

CHAPTER 12 - PLANNING AND ZONING

ARTICLE 1 - DEFINITIONS AND GENERAL PROVISIONS

TABLE OF CONTENTS

SECTIONS:

Sections 12-1-101 to 199, inclusive. Definitions and general provisions.

Section 12-1-101. Definitions.

Section 12-1-102. Adoption of official zoning map and descriptions - custody of and maintenance by city engineer.

Section 12-1-103. Classification, review and zoning of annexed land.

Section 12-1-104. Establishment, designation and requirements of zoning lots.

Section 12-1-105. Buildings, structures and land conforming to requirements of chapter.

Section 12-1-106. Open space and other areas conforming to requirements of chapter.

Section 12-1-107. Interpretation of chapter - conflict with contracts and other rights.

Section 12-1-108. Interpretation of chapter - conflict with other laws.

Section 12-1-109. Interpretation of chapter - certain uses prohibited.

Section 12-1-110. Application of chapter to non-conforming uses.

Section 12-1-111. Administration and enforcement of chapter - building permits - powers and duties of city inspector and Board of Adjustment.

Section 12-1-112. Inspections by city inspector and issuance of certificate of occupancy for conforming buildings.

Section 12-1-113. Procedures for amending, changing, modifying or repealing portions of zoning map.

Section 12-1-114. Minimum Floor Elevations for New Construction and Renovation.

Section 12-1-115. General Requirements for all Storage and Shipping Containers.

Section 12-1-116. Storage and Shipping Containers in Residential Zoning Districts.

Section 12-1-117. Storage and Shipping Containers in Agricultural, Business, Industrial, or Riverfront and Park Zoning Districts.

Section 12-1-118. Noncompliance.

Section 12-1-119 to 199, inclusive. Reserved.

Section 12-1-101 Definitions.

For the purpose of this chapter certain words and terms used herein shall be defined and interpreted as follows:

All words used in the present tense include the future tense. All words in the plural number include the singular number, and all words in the singular number include the plural number, unless the natural construction of the wording indicates otherwise. The word "shall" is mandatory and not directory. The word "used" shall be deemed also to include "designed, intended or arranged to be used."

1. **"Agricultural Building"** is a building located on agricultural property and used to shelter farm implements, hay, grain, poultry, livestock, or other farm produce, in which there is no human habitation, and which is not used by the public.
2. **"Alley"** is a narrow service way providing a secondary means of access to abutting properties.
3. **"Alter or Alteration"** is any change, addition or modification in construction or occupancy.
4. **"Apartment"** shall mean a dwelling unit as defined in this chapter.
5. **"Apartment House"** is any building, or portion thereof, which is designed, built, rented, leased, let, or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other and doing their own cooking in the said building, and shall include flats and apartments.
6. **"Auto Wrecking"** is the collecting, burning out, dismantling or wrecking of used motor vehicles, wheeled or track laying equipment, or trailers, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked motor vehicles, wheeled or trailers or their parts. The dismantling and rebuilding other than custom repair, of more than one motor vehicle, piece of wheeled or track equipment, or trailer at a time even though not for profit or a principal use of a parcel of land shall be defined as auto wrecking. The storage of a partially dismantled motor vehicle, piece of wheeled or track equipment or trailer shall be considered auto wrecking.
7. **"Basement"** is that portion of a building between floor and ceiling, which is partly below and partly above grade.

8. "Billboard" is any structure or portion thereof, situated on private premises, on which lettered, figured or pictorial matter is displayed for advertising purposes, except the name and occupation of the user of the premises, the nature of the business conducted on the premises or the products primarily sold or manufactured on the premises and having an area of 100 square feet or more. Any signboard carrying a message excepted in this definition that also carries extraneous advertising of 100 square feet or more shall be considered a billboard. This definition shall not include any board, sign or surface used to display any official notices issued by a court or public duty, or bulletin boards used to display announcement of meetings to be held on the premises on which such bulletin boards are located, nor shall it include a real estate sign advertising for sale or rent the property upon which it stands when such sign does not exceed 100 square feet.

9. "Block" is a piece or parcel of land entirely surrounded by public highways, streets, streams, railroad rights-of-way, parks, or a combination thereof. There may be more than one numbered block as shown on a plat, falling within a single block as herein defined.

10. "Board" is the Board of Adjustment of the City of Pierre, South Dakota.

11. "Building" is any structure for the support, shelter, enclosure of persons, animals, chattels, or property of any kind.

