

## CHAPTER 165

# ZONING REGULATIONS

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**165.01 TITLE.** This chapter shall be known and may be referred to as the “zoning ordinance” of the City of Dyersville, Iowa.

**165.02 PURPOSE.** The Council deems it necessary in order to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to conserve the value of buildings and property; and to encourage the most appropriate use of land throughout the City with reasonable consideration, and in accordance with a comprehensive plan.

**165.03 INTERPRETATION OF STANDARDS.** The provisions of this chapter shall be held to be minimum requirements. Where this chapter imposes a greater restriction than is imposed or required by other provisions of law, or by other rules or regulations or ordinances, the provisions of this chapter shall control. Where for specific land, the requirements of any other ordinances of the City are more stringent or restrictive than the requirements set forth in this chapter, nothing herein shall be construed to waive compliance with the provisions of such other ordinance.

**165.04 DEFINITIONS.** For the purpose of this chapter, certain terms and words are hereby defined.

1. “Accessory use or structure” means a use or structure subordinate to the principal use of the building on the lot, and serving a purpose customarily incidental to the use of the principal building.
2. “Advertising signs” includes all structures, regardless of the material used in the construction of the same, that are erected, maintained, or used to advertise a business or attraction.
3. “Alley” means a public way for the use of vehicles affording a secondary means of access to abutting property.
4. “Apartment” means a room or suite of rooms, with toilet and culinary accommodations, used or designed for use as a single housekeeping unit, located in a building containing two or more such rooms or suites, or in a building devoted primarily to nonresidential use.
5. “Basement” means a story having part, but not more than one-half, of its height below grade. A “basement” is counted as a story.
6. “Beginning of construction” means the incorporation of labor and materials within the foundation walls of the building or buildings.
7. “Board” means the Board of Adjustment.
8. “Boardinghouse” means a building other than a hotel or restaurant, where meals are regularly served for compensation to more than five persons not members of the family there residing.
9. “Building” means a structure having a roof supported by columns or walls for shelter, support, or enclosure of persons, animals or chattels. When separated by division walls from the ground up without openings, each portion of such structure shall be deemed a separate building.
10. “Building, height of” means the vertical distance from the average, natural grade at the building line, to the highest point of the coping of flat roof, or to the mean height level between eaves and ridge for gable, hip and gambrel roofs.
11. “Building, principal” means a nonaccessory building in which a principal use of the lot on which it is located is conducted.
12. “Building setback line” means a line within a lot or other parcel of land parallel to a public road, street or highway right-of-way line defining that minimum distance between the building and property line upon which buildings or structures may not be placed.

13. “Building wall” means the wall of the principal building forming a part of the main structure. The foundation walls of unenclosed porches or piazzas, steps, walks and retaining wall or similar structure shall not be considered as building walls under the provisions of this chapter.
14. “Bulk station” means distributing stations commonly known as bulk or tank stations used for the storage and distribution of flammable liquids or liquefied petroleum products.
15. “Carport” means space for the housing or storage of motor vehicles and enclosed on not more than two sides by walls, and attached to the principal building.
16. “Cellar” means that portion of a building having more than one-half of its height below grade. A “cellar” is not counted as a story.
17. “Commission” means the Planning and Zoning Commission.
18. “Convalescent home” means a building or premises in or on which care is provided for four or more invalid, infirm, aged, convalescent, or physically disabled or injured persons, not including insane or other mental cases, inebriate, or contagious cases. Nursing homes are “convalescent homes.”
19. “District” means a section or sections of the City within which the regulations governing the use of buildings and premises, or the height and area of buildings and premises, are uniform.
20. “Dwelling” means any building, or portion thereof, which is designed or used exclusively for residential purposes.
21. “Dwelling unit” means a building or portion of a building which is arranged, occupied or intended to be occupied as living quarters.
22. “Dwelling, single-family” means a dwelling designed for or occupied exclusively for residence purposes by one family or housekeeping unit.
23. “Dwelling, two-family” means a dwelling designed for or occupied exclusively by two families, or housekeeping units, living independently of each other.
24. “Dwelling, multi-family” means a dwelling designed for, or occupied by more than two families, or housekeeping units, living independently of each other.
25. “Family” means a group of one or more persons occupying a premises and living as single housekeeping unit, as distinguished from a

group occupying a boardinghouse, lodginghouse, or hotel as defined in this chapter.

26. “Frontage” means all the property on one side of a street between two intersecting streets measured along the line of the street, or if the street is dead-ended, then all of the property abutting on one side between an intersecting street and the dead end of the street.

27. “Garage, private” means an accessory building not over one story of fifteen feet in height used for parking or storage of vehicles as may be required in connection with the permitted use of the principal building. However, the storage of one commercial vehicle not exceeding three-fourths ton may be permitted.

28. “Garage, public” means a building or portion of a building in which motor vehicles are equipped for operation, repaired, stored or kept for remuneration, hire or sale.

29. “Grade” means:

A. For buildings having walls adjoining one street only, the elevation of the regularly established sidewalks grade at the center of the wall adjoining the street;

B. For buildings having walls adjoining more than one street, the average of the elevation of the regularly established sidewalk grades at the center of all walls adjoining the street;

C. For buildings having no wall adjoining the street, the average level of the finished surface of the ground adjacent to the exterior walls of the buildings.

30. “Gasoline service station” means a building or portion of a building used chiefly in connection with tanks, pumps and other appliances, for supplying motor vehicles with gasoline, oil, compressed air, water and similar supplies, but not for the purpose of making repairs. When the dispensing, sale or offering for sale of motor vehicle fuel at retail is incidental to the conduct of a public garage, the premises shall be classified as a public garage.

31. “Home occupation” means a business operated as an accessory use to a residential dwelling unit and subject to these provisions:

A. No home occupation may be operated in such a manner as to create offensive noise, odor, smoke, heat, vibration, electronic interference or other interference with the appropriate use and

enjoyment of adjacent properties or otherwise constitute a nuisance or safety hazard to adjacent persons or properties.

B. No outdoor storage of equipment or materials used in the home occupation shall be permitted.

C. No more than twenty-five percent of the total floor area of a dwelling unit may be devoted to the home occupation.

D. No internal or external alteration which would change the basic characteristic of the building as a residential dwelling shall be permitted.

E. No nonresident employee may be employed on the premises at any time. A home occupation may be carried on by members only of the immediate family.

F. No public display of goods shall be allowed.

G. A permitted home occupation may be operated or maintained as an accessory use only in the principal building.

H. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood.

I. No motor vehicle repair is permitted for customers.

If a home occupation which is operated as a nonconforming use, as defined by Section 165.10, becomes subject to the terms and provisions of Section 165.11 or 165.12, then the home occupation shall also be subject to all of the provisions of this section.

32. "Hotel" means a building in which lodging or boarding and lodging are provided and offered to the public for compensation, and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all hours.

33. "Junkyard" means any area where waste, discarded, or salvaged materials are bought, sold, exchanged, baled or packed, disassembled or handled, including house wrecking yards, used lumber yards and places or yards for storage of salvaged house wrecking and structural steel materials and equipment, automobile, tractor, or machinery wrecking and used parts yards, but not including areas where such uses are conducted entirely within a completely enclosed building, and not including the processing of used, discarded, or salvaged materials as part of the manufacturing operation.

34. “Lodginghouse” means a building or portion thereof, other than a hotel or motel, providing rooms or sleeping accommodations for five or more persons for compensation, including rooming houses.
35. “Lot” means a parcel of land occupied, or intended for occupancy, by one main building, together with its accessory buildings officially approved.
36. “Lot area” means the area of a horizontal plane bordered by the front, side and rear lot lines.
37. “Lot, corner” means a lot abutting upon two or more streets at their intersection.
38. “Lot, depth of” means the mean horizontal distance between the front and rear lot lines.
39. “Lot, double frontage” means a lot having a frontage on two nonintersecting streets, as distinguished from a corner lot.
40. “Lot, interior” means a lot other than a corner lot.
41. “Lot lines” are the lines bounding a lot.
42. “Lot of record” means a lot which is part of a subdivision, the plat of which has been recorded in the office of the County Recorder of Dubuque/Delaware County, or a parcel of land, the deed of which was recorded in the office of the County Recorder of Dubuque/Delaware County prior to the adoption of Ordinance No. 285 on July 9, 1962.
43. “Lot width” means the width of a lot measured at the building line and at right angles to its depth.
44. “Major thoroughfare” means a street on which preference is given to the through movement of traffic at the expense of cross-traffic, by the utilization of stop signs and/or other control devices on intersecting streets.
45. “Mobile home” means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons; but shall also include any such vehicle with motive power not registered as a motor vehicle in Iowa.
46. “Mobile home park” means any site, lot, field or tract of land upon which two or more occupied mobile homes are harbored, either free

of charge or for revenue purposes, and shall include any building, structure, tent, vehicle or enclosure used or intended for use as part of the equipment of such mobile home park. "Mobile home park" shall not be construed to include mobile homes, buildings, tents or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students.

47. "Modular home" means a factory-built structure which is manufactured or constructed to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be attached or towed behind a motor vehicle, and which does not have permanently attached to its body or frame any wheels or axles.

48. "Motel" or "auto court" means a building, or group of attached or detached buildings, containing individual sleeping or living units for overnight auto tourists, with garage attached, or parking facilities conveniently located near each such unit.

49. "Nonconforming building" means a building or portion thereof, existing at the effective date of the ordinance codified in this chapter, or amendments thereto, and which does not conform to the provisions of this chapter or to the use regulations of the district in which it is located.

50. "Nonconforming use" means a use which lawfully occupied a building or land at the time the ordinance codified in this chapter, or amendment thereto, became effective, and which does not conform to the use regulations of the district in which it is located.

51. "Open porch" means a roofed structure attached to the principal building open on two or more sides, projecting not more than eight feet within the front yard, not more than three feet within a side yard, and not more than eight feet within a rear yard.

52. "Parking lot" means an area of land, a yard or other open space on a lot used for or designed for use by standing motor vehicles together with a driveway connecting the parking lot with a public place.

53. "Parking space" means a surfaced area of not less than two hundred fifty square feet, either within a structure or in the open, exclusive of the driveway or access drives, for the parking of a motor vehicle, and connected with a street or alley by a surfaced driveway which provides satisfactory ingress for automobiles.

54. "Premises" means a parcel of land.

