



# Department of Planning + Urban Design

Unified Government of Wyandotte County • Kansas City, Kansas

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## Memorandum

TO: David Alvey  
Mayor/CEO

FROM: Gunnar H. Hand, AICP  
Director of Planning and Urban Design

DATE: December 18, 2020

RE: **Code Interpretation for Use of Churches and Other Places of Worship as  
Emergency Weather Shelter**

The question presented to the Director of Planning and Urban Design (“Director”) is whether the Zoning Code allows for churches and other places of worship to be used by right as temporary emergency weather shelters for unhoused persons during inclement or extreme weather. The Director may render and make public written interpretations concerning the Zoning Code and the official zoning map subject to Section 27-218 of the 2008 Unified Government Code of Ordinances.

Land use regulations relevant to guiding this Director’s interpretation come from municipal and federal sources.

- A. Within the municipal boundaries of Kansas City, Kansas, churches (and other places of worship) are allowed by right in the following zoning districts:
1. A-G Agriculture District, per Section 27-452(b)(2);
  2. R Rural District, per Section 27-453(b)(2);
  3. R-1 Single-Family District, per Section 27-454(b)(6);
  4. R-1(B) Single-Family District, per Section 27-455(b);
  5. R-2 Two-Family District, per Section 27-456(b)(1);
  6. R-2(B) Two-Family District, per Section 27-457(b)(1);
  7. R-3 Townhouse District, per Section 27-458(b)(1);
  8. R-4 Garden Apartment District, per Section 27-459(b)(1);

9. R-5 Apartment District, per Section 27-460(b)(1);
10. R-6 High-Rise Apartment District, per Section 27-461(b)(1);
11. C-0 Nonretail Business District, per Section 27-463(b)(1);
12. C-1 Limited Business District, per Section 27-464(b)(2);
13. C-D Central Business District, Section 27-465(b)(9);
14. C-2 General Business District, per Section 27-466(b)(1);
15. C-3 Commercial District, per Section 27-467(b)(1);
16. M-1 Light Industrial and Industrial Park District, per Section 27-468(b)(1);
17. M-2 General Industrial District, per Section 27-469(b)(1);
18. M-3 Heavy Industrial District, per Section 27-470(b)(1);
19. TND Traditional Neighborhood Design District, per Section 27-471(g)(1)b and subject to Table 27-1176-1; and,
20. B-P Planned Business Park District, per Section 27-472(b)(1).

Section 27-454(b)(6) of the R-1 Single-Family District regulations draws a distinction between churches and residential uses. In the R-1 Single-Family District, churches are allowed in converted dwellings only when all provisions of the building code for the appropriate occupancy are met. Except for the TND District<sup>1</sup>, all other zoning districts have a provision linking that unique district's regulations back to the requirements for appropriate conversion stated in Section 27-454(b)(6).

Residential uses are not allowed by right in the M-1 Light Industrial and Industrial Park District, the M-2 General Industrial District, and the M-3 Heavy Industrial District.

Group dwellings, defined as “a residential dwelling occupied as a residence by persons who do not constitute a family” (Section 27-340), require a Special Use Permit to operate (Section 27-593(b)(6)). A family, as defined by Section 27-340, is “...one or more persons who are related by blood or marriage, including any foster children, a group of not more than five persons living together by joint agreement on a nonprofit cost sharing basis, or a combination of persons related by blood or marriage along with no more than two unrelated adults to a maximum number of five persons living together and occupying a single housekeeping unit with single kitchen facilities....”.

- B. Relevant federal law also guides the Director's interpretation. The Religious Land Use and Institutionalized Persons Act (RLUIPA) (42 U.S.C. 2000cc) states that “[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution— (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest” (42 U.S.C. 2000cc(a)(1)(A)-(B)).

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<sup>1</sup> The Traditional Neighborhood Design District allows churches without district-specific restrictions under Section 27-471(g)(1)b and subject to Table 27-1176-1.

The Unified Government Code of Ordinances draws a distinction between the occupancy of a building for use as a place of worship and assembly, and the occupancy of a building for residential purposes. The building code and amendments adopted by the Unified Government define and regulate the requirements for each type of occupancy. Building codes are not considered a land use regulation and therefore all changes or additions in use to a building are subject to the relevant building code requirements.

Under RLUIPA, a land use regulation may provide a “substantial burden” on a religious institution if both of the following conditions are met: 1) the regulation is in furtherance of a compelling governmental interest, and 2) the regulation is the least restrictive way by which to accomplish the compelling interest. As the administrative and municipal authority of Kansas City, Kansas, the Unified Government has the compelling governmental interest to preserve the health, safety, and welfare of all its citizens. Churches that serve as housing, even temporary housing, would meet the definition of a group dwelling if more than five (5) unrelated persons were to use the building for residential purposes. Therefore, under a general application of Section 27-593(b)(6), a church would be required to receive a Special Use Permit before providing temporary shelter. This process involves the submission of an application, providing notice to the neighbors through letters, a neighborhood meeting, and hearing the case before the City Planning Commission and then the Board of Commissioners. While the Director determines that the current zoning code complies with RLUIPA, the Director also determines that there could be other processes that could grant a church or other place of worship the ability to offer temporary housing while still accomplishing the compelling governmental interest of preserving public health, safety, and welfare. An administrative review process, if defined and established, could satisfy these requirements.

In evaluating this interpretation, approving the use of a church or other place of worship as temporary emergency weather shelters for unhoused persons during inclement or extreme weather, as part of the mission of the church or place of worship, such church or other place of worship is subject to an approval process no more restrictive or onerous than the process that a non-religious institution in the same situation would be subject to, per federal law. An administrative review process that addresses the time-sensitive nature of the need for temporary housing during inclement or extreme weather has not yet been established. Therefore, a church or other place of worship may practice such use while the Director defines and establishes the approval process, subject to the following conditions:

- The applying religious institution must host a neighborhood meeting in order for the applicant church to present the proposed use to the neighborhood and to receive neighborhood feedback. The neighborhood meeting is subject to all notice requirements associated with the Special Use Permit process, including the minimum number of days of notice given prior to the meeting date and meeting minutes to be provided to Staff; and,
- The subject property and all buildings to be used for residential purposes must apply for and successfully pass a code audit from the Building Inspection Division due to change in use from assembly to residential meets all life and safety codes.

It is the determination of the Director of Planning and Urban Design that the use by right of churches and other places of worship enumerated within several districts' regulations encompasses the use of the building as temporary emergency weather shelters for unhoused persons during inclement or extreme weather by right, in order to maintain public health and safety. As part of codifying a future administrative approval process, the Director will require the consideration of several factors in order to make a determination. Such factors will include, but are not limited to, the following:

- Daily hours of operation;
- Annual dates of operation;
- Number of persons utilizing the temporary shelter per night;
- General living space available, as well as the space available for certain designated areas such as sleeping areas, dining areas, showers and/or restrooms;
- Availability, number, and training of an on-site supervisor or manager;
- Presence of complementary uses on site, such as preparing and serving food or providing legal services; and,
- Intake criteria and the intake process for the unhoused.