12. "Building, Accessory" is any subordinate building or structure, the use of which is incidental to the principal building on the same lot, including, but not limited to:

A. Private Garages, Car Ports, Sheds and Agricultural Buildings; and,

B. Fences over 6 feet high, Tanks and Towers.

13. "Building, Existing," is a building erected prior to the adoption of this chapter or one for which a legal building permit has been issued.

14. "Building, Principal" is a building in which is conducted the primary use of the site on which it is situated. In any residential district any dwelling shall be deemed to be the principal building of the site on which it is located.

15. "Certificate of Occupancy" is a permit issued by the city inspector indicating that the use of the building or land in question is in conformity with this chapter and the building code of the city of Pierre or that there has been a legal variance therefrom as provided by said chapter or code.

16. "City Inspector" is the officer charged with the administration and enforcement of this ordinance or his regularly authorized deputy.

17. "Clinic, Medical" is a building or portion of a building containing the offices and associated facilities of one or more practitioners providing medical, dental, psychiatric, osteopathic, chiropractor, physical therapy or similar services for out-patients only, with or without share or common spaces and equipment. A common area pharmacy or drug dispensary available to persons other than patients being treated therein or making charges separate from bills for professional services of said practitioners shall not be considered as a medical clinic use.

18. "Club" shall include clubhouse and shall mean a voluntary association of persons organized for cultural, recreational, fraternal, civic, charitable or similar purpose, but shall not include an organization or premises, the chief activity of which is a service or activity customarily carried on as a business even though it may be chartered and named for purposes herein defining a club.

19. "Commercial Use" is the use of any land or building designed for commercial purposes, which shall include the use of land or buildings used for retail sales and offices.

20. "Commission, City" is the city commission of Pierre, South Dakota.

21. "Commission, Planning" is the city planning commission of the City of Pierre, South Dakota.

22. "Conditional Use" is a use which is not allowed in the district as a matter of right, but which is permitted upon findings of the City Commission that under the particular circumstances present, such use is in harmony with the principal circumstances present, such use is in harmony with the principal permitted uses of the district. Allowable conditional uses are specifically listed under the district regulations. Uses not so listed shall not be allowed as conditional uses but may be allowed as a special use.

23. "Country Club" for the purpose of this chapter shall include golf courses, par-3 golf course, swimming pools, tennis clubs and neighborhood clubhouses any and each of which shall be located on a site of not less than one acre and open only to membership subscribing for the use of all facilities for a term of not less than one year and members' non-paying guests. Sleeping facilities other than quarters for one caretaker or manager and his family shall be prohibited. Clubs operated exclusively as restaurants, cocktail lounges, card rooms, beer taverns, bowling alleys, pool and billiard parlors and similar activities normally carried on as a business shall be excluded from the definition of a country club. Nothing herein shall be construed to limit the method of operation of such facilities enumerated in this definition when owned or operated by a governmental agency.

24. "Court" is a space, open and unobstructed to the sky, located at or above grade level on a lot and bounded on three or more sides by walls of a building.

25. "Coverage" is the percentage of lot area covered by buildings.

26. "Drive-In" may be used as noun or adjective and shall refer to a business which is designed to serve patrons while they are reposed in vehicles or by means of service windows with the intent that products may be consumed in automobiles on the premises.

27. "Dwelling" is a building or portion thereof, designed or used exclusively for residential occupancy, including single-family dwellings, two-family dwellings, multi-family dwellings and group dwellings; provided however that the following are not dwellings:

A. Hotels, motels, tourist courts and cabins;

B. In a building that contains one or more dwelling units or lodging rooms in addition to one or more non-residential uses, the portion of such building that is devoted to such residential uses, except when accessory to the residential uses; and,

C. Used for the institutional care of people such as hospitals, rest homes, orphanages, and homes for the aged.

28. "Dwelling-Multiple-Family" is a building or portion thereof accommodating three or more families living independently of each other.

29. "Dwelling-Single Family" is a building containing one dwelling unit only.

30. "Dwelling-Two Family" is a building containing two dwelling units only.

31. "Dwelling-Unit" is one or more habitable rooms which are occupied or designed to be occupied by one family with facilities for living, sleeping, cooking and eating.