55. "Recreational vehicle" means all those small mobile units principally designed for recreation pastime such as motor homes, camper trailers, pickup campers, pop-up tent trailers, and similar camping-type vehicles or trailers.
56. "Setback" means the required distance between a lot line and the nearest wall of conforming structure on the lot.
57. "Sign" means a publicly displayed board, placard, etc., bearing the same information as advertisement.
58. "Sign area" means the area of the surface of a sign, billboard, placard, etc., bounded by the top, bottom and sides.
59. "Story" means that portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, the space between the floor and the ceiling or roof next above it.
60. "Story, half" means a space under a sloping roof which has the line of intersection of roof decking and the wall face not more than four feet above the top floor level. A half story containing independent apartments or living quarters shall be counted as a full story.
61. "Street line" means a dividing line between a lot, tract, or parcel of land and a contiguous street.
62. "Structure" means anything constructed or erected, the use of which requires location on the ground or attached to something having location on the ground, but not including fences or poles and appurtenances thereto used for the provisions of public utilities.
63. "Structure alterations" means any replacement or change in the type of construction or in the supporting members of a building or structure, such as bearing walls or partitions, columns, beams or girders, beyond ordinary repairs and maintenance, as may be required for the safety of the building.
64. "Yard" means an open space on the same lot with a building, unoccupied and unobstructed by any portion of the structure from the ground upward, excepting as otherwise provided herein. In measuring a lot for the purpose of determining the depth of a front yard, or the depth of a rear yard, the least distance between the lot line and the main building shall be used.
65. "Yard, rear" means a yard extending across the full width of the lot and measured between the rear lot line and the principal building or



any projections other than steps, unenclosed balconies, or porches. On corner lots, the rear yard shall be considered as parallel to the street upon which the lot has its least dimension. The rear yard shall, in all cases, be at the opposite end of the lot from the front yard.

66. “Yard, side” means a yard extending from the front yard to the rear yard and measured between the side lot lines and the principal building, or any projection thereof.

**165.05 DISTRICTS ESTABLISHED.** In order to classify, regulate and restrict the location of trade, industries, and the location of buildings designed for specified uses, to regulate and limit the height and bulk of buildings hereafter erected or altered, to regulate and limit the intensity of the use of lot areas, and to regulate and determine the area of yards, courts, and other open spaces within and surrounding such buildings, the City is divided into eleven districts. The use, height, and area regulations are uniform in each class of district, and the districts shall be known as:

D-1	Delaware Agricultural District
A-1	Rural Restricted District
R-1	Residential District
R-2	Residential District
C-1	Commercial District
C-2	Commercial District
I-1	Industrial District
I-2	Industrial District
I-3	Industrial District
FW	Floodway
FF	Floodway Fringe

**165.06 OFFICIAL MAP.**

1. The boundaries of these districts are indicated upon the zoning map of the City, which map is made a part of this chapter by references. The zoning map and all the notations, references, and other matters shown thereon, shall be as much a part of this chapter as if the notations, references, and other matters set forth by the map were all fully described herein; the original of which is properly attested, and is on file in the Council Chambers in City Hall.

2. The district boundaries are either lot lines, or the centerlines of streets and alleys, unless otherwise shown, and where the districts designated are bounded approximately by street, alley, or lot lines, and

are not dimensioned otherwise, the lot lines or centerlines of streets and alleys shall be construed to be the boundary of the district.

3. The official zoning map which is on file in the Council Chambers in City Hall shall be entitled “Official Zoning Map” and bear the date of adoption and shall bear certification of its authenticity by the Mayor and be attested to by the signature of the City Clerk, together with the date of their signing.

4. Amendments to the map shall identify the area affected by legal description and identify the zoning district as the same existed and the new district designation applicable to said property. A certified copy of the amendatory ordinance, however, shall not repeal or reenact said map, but only amend it. The official zoning map, together with amending ordinances, shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the City. (*See EDITOR’S NOTE at the end of this chapter for ordinances amending the zoning map.*)

5. In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of use and the number of attachments, the Council may, by resolution, adopt a new official zoning map which shall supersede the prior official zoning map. The new official zoning map may integrate the amendments and correct drafting or other errors or omissions in the prior official zoning map, but no such correction shall have the effect of amending the original zoning ordinance or any subsequent amendment thereof. The new official zoning map shall be identified by the date and the signature of the Mayor attested by the Clerk under the following words: “This is to certify that this official zoning map supersedes and replaces the official zoning map adopted (date of adoption of map being replaced) as part of Chapter 165 of the City’s Code of Ordinances.”

**165.07 ANNEXATIONS.** All territory which may hereafter be annexed to the City shall be considered as being in the A-1 Rural Restricted District until changed by ordinance, but a final zoning plan shall be adopted within six months of the annexation following the procedures of this chapter.

**165.08 WATER AREAS.** All areas within the corporate limits of the City which are under water, and not shown as included within any district, shall be subject to all regulations of the district which immediately adjoins the water area, and to extend to the centerline of the water.

**165.09 CONFORMANCE REQUIRED.** Except as hereinafter specified, no building or structure shall be erected, converted, enlarged, reconstructed, moved or structurally altered, nor shall any building or land be used which does not comply with all of the district regulations established by this chapter for the district in which the building or land is located.

**165.10 NONCONFORMING USES.** The lawful use of a building or land existing on the effective date of the ordinance codified in this chapter may be continued, although such use does not conform to the provisions hereof. If no structural alterations are made, the nonconforming use of a building may be changed to another nonconforming use of the same, or of a more restricted classification. Whenever a nonconforming use has been changed to a more restricted use, or to a conforming use, such use shall not thereafter be changed to a less restricted use. The nonconforming use of building may be hereafter extended throughout those parts of a building which were manifestly arranged or designed for such use at the time of the enactment of the ordinance codified in this chapter.

**165.11 DISCONTINUANCE OF NONCONFORMING USE.** No premises, building or portion thereof, used in whole or part for nonconforming purposes according to the provisions of this chapter, which hereafter become and remain vacant for a continued period of two calendar years, shall again be used except in conformity with the regulations of the district in which such building or premises is situated.

**165.12 DAMAGED NONCONFORMING BUILDINGS.** No building which has been damaged by fire, explosion, act of God, or the public enemy, to the extent of more than sixty-five percent (65%) of the fair market value of the building immediately prior to damage, shall be restored except in conformity with the regulations of this chapter. If a building is damaged by less than sixty-five percent (65%) of the fair market value, it may be repaired or reconstructed, and used as before the time of damage, provided that such repairs and reconstruction are done within twelve months of the date of such damage.

**165.13 ACCESSORY BUILDINGS.** No accessory building shall be erected in any required court, or in any yard other than a rear yard except as provided in this section. Accessory buildings shall be at least five (5) feet from lot lines of adjoining lots which are in any R district; on a corner lot they shall conform to the setback regulations on the side street; there shall be at least five (5) feet from any other separate building or structure on the same lot, and at least five (5) feet from any alley line, except that when any entrance to an accessory building faces the alley, the accessory building shall be at least twenty (20) feet

from any alley line. Accessory buildings may be erected or may be connected thereto by a breezeway, or similar structure, and such accessory building shall be considered as part of the principal building for all yard requirements. A carport or garage for a residence may be in a side yard, provided that a full required side yard is provided between the garage or carport and the side lot line. An accessory building within sixty (60) feet of the front lot line shall have a full side yard between it and the side lot line. Accessory buildings which are not a part of the main building shall not occupy more than thirty percent (30%) of the rear yard, and shall not exceed fifteen (15) feet in height; however, this regulation shall not be interpreted to prohibit the construction of a six hundred twenty-five (625) square foot garage on a minimum rear yard.

**165.14 CORNER LOTS.** For corner lots platted after the effective date of the ordinance codified in this chapter, the side street yard shall be equal in width to the setback regulation of the lots to the rear having frontage on the intersecting street. If there are no lots to the rear having frontage on the intersecting street, the side yard shall be not less than fifty percent (50%) of the front yard requirement. On corner lots platted and of record on the eighth day of July, 1962, the same regulations shall apply, except that this regulation shall not be so interpreted as to reduce the width of the area for construction on a corner lot facing an intersecting street to less than twenty-eight (28) feet, nor to prohibit the erection of an accessory building.

**165.15 FRONT YARD.** In any R district there shall be a minimum front yard required as stated in the yard requirement for the particular district; provided, that in no case shall the front yard depth be less than the smallest front yard depth of an existing principal building adjacent to either side lot line.

**165.16 REQUIRED YARD CANNOT BE REDUCED.** No lot shall be reduced in size so as to make the width or total area of the lot, or any yard, or any other open space, less than the minimum required by this chapter. No part of a yard, or other open space provided about a building or structure for the purpose of complying with the provisions of this chapter, shall be included as a part of a yard, or other open space required under this chapter for another building or structure. Off-street parking and loading areas may occupy all or part of any required yard or open space, except as otherwise specified in this chapter.

**165.17 BUILDING LINES ON APPROVED PLATS.** Whenever the plat of a land subdivision approved by the Commission, and on record in the office of the County Recorder, shows a setback building line along any frontage for the purpose of creating a front or side yard line, the building line thus shown

shall apply along such frontage in place of any other yard line required in this chapter, unless specific yard requirements in this chapter require a greater setback.

**165.18 FRONTAGE AND ACCESS.** Lots containing any building used in whole or in part for residence purposes shall abut for at least forty (40) feet on at least one street, unless it has an exclusive, unobstructed, private easement of access or right-of-way at least twenty (20) feet wide to said street; and there shall be not more than one single-family dwelling for such frontage or easement unless there is a common easement of access at least fifty (50) feet wide for two or more such single-family, or for one or more two-family or multiple dwellings.

**165.19 RECREATIONAL VEHICLE PARKING.** Recreational vehicle parking shall be governed as follows:

1. No front yard storage is allowed exceeding forty-eight hours.
2. Storage or parking of recreational vehicles is allowed in the rear yard. If the rear yard is not accessible, the recreational vehicle can be stored in the side yard but must continue to meet zoning side yard requirements.
3. Any recreational vehicle which exceeds forty (40) feet in length or fourteen (14) feet in height shall not be permitted for storage in any residential area.
4. Recreational vehicles must have current registration.

*(Ord. 749 – Sep. 09 Supp.)*

**165.20 D-1 DELAWARE AGRICULTURAL DISTRICT.**

1. Lot and Yard Requirements.
  - A. Single-family Dwelling (without public sewer/water):
    - (1) Minimum Lot Area: 1 acre
    - (2) Minimum Lot Width: no minimum
    - (3) Minimum Yard Requirements:
 

Front .....	50 feet
Each Side.....	15 feet
Rear .....	50 feet
Side Street, Corner Lot.....	40 feet

- B. Single-family Dwelling (with central sewer/water):
  - (1) Minimum Lot Area: 10,000 square feet
  - (2) Minimum Lot Width: no minimum
  - (3) Minimum Yard Requirements:
    - Front..... 30 feet
    - Each Side ..... 8 feet
    - Rear..... 35 feet
    - Side Street, Corner Lot ..... 40 feet
- 2. Permitted Signs. Bulletin boards or signs not exceeding fifty (50) square feet in area pertaining to the construction, lease or sale of a building or premises, which board or signs shall be removed as soon as the premises are leased, sold, or construction completed, are permitted.
- 3. Permitted Principal Uses — Off-street Parking.

