Frontage. In describing a lot or building area which is generally oriented to the street or public area and is thought of as providing a primary access point for the lot or structure.

Garage. An attached or individual structure for the storage of motor vehicles accessory to a dwelling unit.

Governing Body. Shall be as defined in Section 1-101 of this Code.

Ground floor area. All habitable space of a structure exclusive of porches, patios, attached garages or other accessory structures.

Group home. Any dwelling occupied by not more than ten (10) persons, including eight (8) or fewer persons with a disability 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, which dwelling is licensed by a regulatory agency of the state.

Impervious surface. Any area of a lot that is covered with a structure, material, or other fixed physical element that does not allow the infiltration of ground water and cannot be planted with landscape materials.

Lot. A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built upon.

Maintenance easement. An easement providing legal rights of access to the grantee onto adjacent property for the upkeep of any portion of a structure.

Manufactured home. A structure which is subject to the federal manufactured home construction and safety standards established pursuant to 42 U.S.C. 5403.

Mixed-use. A combination of uses, either within a building or on a single integrated parcel, designed and intended for the uses by more than one (1) use category described in this article.

New house. A new house shall be any construction that meets one (1) or more of the following criteria:

- (1) Construction of a new dwelling unit;
- (2) Repair or reconstruction resulting from the demolition of more than seventy percent (70%) of the structural components of an existing dwelling unit;

- (3) New construction and/or structural demolition totaling more than seventy percent (70%) of the total square footage, including the main and second floors, garage, and basement, of the existing dwelling unit.

For the purposes of determining applicable permit fees, new house construction fees are calculated on total square footage of the finished project, including main and second floors, garage, and basement. All other work will be considered a remodel and based upon valuation unless a set building permit fee has been established.

Party wall. A common shared wall between two (2) separate structures, buildings, or dwelling units.

Permeable surface. A surface that allows water to infiltrate through itself into the material immediately below the surface and through the ground surface before disposal into the groundwater.

Planning Commission or Commission. The Planning Commission of the City of Fairway, as authorized by statute and established by Article II.

Portable storage unit. Any container designed for the storage of personal property, which is placed upon any real property, and is typically rented to owners or occupants of real property for their temporary use, and is delivered or can then be transported to another location by an appropriate truck, tractor trailer or other motorized equipment (a.k.a. portable storage container, portable on demand storage, and PODS).

Principal building. A building located on a lot which is used for the primary purpose of the applicable zoning district. (For example, the dwelling unit on a residentially zoned lot is the principal building.)

Primary entrance. The entrance to a building which is designed to accommodate the majority of patrons, residents, or visitors to the building.

Primary entrance feature. Significant architectural or structural details which signify prominence of the primary entrance.

Primary entrance feature, unenclosed. An entry feature with a floor and a ceiling, but where walls, rails, screens, windows, or other obstructions occupy no more than forty percent (40%) of the total wall area between the ceiling and floor.

Private lane. A private vehicle access point located and designed to mimic public street standards, including landscaping, pedestrian access, potential on-street parking, curb-cuts, and crosswalks. Private lanes are typically used on larger sites where public streets are unable to provide the access and block design standards called for in the zoning ordinance.

Public building. A building designed exclusively for City purposes.

Public open space. Any space dedicated for public use, exclusive of right-of-way and easements, and open from the ground to the sky. Public open space does not include any impervious surfaces designated for automobile use.

Solar energy system. Any apparatus or structure including any alteration to an existing apparatus or structure designed to collect, transfer or utilize solar energy, including, but not limited to, panels designed to collect and transfer solar energy into heated water, air or electricity and windows or window walls which admit solar rays to obtain direct heat or to obtain heat for storage.

Sport court. A use accessory to a residential use, where an area of a lot is altered primarily for the purpose of athletic play, whether through placement of structures such as special fencing or lighting, or through provision of a differentiated playing surface.

Structural components. The supporting members of a building including exterior walls, load bearing walls or partitions, columns, beams, joists, rafters or girders.

Street edge. A conceptual line that gives definition and consistency to a street or private lane by assembling physical elements across all lots along a block into a uniform pattern and providing a pedestrian scale to streets

and private lanes. A street edge is typically made up of building façades but can incorporate alternative elements where building locations and site conditions dictate.

Structure. Anything constructed or erected which requires location on the ground or attachment to something having a location on the ground. Excluded from this definition are retaining walls, sidewalks, pavement and public improvements such as utility poles, street light fixtures and street signs.

Tower. A structure designed to support at least one (1) or more antennae. This does not include structures owned and operated by amateur radio personnel licensed by the FCC.

Tower, alternative tower structure. Manmade trees, clock towers, bell steeples, light poles, buildings and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or facilities.

Tower, guyed. A tower that is supported, in whole or in part, by guy wires and ground anchors.

Tower, lattice. A three- or four-sided tower constructed of open steel framing.

Tower, monopole. A tower of single-pole design, constructed without support (guy) wires or anchors.

Wall plane. The exterior portion of the massing of a building, lying between the grade and the lowest level of the roofline and comprising a single vertical plane. Several wall planes offset horizontally may make up a façade. (See façade.)

Wireless communication facility. Any complex, including tower, antennae, antenna support structure, cabinet, building, screen walls, transmission equipment, power source or other equipment constructed on the ground and used to assist antennae in the generation or receipt of electromagnetic communication signals, or used for the transmission or receipt of electromagnetic communication signals.

Wireless service provider (provider). Any provider of cellular or wireless communication service (digital, PCS, and PCN) allowing customers to use mobile telephones to connect, via low-power radio transmitter sites, either to the public switched network or to other mobile telephones. Such providers shall be licensed by the FCC in a specific geographical area in which the radio frequency spectrum is divided into discrete channels.

SECTION 4. Existing Sections 15-235, 15-298 and 15-798 of the Fairway Development Ordinances are hereby repealed.

SECTION 4. This Ordinance No. 1758 shall become effective upon adoption and publication in the official City newspaper.

[Remainder of page intentionally left blank; signatures follow.]

PASSED by the City Council the 14th day of March, 2022. **APPROVED** by the Mayor.

Melanie Hepperly, Mayor

ATTEST:

Kim Young, City Clerk

APPROVED AS TO FORM:



Anna M. Krstulic, City Attorney