32. "Dwelling-Mobile" is a vehicle used or so constructed as to permit its being used as a conveyance upon a public street or highway and duly licensable as such, and shall include self-propelled vehicles so designed, constructed, reconstructed, or added to by any means, in such manner as will permit the occupancy thereof as a dwelling or sleeping place of one or more persons and supported by wheels, jacks, or similar supports. Transportable dwellings not meeting building code requirements for dwellings shall be treated as mobile dwellings.

33. "Family" is an individual or two or more persons related by blood or marriage or a group of not more than five persons (excluding servants) who need not be related by blood or marriage living together in a dwelling unit.

34. "Farm" is any parcel of land containing at least ten (10) acres which is used for gain in the production of agricultural products.

35. "Filling Station" is any area of land, including structures thereon designed or used for the retail sale of motor vehicle fuel.

36. "Flammable Liquids" shall mean any liquid having a flash point below 200 degrees F. and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees F. Flammable liquids shall be divided into three classes as follows:

Class 1A. Shall include those having flash points below 73° F and boiling point below 100° F;

Class 1B. Shall include those having flash points below 73 degrees F and having boiling point at or above 100° F.

Class 1C. Shall include those having flash points at or above 73° F.

37. "Floor Area" is the area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts and courts. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

38. "Garage" is a building or portion thereof in which a self-propelled vehicle containing gasoline, distillate or other volatile, flammable liquid in its tank, is stored, repaired, or kept.

39. "Garage, Private" is an accessory building or portion of a building, not more than twelve hundred square feet (1200 sq. ft.) in area, designed or used for the storage of personal motor vehicles and other customary household articles which are owned and used by the occupants of the building to which it is accessory. Accessory use of pole type construction may be allowed provided it is built according to an engineered design. Any such accessory use shall have an exterior aesthetically similar in texture and appearance to the exterior of the dwelling.

40. "Gas Dispensing Station" is any building or premises which provides for the retail sale of gasoline or oil. No automobile repair work may be done upon the premises containing a gas dispensing station.

41. "Golf Course" as used herein, shall mean standard sized layouts of at least nine holes and shall not include miniature golf courses, par-3 golf courses, pitch and putt courses or driving ranges.

42. "Grade (adjacent Ground Elevation)" is the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and a point five feet (5) distant from said wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line if it is less than five feet (5) distant from said wall. In case walls are parallel to and within five feet (5) of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley or public way.

43. "Ground Coverage" is the area of a zoning lot occupied by all buildings expressed as a percentage of the gross area of the zoning lot.

44. "Home Occupation - General" is a business occupation or profession carried on within a residential dwelling by the resident thereof; and which shall have the following characteristics:

- a) There shall be no external evidence of the occupation with the exception of one unlighted name plate of not more than one square foot in area attached flat against the building. Advertising displays and advertising devices displayed through a window of the building shall not be permitted.
- b) There shall be no emission of smoke, dust, odor, fumes, glare, noise, vibration, electrical or electronic disturbance detectable at the zoning lot line.
- c) The activity shall employ only members of the immediate family of the resident of the dwelling.
- d) There shall not be a stock of goods on the premises in excess of 30 cubic feet in volume, none of which shall be of a flammable nature.
- e) There shall be no signs, radio, television, newspaper, handbill or similar types of advertising linking the address of the premises with the home occupation.
- f) Said home occupation shall not involve continual visits by the general public.

g) The above listed characteristics of a home occupation shall not be construed to restrict the sale of garden produce grown on the premises, provided this exception shall not extend to allow the operation of a commercial greenhouse or nursery, or the existence of stands or booths for the display of produce grown on the premises.

h) Said occupation may include the caring for not more than 12 children at one time for hire.

i) Room or board for hire, but not for more than 2 persons.

j) The conducting of a barber and/or beauty shop, a clinic, a commercial stable, a commercial kennel, a tourist home, a restaurant or a tea room, a convalescent home, a mortuary establishment or any similar use shall not be deemed to be a home occupation.

Any business, occupation or profession, the operation of which does not meet the aforesaid characteristics, shall not be interpreted to be a home occupation despite the fact that it may attempt to operate in a residential building.

45. "Hospital" is an institution in which sick or injured persons are given medical or surgical care.

46. "Hotel" is any building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or occupied for sleeping purposes by guests.

47. "Junk or Salvage Yard" is a place where waste, discarded or salvaged metals, building materials, paper, textiles, used plumbing fixtures, or other used materials are bought, sold, exchanged, stored, baled or cleaned and places or yards for the storage of salvaged metal, materials and equipment, but not including pawn shops and establishments for the sale, purchase or storage of used cars or trucks in operable condition, boats or trailers in operable condition, salvaged machinery in operable condition, and used furniture and household equipment in useable condition and not including the processing of used, discarded or salvaged materials as part of manufacturing operations.