Permitted Principal Uses and Structures	Minimum Required Off-street Parking
Agricultural and horticultural purposes	None
Single-family dwelling	2 spaces
Public and private forests and wildlife reservations	None
Public utility structures and equipment necessary for their operation	1 space/employee
Two-family dwelling, multiple-family dwelling, or mobile home park provided they are served by municipal or community water supply and sewage disposal systems	2 spaces per unit

- 4. Permitted Accessory Uses and Structures. The following accessory uses and structures are permitted:
  - A. Structures and uses customarily incidental to any of the residential uses set out in subsection 3 are allowed. They shall, however, abide by the applicable yard requirements for the principal use;
  - B. Private garage;
  - C. Temporary buildings used in conjunction with construction work provided they are promptly removed upon completion of work.

D. Home occupation.

**165.21 A-1 RURAL RESTRICTED DISTRICT.**

1. Lot, Yard and Height Requirements.
  - A. Minimum Lot Area  
 Dwelling .....1 acre  
 Other Uses .....no minimum
  - B. Minimum Lot Width  
 Dwelling .....no minimum  
 Other Uses .....no minimum
  - C. Minimum Yard Requirements:  
 Front .....50 feet  
 Each Side .....15 feet  
 Rear .....50 feet  
 Side Street, Corner Lot.....40 feet
  - D. Maximum Height Requirements:  
 All uses .....2½ stories or 35 feet
2. Permitted Signs. Bulletin board and signs pertaining to the lease, or sale of a building or premises, or signs pertaining to any material that is grown or treated within the district are permitted; provided, however, that such signs shall be located upon or immediately adjacent to the building, or in the area in which such materials are treated, processed or stored.
3. Permitted Principal Uses — Off-Street Parking.

<b>Permitted Principal Uses and Structures</b>	<b>Minimum Required Off-street Parking</b>
Single-family dwelling	1 space/unit
Farms, providing no animals raised or sheltered within one hundred feet of a residential district	None
Churches, institutions of religious, philanthropic or charitable nature (excluding penal or correctional institutions) AND Public schools, parks, playgrounds	1 space/5 seats in auditorium, or if no auditorium, 1 space/office and classroom
Public and private forests and wildlife reservations	None
Public utility structures and equipment necessary for their operation	1 space/employee

4. Permitted Accessory Uses and Structures. The following accessory uses and structures are permitted:
  - A. Accessory buildings and uses customarily incidental to any of the uses set out in subsection 3 of this section;
  - B. Private garage;
  - C. Home occupation.
  
5. Special Exception Uses and Structures. The following uses and structures are permitted subject to approval by the Board of Adjustment:
  - A. Transient amusement enterprises (carnival, circus; rides and shows);
  - B. Extraction of minerals or raw material;
  - C. Outdoor advertising signs and billboards;
  - D. Refreshment stand in conjunction with a park or recreation area;
  - E. Temporary buildings used in conjunction with construction work provided they are promptly removed upon completion of construction work.

**165.22 R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT.**

1. Lot, Yard and Height Requirements.
  - A. Minimum Lot Area
 

Dwelling.....	7500 square feet
Other Uses.....	10,000 square feet
  
  - B. Minimum Lot Width
 

Dwelling.....	60 feet
Other Uses.....	80 feet
  
  - C. Minimum Yard Requirements:
 

Dwellings:	
Front.....	30 feet
Each Side .....	8 feet
Rear.....	35 feet
Side Street, Corner Lot .....	15 feet



Other Uses:

- Front .....35 feet
- Each Side .....8 feet
- Rear .....35 feet
- Side Street, Corner Lot.....15 feet

- D. Maximum Height Requirements:
  - Principal Structure .....2½ stories or 35 feet
  - Accessory Structure.....1 story or 15 feet

2. Permitted Signs. Bulletin boards or signs not exceeding fifty (50) square feet in area pertaining to the construction, lease, or sale of a building premises, which boards or signs shall be removed as soon as the premises are leased, sold, or construction completed, are permitted.

3. Permitted Principal Uses — Off-Street Parking.

<b>Permitted Principal Uses and Structures</b>	<b>Minimum Required Off-street Parking</b>
Single-family dwelling	1 space/unit
Churches, public and private schools and other educational institutions	1 space/5 seats in auditorium, or if no auditorium, 1 space/office and classroom
Noncommercial parks, playgrounds, community buildings owned or operated by public or semipublic agencies	None

4. Permitted Accessory Uses and Structures. The following accessory uses and structures are permitted:

- A. Accessory buildings and uses customarily incidental to any of the uses set out in subsection 3 of this section. Such uses shall conform to the regulations of Sections 165.13.
- B. Home occupation.

5. Special Exception Uses and Structures. The following uses and structures are permitted subject to approval by the Board of Adjustment:

- A. Agriculture, including truck gardening, but not the raising of livestock for commercial purposes, or of such that would be offensive for reason of noise or odor to the surrounding area;

**165.23 R-2 RESIDENTIAL DISTRICT.**

1. Lot, Yard and Height Requirements.
  - A. Minimum Lot Area
 

Two-family Dwelling.....	3000 square feet/unit
Multi-family .....	2500 square feet/unit plus 1000 square feet for each additional unit over 3
Other Uses.....	6,000 square feet
  - B. Minimum Lot Width
 

Two-family .....	60 feet
Multi-family .....	70 feet
Other Uses.....	50 feet
  - C. Minimum Yard Requirements:
 

Dwellings:	
Front.....	30 feet
Each Side .....	6 feet
Rear.....	30 feet
Side Street, Corner Lot .....	15 feet
Other Uses:	
Front.....	30 feet
Each Side .....	6 feet
Rear.....	30 feet
Side Street, Corner Lot .....	15 feet
  - D. Maximum Height Requirements:
 

All uses .....	2½ stories or 35 feet
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2. Permitted Signs. Bulletin boards or signs not exceeding fifty (50) square feet in area, pertaining to the construction, lease, or sale of a building or premises, which boards or signs shall be removed as soon as the premises are leased, sold, or construction completed, are permitted.

3. Permitted Principal Uses — Off-Street Parking.

Permitted Principal Uses and Structures	Minimum Required Off-street Parking
Single-family dwelling	1 space/unit
Two-family and multi-family dwelling	1 space/unit
Funeral home and mortuary	1 space/4 seats in chapel
Boarding and lodging homes	1 space/rentable room
Churches, public and private schools and other educational institutions	1 space/5 seats in auditorium, or if no auditorium, 1 space/office and classroom
Hospitals, clinics, nursing and convalescent homes	1 space/4 beds
Noncommercial parks, playgrounds, community buildings owned or operated by public or semipublic agencies	None
Mobile home park	1 space/unit

4. Permitted Accessory Uses and Structures. The following accessory uses and structures are permitted:

- A. Accessory buildings and uses customarily incidental to any of the uses set out in subsection 3 of this section;
- B. Private garage for not more than three cars.

Such uses shall conform to the regulations of Section 165.13.

5. Special Exception Uses and Structures — Mobile Home Parks.

A. Area and Width Requirements. Mobile home parks shall have a lot area of one-half acre and a lot width of one hundred (100) feet. Mobile home courts shall provide the minimum of twelve hundred fifty (1250) square feet of space, excluding drives, automobile parking places, and accessory buildings for each and every mobile home accommodated. Each mobile home space shall be at least twenty-five (25) feet wide and shall provide a yard not less than five (5) feet wide on every side of the mobile home. Other requirements for the trailer court are:

- (1) Yard Requirements:
  - Front .....30 feet
  - Side.....15 feet each
  - Rear .....20 feet

(2) Sanitary Facilities. Connection with the municipal sewer system or adequate private sewage disposal facilities is required.

(3) Streets. Each mobile home lot shall have direct access to a park street. The minimum roadway width of interior park streets shall be as follows:

- One-way, no parking..... 11 feet
- One-way, parking one side ..... 18 feet
- One-way, parking both sides ..... 24 feet
- Two-way, no parking ..... 24 feet
- Two-way, parking one side..... 27 feet
- Two-way, parking both sides..... 34 feet

Such streets shall be surfaced with asphaltic concrete or Portland cement according to City specifications for residential streets and maintained in good condition and lighted at night.

(4) Parking. Minimum requirements are as follows: off-drive parking, two parking spaces for each “home” space.

(5) Sidewalks. Sidewalks shall be provided from the entrance of each mobile home to the service facilities. These walks shall be constructed of concrete or asphaltic concrete.

(6) Landscaping — Unused Area. All areas not used for access, parking, circulation, buildings and service shall be completely and permanently landscaped and the entire site maintained in good condition. A landscaped strip of land not less than ten (10) feet in width shall be established and maintained within the mobile home park along its exterior boundaries.

(7) Concrete Slab. Each mobile home unit lot shall be equipped with a concrete slab of sufficient size to support the wheels and the front parking jack. The slab shall have a minimum horizontal dimension of eight by ten (8 x 10) feet and minimum thickness of four (4) inches.

(8) Recreation Areas. There shall be provided within each mobile home park an adequate site or sites for recreational use by residents. The minimum area provided

for such recreation site or sites shall consist of an aggregate of one hundred (100) square feet for each mobile home space in the park. The recreation sites shall be of appropriate design and provided with appropriate equipment.

(9) Length of Occupancy. No mobile home shall remain in a mobile home park for a period exceeding fifteen (15) days without connection to the permanent sanitary sewer system of the park.

(10) Drainage. The streets and all other areas of the park shall be provided with drains and other provisions for proper drainage of the park and the disposal of the drainage shall be in a manner approved by the City such that public and private property will not be damaged by storms or water.

B. Location of Mobile Homes. It is unlawful for any person to park or place any mobile home on a street, alley, highway, or public place, or on any private land within the City, except as is provided by State law and this chapter. This section shall not apply to mobile homes parked or placed within mobile home parks, or upon private property as part of a dealer's or a manufacturer's stock not used as a place for human habitation.

C. Permanent Occupancy. A mobile home shall not be used as a permanent dwelling place or for indefinite periods of time except in a mobile home park, except those so used on December 1, 1975. Any mobile home removed from property not a mobile home park shall not be replaced by a mobile home, unless permitted by this chapter at such place.

D. Special Permits for Location of Mobile Homes Outside Mobile Home Parks. No mobile home shall be placed or parked outside of mobile home parks, except by a permit granted by the Council as set forth in this section. The Council, upon application of a mobile home owner of a mobile home located outside a mobile home park as permitted under this section, may issue a special permit for the location of a mobile home outside mobile home parks. Not more than one mobile home shall be permitted to be located on the same premises outside mobile home parks. The Council shall issue such special permits when it appears that location within local mobile home parks is impracticable and

public health, safety, and welfare interests will not be seriously affected by granting the permit. Special permits shall not be granted for periods in excess of one year, but upon expiration of the special permit reapplication may be made.

