

Passed: 05/23/2023

Published: 05/31/2023

ORDINANCE NO. 2529

AN ORDINANCE AMENDING THE ZONING REGULATIONS OF THE CITY OF DERBY, KANSAS AS FIRST ADOPTED BY ORDINANCE NO. 940 AND SUBSEQUENTLY AMENDED, MOST RECENTLY BY ORDINANCE NO. 2482.

WHEREAS, the City of Derby, Kansas (hereinafter “City”) is granted authority by the statutes of the State of Kansas in K.S.A. 12-757 to amend existing zoning regulations; and

WHEREAS, the Planning Commission on November 17, 2022, initiated an amendment of the existing zoning regulations after the annual review of the Vision Derby 2040 Comprehensive Plan determined that amendments to the zoning regulations are warranted; and

WHEREAS, the Planning Commission gave proper notice in the official City newspaper on March 29, 2023, and held a public hearing on April 20, 2023, at which time an opportunity was granted to interested parties to be heard; and

WHEREAS, at the conclusion of the public hearing the Planning Commission voted (9-0) to recommend approval of amendments to the zoning regulations and transmitted the same to Governing Body along with an accurate written summary of the proceedings of the public hearing; and

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS:

Section 1. The Zoning Regulations of the City of Derby, Kansas (hereinafter “Regulations”) are amended as set out herein.

1. Article 401.B.2.a. of the Regulations is hereby amended to read as follows:
 - a. Adult Care Center, subject to Supplemental Regulation 1101.D.17.
2. Article 401.B.2.c. of the Regulations is hereby amended to read as follows:
 - c. Child Care Center, subject to Supplemental Regulation 1101.D.17.
3. Article 401A.B.2.a. of the Regulations is hereby amended to read as follows:
 - a. Adult Care Center, subject to Supplemental Regulation 1101.D.17.
4. Article 401A.B.2.c. of the Regulations is hereby amended to read as follows:
 - c. Child Care Center, subject to Supplemental Regulation 1101.D.17.
5. Article 401B.C.2 of the Regulations is hereby amended to read as follows:
 2. Public and Civic Uses:
 - a. Adult Care Center, subject to Supplemental Regulation 1101.D.17.
 - b. Cemetery.

- c. Communication structures, antennas or towers owned or operated by a commercial communication company for the dwelling's sole use.
 - d. Child Care Center, subject to Supplemental Regulation 1101.D.17.
 - e. Governmental Use.
 - f. Privately-Owned Park and Playground, subject to Supplemental Regulation 1101.D.10.
 - g. Public Utility.
 - h. Wind Energy Conversion System, subject to Supplemental Regulation 1101.D.16.
- 6. Article 401C.C.2 of the Regulations is hereby amended to read as follows:
 - 2. Public and Civic Uses:
 - a. Adult Care Center, subject to Supplemental Regulation 1101.D.17.
 - b. Cemetery.
 - c. Communication structures, antennas or towers owned or operated by a commercial communication company for the dwelling's sole use.
 - d. Child Care Center, subject to Supplemental Regulation 1101.D.17.
 - e. Governmental Use.
 - f. Privately-Owned Park and Playground, subject to Supplemental Regulation 1101.D.10.
 - g. Public Utility.
 - h. Wind Energy Conversion System, subject to Supplemental Regulation 1101.D.16.
- 7. Article 402.B.2.a. of the Regulations is hereby amended to read as follows:
 - a. Adult Care Center, subject to Supplemental Regulation 1101.D.17.
- 8. Article 402.B.2.c. of the Regulations is hereby amended to read as follows:
 - c. Child Care Center, subject to Supplemental Regulation 1101.D.17.
- 9. Article 403.B.2.a. of the Regulations is hereby amended to read as follows:
 - a. Adult Care Center, subject to Supplemental Regulation 1101.D.17.
- 10. Article 403.B.2.c. of the Regulations is hereby amended to read as follows:
 - c. Child Care Center, subject to Supplemental Regulation 1101.D.17.
- 11. The following lines of the Special Use Regulation Schedule of Article 1101.C. of the Regulations are hereby amended to read as follows:

SPECIAL USE REGULATION SCHEDULE																			
Special Use	Zoning Districts																Supplemental Regulations		
	R-1	R-1A	R-1B	R-1C	R-2	R-3	R-4	MH-1	I-1	B-1	B-2	B-2A	MU-1	B-3	B-4	B-5			
Adult care center	S	S	S	S	S	S												1101.D.17	
Child care center	S	S	S	S	S	S												1101.D.17	
Multi-family dwelling		S			S							S						1101.D.9	
Single-family attached dwelling	S	S										S						1101.D.12	
Two-family dwelling	S	S										S						1101.D.14	

- 12. Article 1101.D.17. of the Regulations is hereby established to read as follows:
 - 17. Adult Care/Day Care: When permitted as a special use on a property with an existing single-family detached, single-family attached, or two-family dwelling, the use shall be subject to the following standards.
 - a. No alteration of the principal residential building shall be made which changes the character thereof as a residence.