48. "Lot" is a zoning lot unless the context shall clearly indicate a lot of record, in which case a "lot" is a lot of record.

49. "Lot Corner" is a zoning lot situated at the intersection of two streets, or bounded on two or more adjacent sides by street right-of-way lines or in the case of curved right-of-way lines, when the extension of tangents at the side lot lines yields an internal angle which does not exceed 135 degrees.

50. "Lot Interior" is a zoning lot other than a corner lot.

51. "Lot, Depth of" is the mean horizontal distance between the front and rear lot lines.

52. "Lot Line" is a boundary of zoning lot. Lot line is synonymous with property line.

53. "Lot of Record" is land designated as a separate and distinct parcel in a subdivision, the plat of which has been recorded in the office of the county register of deeds of Hughes County, South Dakota, parcel of land, the deed to which was recorded in the office of said recorder prior to the adoption of this chapter.

54. "Lot Width" is the distance between side lot lines measured at the rear of the required front yard on a line parallel with a line tangent to the street right-of-way line.

55. "Lowest Floor" is the lowest floor of the lowest enclosed area (including basement). An unfinished or floor resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements.

56. "Manufacturing/Processing, Light" is those manufacturing processes that are not obnoxious due to dust, odor, noise, vibration, pollution, smoke, heat or glare. These commercial or industrial uses are characterized by generally having all aspects of the process carried on within the building itself.

57. "Minor Repair - Automobile" is the replacement of minor assemblies or parts and tune-up of automobiles, or trucks of less than 15,000 pounds gross license weight, but not including body and fender work, painting, engine overhaul or similar type of work.

58. "Mobile Home" is a mobile dwelling.

59. "Mobile Home Park or Manufactured Home Park" is a tract of land that is used, designed, maintained, or held out for rent to accommodate two or more mobile homes. Mobile homes located in a mobile home park are used only to provide living and sleeping accommodations, a mobile home park does not include an automobile or mobile home sales lot on which unoccupied mobile homes are parked for inspection or sale. The term mobile home shall include mobile dwelling.

60. "Motel" is a group of attached or detached living units with individual toilet facilities operated for transient guests and so constructed that guests' automobiles may be parked at or near the living unit.

61. "Natural Production Use" is a production use that shall be directly dependent upon the natural resources of the area; such as gravel pits, rock quarry, and areas containing natural gas.

62. "Non-conforming Building" is a building or structure or portion thereof, lawfully existing at the time this chapter or an amendment thereto becomes effective, which does not meet the area, height, yard, parking, loading or other requirements of this chapter or any amendment thereto.

63. "Non-conforming Uses" is a use that lawfully occupies a building or land at the time this chapter or an amendment thereto becomes effective but does not meet the requirements of this chapter or any amendment thereto.

64. "Occupancy" is the purpose for which a building is used, or its intended usage. The term shall also include the building or room housing such use. Change of occupancy is not intended to include change of tenants or proprietors.

65. "Open Space" is all area including off-street parking spaces not covered by buildings or structures.

66. "Parking space Off-Street" is an off street space available for the parking of one motor vehicle and having an area of not less than one hundred eighty (180) square feet exclusive of drive-ways and having

direct access to a street or alley.

67. "Personal Health Service" is an establishment primarily engaged in providing health services, including, but not limited to, medical, dental, chiropractic, ophthalmology, optometry and audiology.

68. "Personal Service Store" is an establishment engaged in providing services involving the care of a person or their apparel, including, but not limited to laundry or dry cleaning, garment services, coin-operated laundries, photographic and art studios, beauty shops, barber shops, shoe repair, reducing salons, health clubs, clothing rental, tailor and dressmaker.

69. "Placement, Long Term" is the placement of a storage or shipping container in an individual zoning lot for more than six (6) months.

70. "Placement, Short Term" is the placement of a storage or shipping container in an individual zoning lot for six (6) months or less.

71. "Principal Permitted Use" is that use of a zoning lot which is among the uses allowed as a matter of right as the exclusive use of a lot under the zoning classification.

72. "Public Utility Facility" is telephone, electric and cable television lines, poles and equipment; water, gas and sewer pipes and valves, lift stations, telephone exchanges and repeaters and all other facilities and equipment necessary for conducting a service by a government, public utility or cable television franchise.