**165.24 C-1 CENTRAL BUSINESS DISTRICT.**

1. Lot, Yard and Height Requirements.
  - A. Minimum Lot Area  
 Motels and Auto Courts..... 1/2 acre  
 Other Uses..... none
  - B. Minimum Lot Width  
 Motels and Auto Courts..... 100 feet  
 Other Uses..... none
  - C. Minimum Yard Requirements:  
 Motels and Auto Courts:  
 Front..... 30 feet  
 Each Side ..... 15 feet  
 Rear..... 20 feet  
  
 Other Uses: None, except where adjacent to an R District, rear and side yards of 10 feet are required.
  - D. Maximum Height Requirements:  
 All uses ..... 3 stories or 35 feet
2. Permitted Signs. Outdoor advertising signs and billboards are permitted, provided that no such sign or billboard is permitted where the majority (more than 50%) of the buildings on the block are exclusively residential on both sides of the street, or which sign or billboard faces the front or side lot line of any lots in an R district used for residential purpose or which faces any public parkway, square, or entrance to any public park, school, church, or similar institution within three hundred (300) feet thereof. No sign shall be located in such a manner or place as will constitute a hazard to endanger or impair the safety of pedestrians or motorists. No flashing signs are allowed on the sides of lots adjacent to a residential district.
3. Permitted Principal Uses and Structures.
  - A. Clothing and apparel services, including laundry pickup, automatic laundry, dressmaking, millinery, tailor shop and shoe repair shop;

- B. Food services including grocery, meat market, bakery, restaurant, delicatessen and fruit market, ice-o-mats and similar self-serve units, but not including any business of a drive-in nature;
  - C. Personal services, including barbershop and beauty salon, medical and dental clinics, music studios, banks and saving and loan association;
  - D. Retail services, including drug store, hardware, gift shop, and dry goods and notions store.
  - E. Retail home centers and building materials.
4. Permitted Accessory Uses and Structures. The following accessory uses and structures are permitted:
- A. Accessory uses and structures customarily incidental to any permitted principal use;
  - B. Parking lots and storage garages.
5. Special Exception Uses and Structures. Subject to approval by the Board of Adjustment, the following are permitted provided there is no offensive emission of noise, odor, dust or vibration:
- A. Dairy product manufacturing;
  - B. Commercial bakeries;
  - C. Cleaning, drying, laundry works;
  - D. Food and fiber products manufacturing;
  - E. Sign painting shop;
  - F. Truck terminals, plus related services;
  - G. Wood products manufacturing;
  - H. Movie theater, excluding drive-in theater;
  - I. Tavern;
  - J. Single and multi-family dwellings provided that one off-street on premise parking space must be provided for each dwelling unit;
  - K. Any use permitted in the C-2 District Zone Regulations shall apply.

**165.25 C-2 COMMERCIAL DISTRICT.**

1. Lot, Yard and Height Requirements.
  - A. Minimum Lot Area ..... None
  - B. Minimum Lot Width ..... None
  - C. Minimum Yard Requirements:
    - Front ..... 40 feet
    - Each Side: None, except while abutting an A or R District ..... 25 feet
    - Rear: None, except where abutting an A or R District ..... 40 feet
    - Corner Lot, Side Yard ..... 12 feet
  - D. Maximum Height Requirements:
    - All uses ..... 35 feet
2. Permitted Signs. Billboards pertaining only to a use conducted or product sold on the premises are permitted.
3. Permitted Principal Uses — Off-Street Parking.

Permitted Principal Uses and Structures	Minimum Required Off-street Parking
Drive-in eating establishments	
Automobile, trailer or farm implement establishment for sales and repair	50% of floor area
Gasoline service stations, truck terminals, including servicing	50% of floor area
Motels and auto courts	1 space/room plus 1 space/employee
Restaurants and cafes	200% of floor area
Taverns	200% of floor area
Ballrooms and dance halls	200% of floor area
Bowling alleys	5 spaces/alley
Skating rinks, golf driving ranges, other open-air recreation	
Principal uses permitted in the C-1 District	
Funeral home and mortuary	1 space/4 seats in chapel
Churches, public and private schools and other educational institutions	1 space/5 seats in auditorium, or if no auditorium, 1 space/office and classroom
Hospitals and clinics	1 space/4 beds
Non-commercial parks, playgrounds, community buildings owned or operated by public or semi-public agencies	None  <i>(Ord. 646 - Mar. 98 Supp.)</i>



4. Permitted Accessory Uses and Structures. The following accessory uses and structures are permitted:

- A. Accessory uses and structures customarily incidental to any permitted principal use;
- B. Temporary buildings used in construction work, provided that such buildings are removed promptly on completion of such work.

Such uses shall conform to the regulations of Section 165.13 of this chapter.

5. Special Exception Uses and Structures. The following uses and structures are permitted, subject to positive recommendation from the Board of Adjustment.

- A. Well-drilling services, including the storage and use of equipment for wells not to exceed ten (10) inches in inside diameter. The request for special use shall be accompanied by a site plan showing the location of all buildings and all outside storage areas. The outside storage areas shall be enclosed, with the type of enclosure, either manmade or landscaped, to be indicated on said site plan.

**165.26 I-1 INDUSTRIAL DISTRICT.**

- 1. Lot, Yard and Height Requirements.
  - A. Minimum Lot Area.....None
  - B. Minimum Lot Width.....None
  - C. Minimum Yard Requirements:
    - Front .....40 feet
    - Side.....None
    - Rear .....15 feet
    - Rear, double-frontage lot.....40 feet
    - Rear and Each Side: Where adjacent to an R District .....100 feet
  - D. Maximum Height Requirements: Not in excess of the distance measured to the nearest right-of-way.
- 2. Permitted Signs. Billboards pertaining only to a use conducted or product sold on the premises are permitted.

3. Permitted Principal Uses — Off-Street Parking.

Permitted Principal Uses and Structures	Minimum Required Off-street Parking
Any use permitted in the C-2 District	
Grain elevators	
Light foundry casting	
Iron works (ornamental)	
Paper products manufacturing AND Plastic products manufacturing (previously prepared material)	1 space/3 employees of maximum working shift
Contractor’s storage yard	
Well-drilling service	
Seed corn processing	
Lumber yards	

*(Ord. 700 – Jun. 03 Supp.)*

4. Permitted Accessory Uses and Structures. The following accessory uses and structures are permitted:

- A. Any accessory uses customarily incidental to a permitted principal use;
- B. Temporary buildings used in conjunction with construction, provided such buildings are promptly removed upon completion of the work;
- C. Parking lots and storage garages.

Such uses shall conform to the regulations of Section 165.13 of this chapter.

5. Special Exception Uses and Structures. Subject to the provisions of Section 165.33 and other provisions contained herein, the Board of Adjustment may permit other uses similar to the principal uses provided they are not obnoxious or offensive for reasons of emission of odor, dust, smoke, gas, noise, vibrations, refuse matter, or water-carried waste.

**165.27 I-2 INDUSTRIAL DISTRICT.**

- 1. Lot, Yard and Height Requirements.
  - A. Minimum Lot Area ..... None
  - B. Minimum Lot Width ..... None
  - C. Minimum Yard Requirements:
    - Front ..... 40 feet
    - Side ..... None
    - Rear ..... 15 feet

Rear, double-frontage lot.....40 feet  
 Rear and Each Side: Where adjacent  
 to an R District ..... 100 feet

- D. Maximum Height Requirements: Not in excess of the distance measured to the nearest right-of-way.
- 2. Permitted Signs. Billboards pertaining only to a use conducted or product sold on the premises are permitted.
- 3. Permitted Principal Uses — Off-Street Parking.

Permitted Principal Uses and Structures	Minimum Required Off-street Parking
Any use permitted in I-1 District	
Machine shop	
Heavy foundry casting	
Plastic products manufacturing	1 space/3 employees of minimum working shift
Forging plant	
Wood-working mill	
Die casting	
Feed manufacturing	

The best practical means known for the disposal of refuse or water-carried waste, the abatement of obnoxious or offensive odor, dust, smoke, gas, or noise shall be employed.

- 4. Permitted Accessory Uses and Structures. The following accessory uses and structures are permitted:
  - A. Any accessory uses customarily incidental to the permitted principal use;
  - B. Temporary buildings used in conjunction with construction, provided such buildings are promptly removed upon completion of work;
  - C. Parking lots and storage garages.

Such uses shall conform to the regulations of Section 165.13.

- 5. Special Exception Uses and Structures. None.

**165.28 I-3 INDUSTRIAL DISTRICT.**

- 1. Lot, Yard and Height Requirements.
  - A. Minimum Lot Area.....None

- B. Minimum Lot Width..... None
  - C. Minimum Yard Requirements:
    - Front..... 40 feet
    - Side ..... None
    - Rear ..... 15 feet
    - Rear, double-frontage lot..... 40 feet
    - Rear and Each Side: Where adjacent to an R District..... 100 feet
  - D. Maximum Height Requirements: Not in excess of the distance measured to the nearest right-of-way.
2. Permitted Signs. Billboards pertaining only to a use conducted or product sold on the premises are permitted.
  3. Permitted Principal Uses — Off-Street Parking. Providing positive recommendation is received from the Commission and approved by the Council, the following uses are permitted:

Permitted Principal Uses and Structures	Minimum Required Off-street Parking
Slaughterhouses, stockyards	
Acid manufacture and wholesale storage	
Cement, lime, gypsum or plaster manufacturing	
Chemical or explosive manufacturing	
Distillation of bones, fat rendering	1 space/3 employees of maximum working shift
Fertilizer and rubber goods manufacturing	
Petroleum products, refining or wholesale storage	
Quarrying, gas manufacturing	
Principal uses permitted in the I-2 District	
Grain processing	

4. Permitted Accessory Uses and Structures. The following accessory uses and structures are permitted:
  - A. Accessory buildings and uses customarily incidental to any of the uses listed in subsection 3 of this section;
  - B. Dwelling, school, hospital clinics or other institution of human care clearly incidental to the permitted principal use;
  - C. Parking lots and storage garages.

Such uses shall conform to the regulations of Section 165.13 of this chapter.

5. Special Exception Uses and Structures. Subject to approval by the Board of Adjustment the following uses and structures are permitted:

A. Junkyards, provided that such activity is completely enclosed within a building, wall, or fence at least six (6) feet high obscuring the activity from any place off the premises. This shall also require approval by the Commission and Council.

B. All uses, permitted principal or otherwise, shall utilize the best practical means known for disposal of refuse or water-carried waste, the abatement of obnoxious or offensive odor, dust, smoke, gas, or noise.

**165.29 PUBLIC ACCESS DRIVES.** Where a lot does not abut on a public or private alley or easement of access, there shall be provided an access drive not less than eight (8) feet in width in the case of a dwelling, and not less than sixteen (16) feet in width in all cases leading to the loading or unloading spaces and parking or storage areas required hereunder.