- b. Accessory structures constructed as part of the special use shall be of a similar architectural design and material as the principal structure.
 - c. The screening and landscaping requirements of Section 304 shall not apply. Instead, the designated area for outdoor play shall not be located in front of the dwelling and shall be screened with a fence six feet in height in compliance with Subsection 304.E.1.e.
 - d. Outdoor play shall be limited to the hours of 7:30 a.m. to 6:30 p.m. if located within 100 feet of a lot containing a dwelling unit.
 - e. The off-street parking and loading requirements of Article 5 shall not apply. Instead, the center shall be operated in accordance with a parking, loading, and circulation plan approved with the special use. The plan shall provide for a minimum of two on-site parking spaces, which may be permitted in the front yard and may exceed the surfaced area limitation of Subsection 500.A.6.a.1).
 - f. The area in front of the dwelling, except the area paved for parking, loading, and circulation, shall be landscaped with grass, shrubs, trees, or groundcover, and shall be maintained in good condition.
13. The definition of “Sign” in Article 202 of the Regulations is hereby amended to read as follows:
SIGN: See Section 701.
14. Article 601.A.2. of the Regulations is hereby amended to read as follows:
- 2. Within the B-3, B-4 and B-5 zoning districts and as provided below for school and church property, CHRISTMAS TREE, FIREWORKS, PUMPKIN AND SIMILAR NATIONALLY ACCEPTED AND RECOGNIZED CELEBRATION SALES for a period not to exceed 30 days. Display of such merchandise need not comply with the bulk requirements of the districts or observe platted setbacks; provided that no merchandise, displays, temporary structures or axle-mounted enclosures shall be located within 30 feet of the intersection of the curb line of any two streets or at any location near a driveway that may interfere with the view of either motorists or pedestrians. Merchandise display, temporary structures and axle-mounted enclosures shall not occupy or interfere with any required parking spaces or circulation aisles providing access thereto. The area occupied by nationally recognized celebration sales shall not be counted as part of the percentage of outdoor display and sales permitted by specific district regulations. The temporary use may include the use of temporary signage which requires a sign permit and may be displayed only during the period in which the temporary use is permitted including set-up and break-down time. Such signage is limited to not more than one (1) percent of the square footage of the zoning lot, with no individual temporary sign larger than 32 square feet. Such signage, including temporarily displayed electronic message signs, may be placed on vehicles or trailers associated with the temporary use. The square footage calculation shall not include signage permanently painted or permanently affixed to such

vehicles or trailers, except that vehicles or trailers specifically designed for the purpose of displaying signage shall be included in the square footage calculation and limitation on individual sign size. Additionally, balloon signs shall be permitted for a period not to exceed 10 days. On property that is a part of a zoning lot for a school or church use, CHRISTMAS TREE, FIREWORKS, PUMPKIN AND SIMILAR NATIONALLY ACCEPTED AND RECOGNIZED CELEBRATION SALES are permitted provided the sales and display area for such is located along an arterial, collector or business street. All conditions listed above for nationally accepted and recognized celebration sales in the B-3, B-4 and B-5 zoning districts shall also apply to school or church property.

15. The definition of “Sign” in Article 701 of the Regulations is hereby amended to read as follows:
SIGN: Any writing including letters, words or numeral(s), pictorial representation (including illustrations or decorations), emblem (including devices, symbols, or trademarks), flag, banner, streamer, pennant, string of lights, or display calculated to attract the attention of the public, or any other figure of similar character which:
 1. Is a structure or any part thereof, or a portable display, or is attached to, painted on, or in any other manner represented on a building or other structure or on the ground, and
 2. Is used to announce, direct attention to, or advertise, and
 3. Is not located inside a building.
16. Article 703.A.1. of the Regulations is hereby amended to read as follows:
 1. Flags or emblems of a governmental body or of a political, civic, philanthropic, educational or religious organization displayed on private property. These flags or emblems shall not be displayed as part of a commercial promotion or advertising, and the total square footage shall not exceed one (1) percent of the square footage of the zoning lot, with no individual flag exceeding 16 square feet.
17. Article 703.A.4. of the Regulations is hereby amended to read as follows:
 4. Integral decorative or architectural features of buildings, including murals, so long as such features do not contain signage of a commercial nature and are not visible from public rights-of-way for a residential use located in a residential zoning district.
18. Article 703.A.8. of the Regulations is hereby amended to read as follows:
 8. Scoreboards or other signage in athletic fields or stadiums, except that any signage of a commercial nature must face inward to the field or stadium and shall not be oriented in a manner that is intended to be visible from public rights-of-way unless permitted as a ground sign or as an exception by the Board of Zoning Appeal for an off-site sign.
19. Article 703.A.16. of the Regulations is hereby amended to read as follows:
 16. Temporary signs installed at publicly-owned parks and facilities provided that such temporary signage is limited to one (1) percent of the square footage of the zoning lot, with no individual temporary sign larger than 32