73. "Repair" is the reconstruction or renewal of any part of an existing building for the purpose of its maintenance. The word "Repair" or "Repairs" shall not apply to any change of construction.

74. "Residential Use" is use of land or buildings designed for residential purpose which shall include such land or building used for one or two-family residence, apartment houses and multiple family dwellings.

75. "Retail Store" is an establishment engaged in selling products, goods or merchandise to the general public for personal or household consumption; and establishments engaged in providing services or entertainment to the general public including eating and drinking establishments, repair shops, indoor amusement, copying services, health, professional, personal educational, and social services, and other miscellaneous services.

76. "Rooming House or Lodging House" is any building or portion thereof, containing not more than five guest rooms which are used by not more than five guests where rent is paid in money, goods, labor or otherwise. A lodging house shall comply with all the requirements of this chapter for dwellings.

77. "Setback" is the minimum horizontal distance between the property line and a building.

78. "Sign" is any device that directs attention to business, commodity, service or entertainment but not including any flag, badge or insignia or any government agency, or any civic, charitable, religious, patriotic or similar organizations.

79. "Special Use" is a use that is not a principal permitted use, accessory use or conditional use but may be permitted by the Board of Adjustment.

80. "Stable-Private" is an accessory building in which all of the animals housed are the property of the owner or lessee or of his immediate family.

81. "Stable-Public" is a building in which any animals are kept for remuneration, hire or sale.

82. "Storage and Shipping Container" includes the following definitions:

a) "Portable Storage Container" is a container, usually of metal or metal-framed construction, designed and used for the storage of personal or business property of a non-hazardous nature that can be moved from location to location. Containers are typically rented or leased to owners or occupants of property for their temporary use and are typically delivered and removed by truck. Sample proprietary portable storage container companies include, but are not limited to, PODS, PACK-RAT, UPack and SMARTBOX.

b) "Shipping Container" is an industrial container with a design strength suitable to withstand continuous shipment, storage, and handling for the movement of goods and products, in repetition, from one place to the next by ship, rail or truck. Containers must not exceed 40 feet in length, 8 feet in width, and 9 feet 6 inches in height. Other terms include: Conex box, cargo container, and intermodal container.

83. "Story" is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused under-floor space is more than six feet (6') above grade as defined herein for more than 50 percent of the total perimeter or is more than twelve feet (12') above grade as defined herein at any point, such basement, cellar or unused under-floor space shall be considered as a story.

84. "Story-Half" is a story under a gable, hip or gambrel roof, the wall plates of which, on at least two opposite exterior walls, are not more than two feet above the finished floor of such story.

85. "Street" is any thoroughfare of public space not less than thirty feet (30') in width that has been dedicated or deeded to the public for public use.

86. "Structure" is that which is built or constructed, an edifice or building or any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

87. "Structural Alteration" is any change in the structural members of a building, such as walls, columns, beams or girders. Vehicles duly licensed for operation upon public streets or highways shall not be considered structures.

88. "Use" is the purpose or purposes for which land or building is designed, arranged, or intended, or to which said land or building is occupied, maintained or leased.

89. "Use-Accessory" is a use customarily incidental to a principal permitted use or building and located on the same zoning lot with such principal use or building.

90. "Use-Specifically Excluded" is a use of land or a structure which is excluded from a district by the operation of other regulations of the district, and which is specifically enumerated as excluded for purposes of clarity of intent and ease of reference.

91. "Yard" is an open, unoccupied space, other than a court, unobstructed from the ground to the sky, except where specifically provided by this chapter, on the lot on which a building is situated.

92. "Yard-Front" is an open space extending the full width of the zoning lot, between the main building and the front line, unoccupied and unobstructed by buildings or structures in excess of 30 inches in height except as provided herein, the depth of which shall be measured as the least distance between the front lot line and the front of such main building.

93. "Yard-Rear" is an open space extending the full width of the zoning lot between the main building and the rear lot line, unoccupied and unobstructed by buildings or structures in excess of 30 inches in height except as provided herein, the depth of which shall be measured as the least distance between the rear lot line and the rear of such main buildings.

94. "Yard-Side" is an open space extending from the front yard to the rear yard, between the main building and the side lot line, unoccupied and unobstructed by buildings or structures in excess of 30 inches in height, except as provided herein, the depth of which shall be measured as the least distance between the side lot line and the side of such main buildings.