**165.30 PUBLIC AND PRIVATE PARKING LOTS.** Every parcel of land hereafter used as a public or private parking area, including a commercial parking lot, shall be developed and maintained in accordance with the following requirements:

1. No part of any parking space shall be closer than five (5) feet to any established street right-of-way, or alley line.
2. Any off-street parking area, including any commercial parking lot, for more than two vehicles shall be surfaced with a material approved by the City Engineer, so as to provide a durable surface; shall be graded and drained so as to dispose of all surface water accumulation within the area; and shall be so arranged and marked as to provide for orderly and safe loading or unloading and parking and storage of self-propelled vehicles.
3. Any lighting used to illuminate any off-street parking area, including any commercial parking lot, shall be so arranged as to reflect the light away from adjoining premises in any residential district.
4. Storm drainage improvements shall conform to Section 166.07 (2) (G).

**165.31 STORAGE AND PARKING OF VEHICLES IN R-1 AND R-2 DISTRICTS.**

1. For the purposes of this section, the following terms are defined:

A. “Storage of motor vehicles” in the R-1 and R-2 Residential Zone means the placing of motor vehicles, whether licensed or not, in an open parking space.

B. “Open parking space” means an area in a rear yard of not more than two hundred fifty (250) square feet in the open, per vehicle, exclusive of a hard-surfaced driveway not exceeding thirty (30) feet in length and twenty (20) feet in width.

C. “Owner” means the record holder of legal title.

2. Storage of Motor Vehicles Prohibited. It is unlawful for any property owner to place in storage within an R-1 and R-2 Residential District any motor vehicle (except those permitted by Section 165.19) within an open parking space without first obtaining written permission from the Police Chief or designated authority.

3. Permitted Open Parking Spaces. There shall be permitted a maximum of two (2) open parking spaces per residential lot, or combined lots if dwelling is constructed on more than one lot, in both the R-1 and R-2 zones. For multi-family dwellings in excess of two units, there may be two open parking spaces per unit.

4. Storage and Parking of Equipment Prohibited. No equipment shall be parked or stored in an open parking space in an R-1 or R-2 Zone without first obtaining written permission from the Police Chief or designated authority. For purposes of this section, “equipment” is defined as any device which may be driven, transported or pulled upon a highway or street other than a passenger vehicle, van or pickup truck.

**165.32 EXCEPTIONS AND INTERPRETATIONS.** The regulations specified in this chapter are subject to the following exceptions and interpretations.

1. Use of Existing Lots of Records. In any district where dwellings are permitted, a single-family dwelling may be located on any lot or plot of official records as of the effective date of this chapter irrespective of its area or width; provided, however:

A. Each side yard width of any such lot shall not be less than ten percent (10%) of the width of the lot, and in no case less than five (5) feet.

B. The depth of the rear yard of any such lot shall be not less than twenty percent (20%) of the depth of the lot, but in no case less than twenty-five (25) feet.

2. Structures Permitted Above Height Limit. The building height limitations of this section shall be modified as follows:

A. Chimneys, fire towers, monuments, water towers, ornamental towers and spirals, radio or television towers, or necessary mechanical appurtenances may be erected to a height in excess of the height regulations shown for a particular district, provided that a report and recommendation is made by the Commission, and final approval for such exception is granted by the Council.

B. Public, semipublic, or public service buildings, hospitals, or schools, when permitted in a district, may be erected to a height in excess of the height allowed in the district, provided that the building is set back from each property line at least one foot for each foot of additional building height above the height limit in the district.

3. Area Requirements. In any district where public or central water supply or public sanitary sewer is more than 250 feet from any property line, the lot area requirements are one acre, exclusive of rights-of-way, and lot width at the building line shall be a minimum of 100 feet.

4. Double Frontage Lots. Buildings on through lots and extending through from street to street shall provide the required front yard on both streets.

5. Exceptions to Prohibited Uses.

A. The Board of Adjustment may, by special permit after public hearing, authorize the location of any of the following buildings or uses in any district from which they are prohibited by this section:

- (1) Any public building erected and used by any department of the City, County, State, or Federal government;
- (2) Airport or landing field;
- (3) Community building or recreation field;
- (4) Country clubs or golf courses;
- (5) Public and private cemeteries.

B. Before issuance of any special permit for any of the above buildings or uses, the Board shall refer the proposed application to

the Commission, which shall make a report within thirty (30) days regarding the effect of such proposed building or use upon the character of the neighborhood, traffic conditions, public utility facilities, and other matters pertaining to the general welfare. No action shall be taken upon any application for a proposed building or use above referred to until and unless the report of the Commission has been filed, provided, however, that if no report is received within thirty (30) days, it shall be assumed that the approval of the application has been given by the Commission.

6. Utilities and Railroads. Existing utilities and railroads may continue to be operated and maintained in residential and commercial districts, but no new utility or railroad structure other than the usual poles, wires, and underground utilities, shall be established in such districts, except when so authorized by the Board of Adjustment.

7. Fences. In any residential district, no fence or continuous planting over three (3) feet in height shall be maintained in any front yard; no fence or continuous planting over four (4) feet in height shall be maintained in any side yard; and no fence or continuous planting over eight (8) feet in height shall be maintained in a rear yard. In addition, in any residential district, no fence or continuous planting shall be maintained within thirty (30) feet of any corner lot street line intersection which would impair the sight distance of the operator of a motor vehicle. No fence shall be constructed or reconstructed without a building permit issued pursuant to Section 165.37 of this chapter. No fences are permitted in the public street right-of-way.

8. Front Setback Exception. The front setback requirement (minimum yard requirement) for the following property is hereby changed from forty (40) feet to twenty (20) feet:

Lot One (1) of Lot One (1) of Lot One (1) of Lot One (1) of Lot One (1) of Lot One (1) of Lot One (1) of Lot One (1) of Lot One (1) of Lot One (1) of Lot One (1) of the Southeast Quarter (SE<sup>1</sup>/<sub>4</sub>) of the Southeast Quarter (SE<sup>1</sup>/<sub>4</sub>) of Section 31, Township 89 North, Range 2 West of the 5th P.M.

and

Lot One (1) of Lot One (1) of Lot One (1) of Lot One (1) of Lot One (1) of Lot One (1) of Lot One (1) of Lot Two (2) of the Southeast Quarter (SE<sup>1</sup>/<sub>4</sub>) of the Southeast Quarter (SE<sup>1</sup>/<sub>4</sub>) of Section 31, Township 89 North, Range 2 West of the 5th P.M.



**165.33 BOARD OF ADJUSTMENT.**

1. Board Created. A Board of Adjustment is established, which shall consist of five (5) members appointed by the Council and two (2) members appointed as provided in Section 414.23 of the Code of Iowa. The terms of office of the members of the Board of Adjustment shall be as provided by statute.
2. Meetings. The meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as the Board may determine. Such Chairperson or, in his/her absence, the acting Chairperson may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall adopt its own rules of procedure not in conflict with this Code of Ordinances or with the Code of Iowa, and may select or appoint such officers as it deems necessary. The Board shall keep minutes of its proceedings showing the vote of each member on each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Clerk, and shall be a public record. The presence of five (5) members shall be necessary to constitute a quorum.
3. Appeals. Appeals to the Board of Adjustment may be taken by any person aggrieved, or by any officer, department, or board of the City affected by any decision of the Council. Such appeal shall be taken within ten (10) days by filing with the Council, and with the Board of Adjustment, a notice of appeal specifying the ground thereof. The City Administrator shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from is taken.
4. Stay of Proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the Council certifies to the Board, after notice of appeal has been filed, that by reason of the facts stated in the certificate a stay would, in their opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board, or by a court of record on application on notice to the Council, and on due cause shown.
5. Notice of Hearing; Fee. The Board shall fix a reasonable time for hearing on the appeal or application, give public notice thereof, as well as due notice to the parties in interest, and decide the same in reasonable

time. Before the appeal or application is filed with the Board of Adjustment, the appellant shall pay a fee of seventy-five dollars (\$75.00) to the City for costs due to notifications and publications.

*(Ord. 704 – Apr. 04 Supp.)*

6. Jurisdiction. The Board of Adjustment shall have the powers set out in this section, and it shall be its duty to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Council in the enforcement of this chapter.

7. Exceptions. In hearing and deciding appeals, the Board shall have the power to grant an exception in the following instances:

A. Permit the extension of district where the boundary line of a district divides a lot of record held in a single ownership.

B. Grant a variation in the regulations when a property owner can show that the property was acquired in good faith, and where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property, or where by reason of topographical conditions, or other extraordinary situations, the strict application of the terms of this chapter actually prohibits the use of the property in a manner reasonably similar to that of other property in the district, and where the Board is satisfied under the evidence before it that the granting of such variation will alleviate a clearly demonstrable hardship, provided, however, that all variations granted under this clause shall be in harmony with the intended spirit and purpose of this chapter.

C. Permit the erection and use of a building, or the use of premises for a railroad, or public utility purposes.

D. Permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God, or the public enemy to the extent of more than sixty-five percent (65%) of its fair market value, where the Board finds some compelling necessity requiring a continuance. The primary purposes of continuing the nonconforming use is not to continue a monopoly.

E. Reduce the parking and loading requirements in any of the districts whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience;

F. Determine the district in which a commercial venture or industry should be located where such commercial venture or industry is not specifically mentioned in this chapter. Such classification shall be based upon comparison with other similar uses specifically mentioned, and on an evaluation of its operation and effect upon uses within the surrounding district, or districts;

8. Exceptions in Floodway or Floodway Fringe Districts. A variance from strict compliance of floodway or Floodway Fringe Overlay District regulations may be granted only if the structure is to be erected on a lot of one-half acre or less in size and such lot is contiguous to and surrounded by lots with existing structures constructed below the regulatory flood protection elevation, or the structure is listed on the National Register of Historic Places or the State Inventory of Historic Places to be restored or reconstructed. Variances from strict compliance of the overlay district regulations shall not be issued except upon:

- A. A showing of good and sufficient cause,
- B. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
- C. A determination that the variance issuance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local or State laws or ordinances.

Variances from strict compliance of the overlay districts regulations may only be issued upon a determination that the applicant requesting a variance shall meet the minimum necessary standards of the regulations to afford relief. The Board of Adjustment will notify the applicant that the issuance of a variance to locate a structure at an elevation below the one hundred year flood level will result in increased actuarial rates for flood insurance coverage.

9. Standards for Decisions of Board. In considering all appeals, and all proposed exceptions or variations to this chapter, the Board shall, before making any exceptions or variations, first determine that it will not impair the safety and welfare of the occupants of adjoining and surrounding property, that health has been adequately safe-guarded, that it will not impair an adequate supply of light and air to adjacent property, shall not increase congestion in the public streets, and shall not diminish or impair established property values in surrounding areas. The concurring vote of five members of the Board shall be necessary to

reverse any order or decision of the Council, or to decide in favor of the applicant on any matter upon which it is authorized by this section to render a decision.

10. Limitations on Board. Nothing contained in this section shall be construed to give or grant to the Board of Adjustment the power of authority to alter or change this chapter or the zoning map, such power and authority being reserved to the Council in the manner provided in Section 165.39 of this chapter.