square feet. Such temporary signage may be displayed only during the period in which the temporary activities are scheduled, including set-up and break-down time.

20. Article 704.A.4. of the Regulations is hereby amended to read as follows:
 4. Snipe Signs, as defined herein, unless exempted from these regulations.
21. Article 704.A.8. of the Regulations is hereby amended to read as follows:
 8. Balloon Signs, except as permitted with an authorized temporary use.
22. Article 707.A.3. of the Regulations is hereby amended to read as follows:
 3. Illumination: Signs shall only be indirectly illuminated.
23. Article 1005.B.7. of the Regulations is hereby established to read as follows:
 7. Increasing the maximum height of a sign by up to 10 percent.
24. Article 1005.B.8. of the Regulations is hereby established to read as follows:
 8. Increasing the maximum size of a sign by up to 10 percent.
25. Article 1005.B.9. of the Regulations is hereby established to read as follows:
 9. Increasing the permitted height of a fence located within a setback to a maximum of eight feet in height.
26. Article 303.E.3.a. of the Regulations is hereby amended to read as follows:
 - a. For single-family, duplex and multiple-family uses only, split-rail, decorative metal, picket, or similar fences with an open space design with pickets no wider than 3.5 inches and spaced at least 4 inches apart, which do not exceed a height of 36 inches and which do not include security measures or points at the top. Temporary picket or decorative metal fences not to exceed a height of 48 inches as an accessory use to model homes and related sales offices only; provided, such fences block access into the driveway and remain in place only as long as the model home is open for sales, but not longer than six months. Permits for additional six-month periods may be approved upon reapplication; however, no further fee, if any, will be required. On corner lots, the Zoning Administrator may modify the fence design if the spacing of the pickets or railings would obstruct, impair, obscure or interfere with the vision triangle.
27. Article 303.G. of the Regulations is hereby amended to read as follows:
 - G. Reserved.
28. Article 408A.B.1. of the Regulations is hereby amended to read as follows:
 1. Residential Uses:
 - a. Multi-Family Dwelling, subject to Supplemental Regulation 1101.D.9.
 - b. Single-Family Attached Dwelling, subject to Supplemental Regulation 1101.D.12.
 - c. Two-Family Dwelling, subject to Supplemental Regulation 1101.D.14.
29. Article 500.A.6.a.1) of the Regulations is hereby amended to read as follows:
 - 1) In residential zoning districts, additional accessory off-street parking on driveways for single and two-family dwellings and all types of manufactured and mobile homes is permitted; provided that the parked vehicle does not overhang into the street right-of-way (front lot line) and

the total surfaced area within the front yard setback does not exceed twelve-hundred-fifty (1,250) square feet or seventy-five (75) percent of the dwelling's required yard, whichever is less, except that for lots greater than 100 feet in width the total surfaced area with the front yard setback shall not exceed fifty (50) percent of the dwelling's required yard.