95. "Zoning, Lot" is a single tract of land located within a single block, which at the time of filing for a building permit or a certificate of occupancy, is designated by the owner or developer as a tract to be used, developed or built upon as a unit, under single or unified ownership or control, and assigned to the particular use, building or structure, for which the building permit or certificate of occupancy are issued and including such area of land as may be required by the provisions of this chapter for such use, building or structure. The said described tract of land must be recordable in the Office of the Hughes County Register of Deeds.

Source: Ord. No. 1158, 1985; 1208, 1987; 1252, 1990; Ord. No. 1329, 1993; Ord. 1436, 1999; Ord. 1439, 1999; Ord. No. 1468, 2000; Ord. No. 1584, 2005

Section 12-1-102 Adoption of official zoning map and descriptions - custody of and maintenance by city engineer.

The location, size, shape, and boundaries of the zones to which the provisions of the text of this chapter are applicable, shall be indicated on the official zoning map in the city engineer's office and by descriptions incorporated herein and by this reference made a part hereof and said map, after being adopted by reference as a part of this chapter, and so certified by the city finance officer together with the text, shall be maintained by the city engineer and said map shall be the official zoning map, for the purpose of

enforcement of this chapter. In case of doubt or dispute the description of said zones shall govern.

Section 12-1-103 Classification, review and zoning of annexed land.

Any land subsequently annexed to the city shall upon such annexation automatically be placed in the same zoning district as it was in the extra-territorial zoning and remain so zoned until an amendment to this chapter shall place such annexed land in a different zone or zones. The planning commission shall review the zoning classification of any annexed land and shall report thereon to the city council giving its recommendations as to the proper classification. Said report shall be submitted within six months of the effective date of the annexation.

Section 12-1-104 Establishment, designation and requirements of zoning lots.

In order to facilitate the enforcement of this chapter the device of zoning lots as defined herein shall be used. A parcel of land shall be designated and suitably recorded by the city building official as forming the site of each new building, structure or use of land or the site of any building structure or use of land designated for any alteration or modification requiring a building permit or certificate of occupancy. Said parcel shall conform in dimensions and area to the provisions of this chapter. A zoning lot may or may not coincide with platted lot lines. Each zoning lot shall abut a public street for a distance of not less than forty feet.

Source: Ord. No. 1475, 2000; Ord. No. 1630, 2008; Ord. No. 1789, 2018.

Section 12-1-105 Buildings, structures and land conforming to requirements of chapter.

No building, structure, or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, moved, or structurally altered unless in conformity with all of the regulations herein specified for the district in which it is located.

Section 12-1-106 Open space and other areas conforming to requirements of chapter.

No open space surrounding any building shall be encroached or reduced in any manner, except in conformity with the yard, lot area, and building location regulations herein designated for the district which such building or open space is located. No yard, off-street parking space, off-street loading space, or other space surrounding any building for the purpose of complying with the provision of this chapter except as otherwise specified herein, shall be considered as providing a yard or open space for any other building, and no yard or other open space on one platted lot shall be considered as the required open space on another platted lot unless the other platted lot is in the same ownership and is declared as a single zoning lot in applying for a building permit, and provided no land so considered has previously been considered as part of a required building site or zoning lot in the application for a building permit for an existing building. The required yard or open space for any use, building or structure shall be contained in the same zone as required for the principal use, its buildings or accessory buildings.

No lot, yard, off-street loading space, off-street parking space or other open space required for an existing building by the regulations contained herein shall be hereafter reduced in dimension or area below the minimum requirements set forth herein for said building or structure, except to provide for the extension, establishment of widening of a public street or highway.

Section 12-1-107 Interpretation of chapter - conflict with other rights.

It is not the intention of this chapter to defeat the purposes of any contract, deed restriction or protective covenant when such instrument is inconsistent with this chapter or contains more restrictive requirements. In the event this chapter conflicts with other provisions of this code, ordinances, rules and regulations adopted pursuant to law, or state or federal law, then the more strict provisions shall apply.

Areas that are included within the boundaries of an urban renewal plan or other area plan which has been officially adopted and approved by the council and a contract with the federal or other government consummated as a consequence thereof, shall not be the subject of any zoning change which will defeat the purposes of such contract.

Section 12-1-108 Interpretation of chapter - conflict with other laws.