11. Notice. The Board shall make no finding except in a specific case, and after a public hearing conducted by the Board. A notice of the time and place of such public hearing shall be published in a Dubuque County publication of general circulation in the City at least seven (7) days previous to the hearing. Such notice shall contain the address or location of the property for which variation, or other ruling by the Board, is sought, as well as a brief description of the nature of the appeal.

12. Records. The action of the Board shall not become effective until after the resolution of the Board, setting forth the full reason for its decision, and the vote of each member participating therein, has been recorded in the minutes. Such resolution, immediately following the Board's final decision, shall be filed in the office of the Board, and it shall be open to public inspection. Every variation and exception granted or denied by the Board shall be supported by a written testimony, or evidence submitted in connection therewith.

13. Review by Council. The Council may review variances and exceptions granted by the Board of Adjustment prior to the effective date of the variance or exception. No variance or exception shall become effective prior to the next regularly scheduled Council meeting after the granting of the variance or exception. The Council may remand a decision of the Board of Adjustment to grant a variance or exception to the Board of Adjustment for further study. The effective date of the variance or exception is delayed for thirty (30) days from the date of the remand.

14. Court Appeal. Any taxpayer, or any officer, department, or board of the City, or any person or persons jointly or separately aggrieved by any decision of the Board, may present to a court of record a position to be verified, setting forth that such decision is illegal, in whole, or part, specifying the ground of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board. Upon the presentation of such petition the court may

direct the Board to review such decision of the Board, and shall prescribe therein the time within which a return thereto shall be made, which shall be not less than ten (10) days, and be extended by the court.

15. Court Writ. The allowance of the writ shall not stay proceedings on the decisions appealed from, but the court may, on application, upon notice to the Board, and on due cause shown, grant a restraining order. If upon the hearing it shall appear to the court that testimony is necessary for proper disposition of the matter, it may take such evidence, or appoint a referee to take such evidence, as it may direct, and report the same to the court with the findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

16. Court Costs. The court may reverse or affirm, wholly or in part, or may modify the decision brought up for review. Costs shall not be allowed against the Board, unless it shall appear to the court that the Board acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

**165.34 APPROVAL AND ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF COMPLIANCE.** Building permits must be approved before the beginning of construction, and a certificate of compliance shall be issued within ten (10) days after the lawful erection or alteration of the building is completed. A record of all certificates shall be kept on file in the office of the administrative officer, and copies shall be furnished upon request to any person having a proprietary, or tenancy interest in the building affected.

**165.35 CERTIFICATE OF OCCUPANCY.** No land shall be occupied or used, and no buildings hereafter erected or structurally altered shall be occupied or used, in whole or in part, for any purpose whatsoever, until a certificate of occupancy is issued by the Council, stating the building and use comply with the provisions of this chapter and other building and health ordinances of the City. No change of use shall be made in any building, or part thereof, now or hereafter erected, or structurally altered, unless a certificate of occupancy shall be issued to make a change and unless the changes are in conformity with the provisions of this chapter.

**165.36 NONCONFORMING USES; CERTIFICATES.** Nothing in this chapter shall prevent the continuance of a nonconforming use as herein authorized, unless a discontinuance is necessary for the safety of life or property. Certificates of occupancy shall be given to each nonconforming use indicating its status as a lawful, nonconforming use as of the time when it

legally became a nonconforming use, and requiring that any change in use requires a new permit and certificate of occupancy. A certificate of occupancy for the nonconforming use shall be transmitted by the owner to any succeeding owner of the property in order to confirm its legal existence.

**165.37 APPLICATION FOR BUILDING PERMIT; PROCEDURE.** To obtain a building permit, the applicant shall first file an application therefor in writing on a form furnished for that purpose. Every application shall:

1. Identify and describe the work to be covered by the permit for which application is made;
2. Describe the land on which the proposed work is to be done by lot, block tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or work;
3. Indicate the use or occupancy for which the proposed work is intended;
4. Be accompanied by plans and specifications for proposed construction;
5. Be accompanied by a plat, drawn to scale, showing the actual dimensions of the lot to be built upon, the size, shape and location of the building to be erected, and such other information as may be necessary to provide for the enforcement of this chapter;
6. Be signed by the permittee or authorized agent who may be required to submit evidence to indicate such authority;
7. Within designated flood prone areas, be accompanied by elevations (in relation to mean sea level) of the lowest habitable floor (including basement) or in the case of floodproofed nonresidential structures, the elevation to which it has been floodproofed. Documentation or certification of such elevations will be maintained by the City Administrator;
8. Give such other information as reasonably may be required by the Council such as:
  - A. A typical valley showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be corrupted by the proposed development and higher water information,
  - B. Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location

and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities, photographs showing existing land uses and vegetation upstream and downstream, soil types and other pertinent information,

C. Profile showing the slope of the bottom of the channel or flow line of the stream.

The Council shall review all building permit applications to determine if the site of the proposed development is reasonably safe from flooding and that all necessary permits have been received as required by Federal or State law (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S. Code 1334) and make recommendations for development in all locations which have flood hazards.

**165.38 NOTIFICATION OF COMPLETION.** Any party having obtained a building permit shall notify the Council when the erection or alteration of the building is completed. The certificate of compliance shall then be issued according to Section 165.34 if the building is found to be in compliance with this chapter and any other building requirements of the City.

**165.39 AMENDMENTS.**

1. Initiation. The Council may from time to time, on its own motion or petition, amend, supplement, change, modify or repeal by ordinance the boundaries of districts or regulations, or restrictions established in this chapter. Any proposed amendments, supplement, change, modification or repeal shall be filed with the Clerk. Such proposed amendment, supplement, modification or change shall clearly describe the property and its boundaries and to which district the amendment, supplement, modification or change is desired, with the ownership of the property sworn to under oath by the applicant.

2. Petition. When the proposed amendment, supplement, modification, or change is by petition it shall be duly signed by the owners of fifty percent (50%) of all real estate included within the boundaries of the area petitioned for change and in addition, be duly signed by the owners of fifty percent (50%) of the area of all real estate lying outside of said tract, but within two hundred fifty (250) feet of the boundaries thereof, intervening streets and alleys not to be included in computing such two hundred fifty (250) feet. The Council shall refer the proposed amendment, supplement, change, modification or repeal to the Commission for its recommendations and report.

3. Commission Report. If the Commission makes no report within thirty (30) days, it shall be considered to have made a report approving the proposed amendment, supplement or modification.
4. Hearing. After the recommendations and the report of the Commission have been filed, the Council shall before enacting any proposed amendment, supplement, change, modification or repeal, hold a public hearing in relation thereto, giving at least seven days' notice of the time and place of such hearing, which notice shall first be published in a newspaper having a general circulation in the City.
5. Council Vote. If the Commission recommends against, or if a protest against such proposed amendment, supplement, change, modification or repeal is presented in writing to the Clerk, duly signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending the depth of one lot or not to exceed two hundred (200) feet therefrom, or of those directly opposite thereto, extending the depth of one lot or not to exceed two hundred (200) feet from the street frontage of such opposite lots, such amendment, supplement, change, modifications, or repeal shall not become effective except by the favorable vote of all members of the Council.
6. Renewal after Denial. Whenever a petition for an amendment, supplement, modification or change of the zoning or regulations herein contained, or subsequently established, shall have been denied by the Council, then no new petition covering the same property, or the same property and additional property, shall be filed with or considered by the Council until one year shall have elapsed from the date of the filing of the first petition.
7. Application Fees.
  - A. Rezoning Petition. Before any action shall be taken as provided in this chapter, the party which petitions for a change in the district regulations or district boundaries shall pay an application fee of one hundred and twenty-five dollars (\$125.00) for costs due to printing of notifications, publications and legal fees encountered by the City. Under no circumstance shall said sum, or any part thereof, be refunded for failure of the change to be adopted by the Council.
  - B. Final Subdivision Plat. Before any action shall be taken on a final subdivision plat, the party which submits such plat shall pay an application fee based on the following schedule for costs



due to printing of notifications and legal fees encountered by the City. Under no circumstance shall said sum, or any part thereof, be refunded for failure of the plat to be adopted by the Council.

(1) Plats consisting of public streets or utilities - \$200.00

(2) Plats with no public streets or utilities - \$125.00

*(Ord. 704 – Apr. 04 Supp.)*

#### **165.40 FLOODWAY AND FLOODWAY FRINGE DISTRICTS.**

1. Flood Losses Resulting from Periodic Inundation. The flood hazard areas of the City are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

2. General Causes of These Flood Losses. These flood losses are caused by:

A. The cumulative effect of obstruction in floodways causing increases in flood heights and velocities;

B. The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others which are inadequately elevated or otherwise protected from flood damages.

3. Methods Used to Analyze Flood Hazards. This section uses a reasonable method of analyzing flood hazards which consists of a series of interrelated steps.

A. Selections of a regulatory flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The regulatory flood selected for this section is representative of large floods known to have occurred in this region and which are reasonably characteristic of what can be expected to occur on the particular streams subject to this section. It is in the general order of a flood which could be expected to occur on the average once every one hundred years or has a one percent chance of occurrence in any one year, as delineated on the Flood Insurance Study and Illustrative Material (FIRM) dated June 2, 1995.

- B. Calculation of water surface profiles based upon a hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood;
- C. Computation of the floodway required to convey this flood without increasing flood heights more than one foot at any point;
- D. Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any increase in flood height;
- E. Delineation of the floodway fringe, i.e., that area outside the floodway encroachment lines but which still is subject to inundation by the regulatory flood.

4 Statement of Purpose. It is the purpose of this section to promote the public health, safety and general welfare and to minimize those losses described herein by provisions designed to:

- A. Restrict or prohibit uses which are dangerous to health, safety, or property in times of flood or cause increased flood heights or velocities;
- B. Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;
- C. Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard;
- D. Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the Federal Flood Insurance Program.

5. Warning and Disclaimer of Liability. The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This section does not imply that areas outside floodways and floodway fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damages. This section shall not create liability on the part of the City, or any officer or employee thereof, for any flood damages that may result from reliance on this section or any administrative decision lawfully made thereunder.

6. Definitions.
- A. “Actuarial rates” or “risk premium rates” are those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with 42 U.S.C. 4014 and the accepted actuarial principles. Actuarial rates include provisions for operating costs and allowances.
- B. “Basement” means any area of the building having its floor subgrade (below ground level) on all sides.
- C. “Channel” means a natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water. “Channel flow” is that water which is flowing within the limits of a defined channel.
- D. “Crawl space” means any open space located within the foundation of a structure and under the lowest habitable floor of said structure, not to exceed three and one-half feet in height.
- E. “Development” means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.
- F. “Flood” means a temporary rise in a stream’s flow or stage that results in water overlapping its banks and inundating areas adjacent to the channel; an unusual and rapid accumulation of runoff or surface waters from any source.
- G. “Flood elevation determinations” means a determination of the water surface elevations of the one-hundred-year flood; that is, the level of flooding that has a one percent chance of occurrence in any given year.
- H. “Flood Insurance Rate Map (FIRM)” means the official map prepared by the Department of Housing and Urban Development, Federal Insurance Administration for a community delineating where flood insurance may be sold and the risk premium zones applicable to such area.
- I. “Flood Insurance Study (FIS)” means the official report provided by the Federal Insurance Administration. The report contains flood profiles and water surface elevations for various

flood frequencies as well as the boundaries and water surface elevations of the one-hundred-year flood.