30. Article 500.A.6.b. of the Regulations is hereby amended to read as follows:
 - b. **SURFACING:** All required off-street parking spaces and driveways for single-family and two-family dwellings shall be surfaced with either poured in place concrete, asphaltic concrete, brick or similar paving material approved by the Zoning Administrator. When located between the principal structure and the street, accessory off-street parking for a single or two-family dwelling shall be paved. For single-family and two-family dwellings located on an unpaved street and for accessory parking located beside or behind the principal structure, the Zoning Administrator may permit a surfacing material for off-street parking spaces and driveways of one-half inch diameter crushed rock or similar material.
31. Article 304.I.1.a. of the Regulations is hereby amended to read as follows:
 - a. **SCREENING ALONG SIDE OR REAR LOT LINES.** Screening shall be provided along all side or rear lot lines of non-residential uses when adjacent to any residential zoning district and along all side or rear lot lines of multiple-family uses when adjacent to any single or two-family zoning district. Screening may be omitted, for property zoned as either "I-1" or "B-1" zoning district, along any side or rear lot line or portion thereof, only when the development of permitted uses within such zoning districts provides at least a 25-foot wide landscaped yard adjacent to such lot line or portion thereof. Such landscaped yards shall not be used for driveways, vehicular parking, loading areas, recreational areas, signs or similar uses, but shall be counted as the buffer area required by subsection 304.J.2 of these regulations. If a minimum 25-foot wide landscaped yard is proposed, the installation of plant materials shall be per a landscape plan approved in accordance with subsection 304.E of this Ordinance.
32. Article 304.I.1.b. of the Regulations is hereby amended to read as follows:
 - b. **SCREENING OF MECHANICAL EQUIPMENT, LOADING DOCKS, TRASH RECEPTACLES, AND OUTDOOR STORAGE AREAS.** Screening shall be provided to reasonably hide from ground level view from adjoining streets and lots all ground level heating, air conditioning and other mechanical equipment, loading docks, trash receptacles or similar uses. Roof-mounted heating, air conditioning and mechanical equipment on buildings shall be screened by a parapet wall of sufficient height to conceal it from view on all sides of the building from adjoining streets and lots or an alternative screening method approved by the Planning Commission during Site Plan Review. If a parapet wall is used, it must be constructed of material which is compatible with the building architecture. Outdoor storage areas, where permitted by the zoning regulations, shall be screened to reasonably hide from ground level view from adjoining streets and lots

all outdoor storage. Screening installed to meet the requirements of this subsection shall be per a plan approved in accordance with subsection 304.E of these regulations.

33. Article 410.E.1.d. of the Regulations is hereby amended to read as follows:
 - d. Display and sales area equivalent to not more than 10 30 percent of the total floor area of the enclosed portion of the business establishment is permitted outside of a completely enclosed building, unless in Section 410.E. or Section 1004 of these regulations a different percentage is specifically authorized for certain uses, provided that:
 - 1) Such outside use areas do not occupy or interfere with any required parking spaces or obstruct any vision triangle;
 - 2) The outside use area may be located within any required yard or setback unless the provisions of Section 410.E. or Section 1004 of these regulations prohibit such use of a required yard or setback;
 - 3) The outside use area is paved with concrete or asphaltic concrete, unless provided for otherwise by Section 410.E. or Section 1004 of these regulations;
 - 4) The arrangement of display items shall not obstruct handicapped accessibility or impede pedestrian movement.
34. Article 410.E.1.e. of the Regulations is hereby amended to read as follows:
 - e. An outdoor dining area shall not exceed 100% of the size of the enclosed portion of the business.
35. Article 401.A.3.a. of the Regulations is hereby amended to read as follows:
 - a. Mobile Food Vending, subject to Use Limitation 401.E.3.
36. Article 401.E.3. of the Regulations is hereby established to read as follows:
 3. Mobile Food Vending is limited to properties developed with a park or school or at city-approved events.
37. Article 401A.A.3.a. of the Regulations is hereby amended to read as follows:
 - a. Mobile Food Vending, subject to Use Limitation 401A.F.3.
38. Article 401A.F.3. of the Regulations is hereby established to read as follows:
 3. Mobile Food Vending is limited to properties developed with a park or school or at city-approved events.
39. Article 401B.B.3.a. of the Regulations is hereby amended to read as follows:
 - a. Mobile Food Vending, subject to Use Limitation 401B.F.3.
40. Article 401B.F.3. of the Regulations is hereby established to read as follows:
 3. Mobile Food Vending is limited to properties developed with a park or school or at city-approved events.
41. Article 401C.B.3.a. of the Regulations is hereby amended to read as follows:
 - a. Mobile Food Vending, subject to Use Limitation 401C.F.3.
42. Article 401C.F.3. of the Regulations is hereby established to read as follows:
 3. Mobile Food Vending is limited to properties developed with a park or school or at city-approved events.
43. Article 402.A.3.a. of the Regulations is hereby amended to read as follows:
 - a. Mobile Food Vending, subject to Use Limitation 402.E.3.
44. Article 402.E.3. of the Regulations is hereby established to read as follows:

3. Mobile Food Vending is limited to properties developed with a park or school or at city-approved events.
45. Article 403.A.3.a. of the Regulations is hereby amended to read as follows:
 - a. Mobile Food Vending, subject to Use Limitation 403.E.2.
46. Article 403.E.2. of the Regulations is hereby established to read as follows:
 2. Mobile Food Vending is limited to properties developed with a park or school or at city-approved events.
47. Article 404.A.3.a. of the Regulations is hereby amended to read as follows:
 - a. Mobile Food Vending, subject to Use Limitation 404.E.2.
48. Article 404.E.2. of the Regulations is hereby established to read as follows:
 2. Mobile Food Vending is limited to properties developed with a park or school or at city-approved events.
49. The following lines of the Use Regulations Schedule of Article 417 of the regulations are hereby amended to read as follows:

[illegible]

50. Article 413.A.4.k. of the Regulations is hereby amended to read as follows:
- k. Successive Applications. In the event the Governing Body disapproves an application for a PUD District or disapproves an application for a PUD amendment, a similar rezoning application shall not be refiled within one-year from the advertised Public Hearing date of the disapproved application.
51. The definition of “Automobile, Truck, Boat, Trailer, Motorcycle, and Recreational Vehicle Sales” in Article 202 of the Regulations is hereby amended to read as follows:
- AUTOMOBILE, TRUCK, BOAT, TRAILER, MOTORCYCLE AND RECREATIONAL VEHICLE SALES: The sale and/or rental of new and/or used automobiles, trucks, boats, trailers, motorcycles, recreational and similar vehicles

in operating condition and the accessory repair, servicing and rental of such vehicles; but not including body work, painting, motor rebuilding or rental of equipment, unless specifically permitted by the applicable district regulations.

52. The definition of “Equipment Rental and Sales Business” in Article 202 of the Regulations is hereby amended to read as follows:

EQUIPMENT RENTAL AND SALES BUSINESS: A business whose trade is characterized by the renting and/or sales of the following types of equipment: 1) miscellaneous hand operated equipment and tools, 2) non trailer mounted generators, air compressors, pumps, sweepers and similar non trailer mounted equipment, 3) lawn mowers, 4) portable concrete mixers which do not exceed a maximum capacity of 9 cubic feet, 5) vertical lifts which do not exceed a 25 foot maximum working height, 6) lawn and garden tractors which do not exceed 30 horsepower, 7) miscellaneous utility or light construction equipment which does not exceed 30 horsepower, 8) trucks which do not exceed a gross vehicle weight of 14,000 pounds, 9) vehicles used for moving purposes that are equipped with a van or bed area that does not exceed 10 feet in length, 10) trailers which do not exceed 12 feet in length, 11) portable signs, 12) scaffolding, and 13) and similar equipment. In addition, a business which is defined as an equipment rental and sales business shall not store or display on site heavy construction or farm equipment such as, but not limited to, earth movers, graders, bulldozers, scrappers, dump trucks, combines, trenching shields, rollers that exceed 30 horsepower or any of the above-referenced equipment, identified as permitted, which exceeds established size, weight or horse power maximums. A business such as a hardware store, home improvement center or garden center that occasionally rents hand tools and equipment or lawn maintenance or gardening equipment shall not be construed to be an equipment rental and sales business. A business whose trade involves the rental of kitchen appliances such as stoves, refrigerators, washing machines and similar appliances or equipment shall also not be construed to be an equipment rental and sales business.

53. Article 302.D.3. of the Regulations is hereby established to read as follows:

3. When an existing lot is reduced as a result of conveyance to a federal, state or local government for a public purpose and the remaining area is at least 75 percent of the required minimum lot area for the district in which it is located, then that remaining lot shall be deemed to comply with the minimum lot area standards of these regulations.

54. Article 302.E.3. of the Regulations is hereby established to read as follows:

3. When an existing lot is reduced in size as a result of conveyance to a federal, state or local government for a public purpose and the conveyance causes existing structures on the lot to exceed the maximum lot coverage or encroach into any setback of the resulting front, side or rear yard, then the existing structures shall be deemed to comply with the bulk regulations.

55. Article 601.B.2.a. of the Regulations is hereby amended to read as follows:

- a. **COMMUNITY CELEBRATIONS** and other such activities provided for by 601.A.1, if such activities are part of a city-organized event;

Section 2. All original provisions of the Regulations, including the Official Zoning Map, shall remain in full force and effect except as specifically amended herein.

Section 3. Any proceedings initiated prior to the effective date of the amended Regulations may proceed under the provisions of the Regulations in effect at the time the proceeding was initiated.

Section 4. The amended Regulations shall take effect and be in force and effect after adoption and publication of this Ordinance once in the City's official newspaper.

ADOPTED BY THE CITY COUNCIL this 23rd day of May 2023, and **SIGNED** by the Mayor.

/s/Randy White
Mayor

Seal:

Attest:

/s/Lynn Ciarleglio
City Clerk

Approved as to form:

/s/Jacqueline Kelly
City Attorney