In the interpreting or applying the provisions of this zoning ordinance, the minimum requirements adopted for the promotion of the public health, morals, safety, convenience, comfort, and general welfare shall be strictly conformed to. Wherever the requirements of this chapter are in conflict with the requirements of any other local statute, ordinance, or regulation, the most restrictive, or that imposing the higher standards, shall govern.

Section 12-1-109 Interpretation of chapter - certain uses prohibited.

Any use that is not specifically permitted in a district as a principal use, an accessory use or a conditional use, is hereby specifically prohibited. In the regulations for some zones specific excluded uses are enumerated for clarification of intent, but such lists of excluded uses are not to be interpreted as including all excluded uses.

Section 12-1-110 Application of chapter to non-conforming uses.

The lawful use of any building or premises existing at the time of the effective date of this chapter shall be allowed to continue although the use does not conform to the regulations of the chapter in the respective district, and such building may be reconstructed or structurally altered and the non-conforming use changed subject to the following regulations:

1. Any structure or part thereof that is declared unsafe may be restored to a safe condition.
2. Any non-conforming building may not be reconstructed or structurally altered during its life to

exceed a cost of fifty (50) percent of the assessed value of the building unless the building is changed to conform with the regulations of the district.

3. There shall be no extension of any building for a non-conforming use, but an extension to said building may be allowed for a conforming use.

4. Any building damaged by fire or other causes to the extent of fifty (50) percent of its assessed value shall not be repaired or rebuilt unless it is in conformity with the regulations for the respective district.

5. Upon the discontinuance of a non-conforming use for a period of one year the use shall not be re-established. Any future use shall be in conformity with the regulations of the respective district.

6. No non-conforming use once changed to a conforming use shall be allowed to revert back to a non-conforming use.

7. No non-conforming use shall be extended to replace a conforming use.

8. If the boundaries of a district shall be changed so as to transfer an area from one district to another district with different regulations, the above provisions shall apply to any non-conforming uses existing in the district to which the area is transferred.

Section 12-1-111 Administration and enforcement of chapter - building permits - powers and duties of city inspector and board of adjustment.

A. Administration and Enforcement

This zoning ordinance except as provided in Article II, shall be administered and enforced by the city inspector. An appeal concerning the decision of the city inspector may be made to the board of adjustment as herein provided.

B. Building Permits.

1. There shall be no building or structure erected, added to, or structurally altered unless there has been a permit issued by the city inspector. Except upon a written request from the board of adjustment, no such building permit or certificate of occupancy shall be issued for any building where said construction, addition or alteration or use thereof will not conform to the regulations of this chapter.

2. With all applications for building permits there shall be submitted a copy of a layout or plot plan, drawn to scale, showing the actual dimensions of the lot to be built upon the exact size and location on the lot of the building and accessory buildings to be erected and any other information necessary to determine and provide for the enforcement of this zoning ordinance. A careful record of these applications and plot plans shall be kept in the office of the city inspector.

Cross reference: Sections 2-4-301 to 399, inclusive board of adjustment; and, Section 101-1-101 to 199,

inclusive, building permits and inspections.

Section 12-1-112 Repealed.

Source: Ord. No. 1079.

Cross reference: Section 11-1-101 to 199, inclusive. Adoption of Uniform Building Code.

Section 12-1-113 Procedures for amending, changing, modifying or repealing portions of zoning map.

Amendments and Changes Procedure:

1. The city commission may from time to time amend, change, modify or repeal any portion of the zoning ordinance.
2. Every proposed amendment or change shall be referred to the city planning commission for a report thereon.

Source: Ord. No. 864, 1972.

Section 12-1-114 Minimum Floor Elevations for New Construction and Renovation.

That all structures constructed hereafter will require the lowest floor to be constructed with a minimum floor elevation (North American Vertical Datum 1988 with units in feet) as specified for each of the 3 zones that follow:

- 1. Zone One: Lowest Floor Elevation 1434.3.** All lands within the boundary of a line defined as follows:

Beginning at the intersection of the DM&E railroad main line and the shoreline of the Missouri River following the railroad tracks easterly to its intersection with the center section line of Section 32 T111NR79W, then north along the center section line of Section 29 T111NR79W extended to its intersection with the northerly city limits line (as of 12-01-00), then west along the city limits line to the shoreline of the Missouri River, then south along the shoreline to the point of beginning.