J. “Flood plain management” means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plan, flood-control works and flood plain management regulations.

K. “Floodproofing” means any combination of structural and nonstructural additions, changes or adjustments to structures including utility and sanitary facilities, which would preclude the entry of water. Structural components shall have the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.

L. “Flood protection system” means those physical structural works constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a special flood hazard. Such a system typically includes levees or dikes. These specialized modifying works are those constructed in conformance with sound federal engineering standards.

M. “Floodway” means the channel of a river or other watercourse and the adjacent portion of the flood plain that must be reserved in order to discharge the one-hundred-year flood without cumulatively increasing the water surface elevation more than one foot at any point assuming equal conveyance reduction outside the channel from the two sides of the flood plain.

N. “Floodway Fringe” means that area of the flood plain, outside of the floodway, that on the average is likely to be flooded once every one hundred years (i.e., that has a one percent chance of flood occurrence in any one year).

O. “Lowest floor” means the floor of the lowest enclosed area in a building, including a basement except when all the following criteria are met:

- (1) The enclosed area is designed to flood to equalize hydrostatic pressure during floods with walls or openings that satisfy the provisions of subsection (13)(D)(1) of this section, and

(2) The enclosed area is unfinished (not carpeted, drywalled, etc.) and used solely for low damage potential uses such as building access, parking or storage, and

(3) Machinery and service facilities (e.g., hot water heater, furnace, electrical service) contained in the enclosed area are located at least one (1) foot above the one-hundred-year flood level.

(4) The floor of the enclosed area is not subgrade on all sides.

In cases where the lowest enclosed area satisfies criteria (1), (2), (3), and (4) above, the lowest floor is the floor of the next highest enclosed area that does not satisfy the criteria above.

P. “Factory built home” means any structure, designed for residential use, which is wholly or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation, on building site. For the purpose of this section, factory built homes include mobile homes, manufactured homes and modular homes, and also include park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days.

Q. “Factory built home park” means a parcel or continuous parcels of land divided into two or more factory built home lots for rent or sale.

R. “New construction” means those structures where new construction or substantial improvement of which is begun after December 31, 1974, or the effective date of the FIRM, whichever is later.

S. “One-hundred-year flood” means the base flood having a one percent chance of annual occurrence.

T. “Overlay District” means a district which acts in conjunction with the underlying zoning district or districts.

U. “Regulatory flood elevation” means elevation indicated on the FIRM as the elevation of the one-hundred-year flood.

V. “Regulatory flood protection elevation” means an elevation one foot higher than the water surface elevation of the regulatory flood.

W. “Storm cellar” means a space below grade used to accommodate occupants of a structure and emergency supplies as a means of temporary shelter against severe tornado or similar wind storm activity.

X. “Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

Y. “Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage” regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions or (2) any alteration will not preclude the structure’s continued designation as a “historic structure.” Any addition which increases the original floor area of a building by twenty-five percent (25%) or more. All additions constructed after November 19, 1980, shall be added to any proposed addition in determining whether the total increase in original floor space would exceed twenty-five percent (25%).

Z. “Violation” means a failure of a structure or other development to be fully compliant with the City’s flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this section is presumed to be in violation until such time as that documentation is provided.

7. Overlay Districts; Generally. In addition to the nine (9) classes of districts, the mapped flood plain areas within the jurisdiction of this section are divided into the two following districts:

A. A Floodway Overlay District (FW) and a Floodway Fringe Overlay District (FF) identified in the Flood Insurance Study [flood boundary and floodway map(s)]. The boundaries of these

districts shall be shown on the official zoning map. Within these districts all uses not meeting the standards for the Floodway Overlay District and the Floodway Fringe Overlay District and those standards of the underlying zoning district shall be prohibited. These zones shall be consistent with the numbered and unnumbered "A" zones as identified on the official FIRM and identified in the Flood Insurance Study provided by the Federal Insurance Administration.

8. Overlay Districts; Boundaries. The boundaries of the Floodway and Floodway Fringe Overlay Districts shall be determined by scaling distances on the official zoning map (zone plan). Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the enforcement official shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Adjustment will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his or her case to the Board and to submit technical evidence, if said person so desires.

9. Permitted Uses; Floodway Overlay District. The following uses shall be permitted within the Floodway District to the extent they are not prohibited by any other ordinance (or underlying zoning district) and provided they do not include placement of structures, factory-built homes, fill or other obstruction, the storage of materials or equipment, excavation, or alteration of a watercourse.

A. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.

B. Industrial/commercial uses such as loading areas, parking areas, airport landing strips.

C. Private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.

- D. Residential uses such as lawns, gardens, parking areas and play areas.
  - E. Such other open-space uses similar in nature to the above uses.
10. Conditional Uses; Floodway Overlay District. The following uses which involve structures (temporary or permanent), fill, storage of materials or equipment may be permitted only upon issuance of a Conditional Use Permit by the Board of Adjustment as provided for in subsection 16 of this section. Such uses must also meet the applicable provisions of the Floodway District Performance Standards.
- A. Uses or structures accessory to open-space uses.
  - B. Circuses, carnivals, and similar transient amusement enterprises.
  - C. Drive-in theaters, new and used car lots, roadside stands, signs, and billboards.
  - D. Extraction of sands, gravel, and other materials.
  - E. Marinas, boat rentals, docks, piers, wharves.
  - F. Utility transmission lines, underground pipelines.
  - G. Other uses similar in nature to uses described in subsection 9 or this subsection 10 which are consistent with the provisions of subsection 11 and the general spirit and purpose of this section.
11. Performance Standards; Floodway Overlay District. All Floodway District uses allowed as a Permitted or Conditional Use shall meet the following standards:
- A. No use shall be permitted in the Floodway District that would result in any increase in the 100 year flood level. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
  - B. All uses within the Floodway District shall:
    - (1) Be consistent with the need to minimize flood damage.
    - (2) Use construction methods and practices that will minimize flood damage.



- (3) Use construction materials and utility equipment that are resistant to flood damage.
  - C. No use shall affect the capacity or conveyance of the channel or floodway or any tributary to the main stream, drainage ditch, or any other drainage facility or system.
  - D. Structures, buildings and sanitary and utility systems, if permitted, shall meet the applicable performance standards of the Floodway Fringe District and shall be constructed or aligned to present the minimum possible resistance to flood flows.
  - E. Buildings, if permitted, shall have a low flood damage potential and shall not be for human habitation.
12. Permitted Uses; Floodway Fringe Overlay District. Any use permitted in subsections 9 and 10 and in other zoning districts shall be permitted in the Floodway Fringe Overlay District. No uses shall be permitted in the district unless the standards of subsection 13 are met.
13. Performance Standards; Floodway Fringe Overlay District. All uses must be consistent with the need to minimize flood damage and shall meet the following applicable performance standards.
- A. All structures shall (i) be adequately anchored to prevent flotation, collapse or lateral movement of the structure, (ii) be constructed with materials and utility equipment resistant to flood damage, and (iii) be constructed by methods and practices that minimize flood damage.
  - B. Residential Buildings — All new or substantially improved residential structures shall have the lowest floor, including basements, elevated a minimum of one foot above the 100-year flood level. Construction shall be upon compacted fill which shall, at all points, be no lower than one foot above the 100-year flood level and extend at such elevation at least 18 feet beyond the limits of any structure erected thereon. Alternate methods of elevating (such as piers) may be allowed, subject to favorable consideration by the Iowa Department of Natural Resources and the Board of Adjustment and issuance of a Conditional Use Permit, where existing topography, street grades, or other factors preclude elevating by fill. In such cases, the methods used must be adequate to support the structure as well as withstanding the various forces and hazards associated with flooding.

C. Nonresidential Buildings — all new and substantially improved nonresidential buildings shall have the first floor (including basement) elevated a minimum of one foot above the 100-year flood level, or together with attendant utility and sanitary systems, be floodproofed to such a level. When floodproofing is utilized, a professional engineer registered in the State of Iowa shall certify that the floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the 100-year flood; and that the structure, below the 100-year flood level, is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to National Geodetic Vertical Datum) to which any structures are floodproofed shall be maintained by the Council.

D. All new and substantially improved structures:

(1) Fully enclosed areas below the “lowest floor” (not including basements) that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:

(a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided,

(b) The bottom of all openings shall be no higher than one foot above grade,

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(2) New and substantially improved structures must be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(3) New and substantially improved structures must be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

E. Factory-built homes — Factory-built homes including those placed in existing factory-built home parks or subdivision shall be anchored to resist flotation, collapse, or lateral movement; and shall be elevated on a permanent foundation such that the lowest floor of the structure is a minimum of one (1) foot above the 100-year flood level.

F. Utility and Sanitary Systems:

(1) All new and replacement sanitary sewage systems shall be designed to minimize and eliminate infiltration of flood waters into the system as well as the discharge of effluent into flood waters. Wastewater treatment facilities shall be provided with a level of flood protection equal to or greater than one foot above the 100-year flood elevation.

(2) On-site disposal systems shall be located or designed to avoid impairment to the system or contamination from the system during flooding.

(3) New or replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system. Water supply treatment facilities shall be provided with a level of protection equal to or greater than one foot above the 100-year flood elevation.

(4) Utilities such as gas or electrical systems shall be located and constructed to minimize or eliminate flood damage to the system and the risk associated with such flood damaged or impaired systems.

G. Storage of materials and equipment that are flammable, explosive or injurious to human, animal or plant life is prohibited unless elevated a minimum of one foot above the 100-year flood level. Other material and equipment must either be similarly elevated or (i) not be subject to major flood damage and be anchored to prevent movement due to flood waters or (ii) be

readily removable from the area within the time available after flood warning.

H. Flood control structural works such as levees, floodwalls, etc., shall provide, at a minimum, protection from a 100-year flood with a minimum of 3 foot of design freeboard and shall provide for adequate interior drainage. In addition, structural flood control works shall be approved by the Department of Natural Resources.

I. No use shall affect the capacity or conveyance of the channel or floodway of any tributary to the main stream, drainage ditch, or other drainage facility or system.

J. Subdivisions (including factory-built home parks and subdivisions) shall be consistent with the need to minimize flood damages and shall have adequate drainage provided to reduce exposure to flood damage. Development associated with subdivision proposals shall meet the applicable performance standards. Subdivision proposals intended for residential development shall provide all lots with a means of vehicular access that will remain dry during occurrence of the 100-year flood.