- 2. Zone Two: Lowest Floor Elevation 1433.5.** All lands within the boundary of a line defined as follows:

Beginning at the intersection of the DM&E railroad tracks main line and the shore line of the Missouri River following the railroad tracks southeasterly to its intersection with Harrison Avenue, then south, south westerly along the center line of Harrison Avenue extended to its intersection with the shore line of the Missouri River, then north westerly along the shoreline of the Missouri River to the point of beginning.

3. Zone Three: Lowest Floor Elevation 1432.0. All lands within the boundary of a line defined as follows:

Beginning at the intersection of the DM&E railroad tracks main line and Harrison Avenue, then easterly along the railroad tracks to its intersection with the easterly city limits line (as of 12-01-99), then southerly following the city limits line to its intersection with the shoreline of the Missouri River, then northwesterly along the shoreline to the intersection of the shoreline and the center line of Harrison Avenue extended, then northeasterly along the centerline of Harrison Avenue to the point of beginning.

The minimum floor elevations will apply to all new construction and renovation of existing structures, which exceed 50 percent of the structure's value. All furnaces, water heaters and other mechanical or electrical equipment must be placed above the specified elevations. Lowest floors are as defined in Section 12-13-102.

No variances, waivers or special exceptions shall be granted under this section. The ordinance codified does not imply those areas outside the 3 zones or land uses permitted within such zones will be free from flooding or flood damages. The ordinance codified herein shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance thereon or any administrative decision lawfully made thereunto.

Section 12-1-115 General Requirements for all Storage and Shipping Containers

The general requirements for all storage and shipping containers are as follows:

1. For the purpose of this ordinance, the term "container" shall not include railroad cars, truck vans, converted mobile homes, trailers, recreational vehicles, bus bodies, vehicles and similar prefabricated items and structures originally built for purposes other than the storage of goods and material.
2. Containers must be placed entirely on municipal or private property, and must not be located on the boulevard, in a street or alley right-of-way, or on a public sidewalk.
3. Containers must not be placed where they will block the visibility at a street or alley intersection.
4. Containers must be secured against entry of vermin.
5. Containers must have weatherproof roofs, sides, and doors.
6. Stacking of materials on top of containers is prohibited.
7. Containers must not be placed across a lot line.

Section 12-1-116 Storage and Shipping Containers in Residential Zoning Districts

Storage and shipping containers may be used in areas zoned Residential for short term placement with the following conditions:

1. Containers must meet all general requirements of Section 12-1-115.
2. Containers may be used for materials storage or construction and must be removed upon completion of the work.
3. Containers may be placed for a maximum of six (6) months per event with a total of two events or a maximum of one year.
4. Vertical stacking of containers is prohibited.
5. The entire container must be painted in a neutral (white, tan, beige, light grey, or similar color) so that the old shipping company logo or any graffiti does not show. The only signage or advertising allowed on the container is to identify the business supplying the rental container.
6. Existing containers that were legally placed on a parcel prior to the adoption of this ordinance must be removed by June 1, 2025.
7. Long term placement of containers in Residential zoning districts is prohibited.

Section 12-1-117 Storage and Shipping Containers in Agricultural, Business, Industrial, or Riverfront and Park Zoning Districts

Storage and shipping containers may be used for storage in Agricultural, Business, Industrial, or Riverfront and Park zoning districts with the following conditions:

1. Containers must meet all general requirements of Section 12-1-115.
2. Vertical stacking of containers is prohibited except where the containers are located entirely to the rear of the principal building.
3. Containers used for long term placement must either have the entire container painted in a neutral color (white, tan, beige, light grey, or similar) so that the old shipping company logo or any graffiti does not show or be properly screened. Proper visual screening may include fencing, other structures, or vegetation. The only signage or advertising allowed on the container is to identify the business on that property. Any other signage on the container will be counted as on-site signage and must be permitted according to the municipal sign ordinance prior to placement of the container or the sign.
4. Containers used for long term placement must meet all setback requirements.
5. Containers may be used for materials storage or temporary job trailers on construction sites with a properly issued building permit and must be removed upon completion of the work.
6. Containers shall not connect to utility services, with the exception of electricity, nor shall any

other utility services be utilized within a container.

7. The use of storage and shipping containers as the primary structure on a lot is prohibited.

Section 12-1-118 Noncompliance

Containers found out of compliance with this ordinance are subject to fines and possible legal action based on the property maintenance code fine schedule.

Source: Ord. No. 1468, 2000; Ord. No. 1589, 2006; Ord. No. 1861, 2024.

Section 12-1-119 to 199, inclusive. Reserved.