K. The exemption of detached garages, utility sheds, no larger than 24' x 24' and similar sized structures from the 100-year flood elevation requirements may result in increased premium rates for insurance coverage of the structure and contents, however, said sheds and similar accessory type structures are exempt from the 100-year flood elevation requirements when:

- (1) The structure shall not be used for human habitation.
- (2) The structure shall be designed to have low flood damage potential.
- (3) The structure shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters.
- (4) Structures shall be firmly anchored to prevent flotation which may result in damage to other structures.
- (5) The structure's service facilities, such as electrical and heating equipment, if any, shall be elevated or

floodproofed to at least one foot above the 100-year flood level.

(6) For garages (not sheds) a conditional permit has been granted by the Board of Adjustment.

14. Flood Proofing Certification. Where a nonresidential structure is intended to be made water-tight below the base flood level, a registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section, and a record of such certificates which includes the specific elevation to which such structures are flood proofed shall be maintained with the Council.

15. Administration.

A. The Council shall:

(1) Review all flood plain development permit applications to insure that the provisions of this section will be satisfied.

(2) Review all flood plain development permit applications to insure that all necessary permits have been obtained from Federal, State or local governmental agencies.

(3) Record and maintain a record of (i) the elevation (in relation to National Geodetic Vertical Datum) of the lowest floor of all new or substantially improved buildings or (ii) the elevation to which new or substantially improved structures have been floodproofed.

(4) Notify adjacent communities and/or counties and the Department of Natural Resources prior to any proposed alteration or relocation of a watercourse and submit evidence of such notification to the Federal Insurance Administrator.

(5) Keep a record of all permits, appeals, variances and such other transactions and correspondence pertaining to the administration of this section.

(6) Submit to the Federal Insurance Administrator an annual report concerning the community's participation,

utilizing the annual report form supplied by the Federal Insurance Administrator.

(7) Notify the Federal Insurance Administration of any annexations or modifications to the community's boundaries.

(8) Review subdivision proposals to insure such proposals are consistent with the purpose of this section.

B. Permit Required. A Flood Plain Development Permit issued by the Council shall be secured prior to initiation of any flood plain development (any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, filling, grading, paving, excavation or drilling operations) including the placement of factory-built homes.

C. Application for Permit. Application for a Flood Plain Development Permit shall be made on forms supplied by the City and shall include the following information:

(1) Description of the work to be covered by the permit for which application is to be made.

(2) Description of the land on which the proposed work is to be done (i.e., lot, block, tract, street address or similar description) that will readily identify and locate the work to be done.

(3) Identification of the use or occupancy for which the proposed work is intended.

(4) Elevation of the 100-year flood.

(5) Elevation (in relation to National Geodetic Vertical Datum) of the lowest floor (including basement) of buildings or of the level to which a building is to be floodproofed.

(6) For buildings being improved or rebuilt, the estimated cost of improvements and market value of the building prior to the improvements.

(7) Such other information as the Council deems reasonably necessary for the purpose of this section.

D. Action for Permit Application. The Council shall, within a reasonable time, make a determination as to whether the proposed flood plain development meets the applicable provisions and standards of this section and shall approve or disapprove the application. For disapprovals, the applicant shall be informed, in writing, of the specific reasons therefor. The Council shall not issue permits or conditional uses or variances except as directed by the Board of Adjustment.

E. Construction and Use to be as Provided in Application and Plans. Flood Plain Development Permits issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this chapter. The applicant shall be required to submit certification by a professional engineer or land surveyor, as appropriate, registered in the State of Iowa, that the finished fill, building floor elevations, floodproofing, or other flood protection measures were accomplished in compliance with the provisions of this section, prior to the use or occupancy of any structure.

16. Exceptions and Modifications. No variance shall be granted for any development within the Floodway District. The requirements and standards of the floodway fringe area overlay district shall be complied with, or a variance shall be granted by the Board of Adjustment in accordance with Section 165.33(7) of this chapter provided that:

A. The application for variance has been approved by the Iowa Department of Natural Resources.

B. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.

C. In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this section, the applicant shall be notified in writing over the signature of the Chairperson of the Board of Adjustment that (i) the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of

insurance coverage, and (ii) such construction increases risks to life and property.

#### **165.41 VIOLATIONS, PENALTIES AND ENFORCEMENT.**

1. Violation and Penalties. Any person who violates, disobeys, omits, neglects, or refuses to comply with, or who resists the enforcement of any of the provisions of this chapter, upon conviction, shall be in violation of this Code of Ordinances, and each day that a violation is permitted to exist constitutes a separate offense. The Council is designated and ordered to enforce this chapter.

2. Enforcement. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this chapter, the Council, in addition to other remedies, shall institute any proper action or proceedings in the name of the City, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about said premises.

**165.42 TOWERS AND ANTENNAS.** The provisions of this section are intended to regulate the location of towers and antennas. The Telecommunications Act of 1996 restructured and deregulated many aspects of the country's communications industry. New wireless telecommunication providers entering the market desire to build a network that may require additional wireless telecommunications towers and antennas mounted on existing buildings and other structures. The purpose of these regulations is to encourage the use of the new technologies while protecting the safety and aesthetics of the community.

1. Definitions:

A. "ANSI" means American National Standards Institute.

B. "Antenna array" means a grouping of antennas that encompasses both transmitters and receivers of a single wireless telecommunications provider.

C. "Antenna" means any exterior transmitting, reception or receiving device mounted on a tower, building or freestanding structure and used in transmission or reception of electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunication signals or other communication signals.



- D. “FAA” means Federal Aviation Administration.
  - E. “FCC” means Federal Communication Commission.
  - F. “Support facilities” means support buildings, boxes, cabinets or similar structures containing electrical or mechanical equipment and developed for the reception or transmission of electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunication signals or other communication signals.
  - G. “Tower height” means the distance measured from the grade level at the base of the tower to the highest point on the tower, including any antenna mounted on the tower.
  - H. “Tower” means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term also includes radio and television transmission towers, microwave towers, cellular telephone towers, alternative tower structures, and other similar structures, and the term includes the structure and any support thereto.
2. Applicability. Wireless telecommunication towers and antennas shall be regulated pursuant to this section and not regulated as essential service, public utility or private utility. This section applies to all towers and antennas except the following:
- A. Individually owned residential receive-only antennas.
  - B. Satellite receiving dishes not larger than five (5) feet in diameter (see accessory structures).
  - C. Existing or new public safety structures necessary for broadcast of emergency communications or warning sirens operated by governmental subdivisions.
3. Towers.
- A. No tower or its associated support facilities shall be constructed except in accordance with the following requirements:

ZONING DISTRICTS	USE	SETBACKS	HEIGHT	COLOR	LIGHTING
Agricultural, Residential, Commercial	Conditional Use Permit required	Equal to the height of the tower in all directions	Single users: not more than 75 feet Two or more users: not more than 150 feet	Towers shall be finished in a neutral color to reduce visual impact subject to applicable FAA regulations	No lighting of tower unless required by FAA or other governmental regulations
Industrial	Permitted Use		Height allowed by district in which tower is located		

B. Applicants proposing to construct a tower higher than allowed by paragraph A may apply for a variance to the Zoning Board of Adjustment.

C. Guys and support facilities must comply with setback requirements for the district in which they are located.

D. Towers are prohibited in any public parks or recreation areas.

E. Towers are prohibited within 1,000 feet of any historically designated sites.

F. Application Requirements For Site Plan Review. Site plans for towers shall be considered a major site plan. The following information shall be submitted with the site plan:

- ❖ Site and landscape plans drawn to scale;
- ❖ A report, including a description and visual depiction of the tower, with technical reasons for its design and an explanation of why existing towers or other structures cannot be utilized;
- ❖ Engineered plans for the structure and foundation;
- ❖ The general capacity of the tower, and information necessary to assure that ANSI standards are met;
- ❖ A statement of intent on whether excess space will be leased;
- ❖ Proof of ownership of the proposed site or authorization to utilize it;
- ❖ Copies of any easements necessary; and
- ❖ An analysis of the area containing existing topographical contours.

4. Antennas. Antennas, and their essential support facilities, shall be allowed as a permitted use in any zoning district subject to the following:
  - A. A simple site plan shall be submitted for each antenna or antenna array providing the following information:
    - ❖ Mounting location of proposed antenna or antenna array on host structure.
    - ❖ Description of antenna or antenna array height and width, including a photo (if available) or other visual representation.
    - ❖ Proof of ownership of the proposed site or authorization to utilize it.
  - B. The antenna does not extend more than thirty (30) feet above the highest point of the host structure.
  - C. Antennas may be mounted on nonresidential structures, including, but not limited to existing towers, traffic signals, street lights, water towers, billboards, telephone tower and emergency signal poles, bridges, and parking deck structures.
  - D. Antennas or antenna arrays shall comply with the maximum height requirement of the zoning district in which they are located. Applicants proposing an antenna higher than allowed by the zoning district in which it will be located may apply for a variance to the Zoning Board of Adjustment.
  - E. No antenna or antenna array may, by virtue of this section, occupy, encroach or “overhang” any public right-of-way without the expressed approval of the City.
  - F. Each antenna installation shall require a separate building permit.
5. Support Facilities. Support facilities shall be of a color and construction that is compatible with surrounding development. Support facilities shall not be more than four hundred (400) square feet of gross floor area and more than twelve (12) feet in height. Setbacks for support facilities shall be the same as the setbacks required for other structures in the zoning district in which they are located.
6. Landscaping and Screening Requirements for Towers and Support Facilities.
  - A. Support facilities and tower bases shall be landscaped with a buffer of plant materials that effectively screens from view the tower base and any support facilities from adjacent property or street. The plantings installed shall be of a size and species that can achieve a height of six (6) feet and seventy-five percent (75%) opacity within three (3) growing seasons.

B. In locations where the visual impact of the tower and support facilities would be minimal, the landscape requirement may be reduced or waived by the City.

C. Existing mature tree growth and natural land forms on the property shall be preserved to the maximum extent possible. Natural growth around the property perimeter may be considered a sufficient buffer for a proposed tower and support facilities, as determined by the City.

7. **Application Requirements for Conditional Use Permits.** An applicant proposing a tower that requires a conditional use permit for construction in the zoning district for which it is proposed shall submit the following information, in addition to requirements established in this section:

- ❖ Site and landscape plans drawn to scale;
- ❖ A report, including a description and visual depiction of the tower, with technical reasons for its design and an explanation why existing towers or other structures cannot be utilized, including pre-approved City-owned locations;
- ❖ The general capacity of the tower and information necessary to assure that ANSI standards are met;
- ❖ A statement of intent on whether the excess space will be leased; proof of ownership of the proposed site or authorization to use it; copies of any easements necessary; and
- ❖ An analysis of the area containing existing topographical contours.

8. **Nonconforming Towers or Antennas.** Any existing tower or antenna which becomes nonconforming on the effective date of the ordinance codified in this section<sup>†</sup> or becomes nonconforming at any future date shall be regulated according to the rules set forth in Section 165.36 of this chapter, except as follows:

A. New antennas and support facilities may be mounted on a nonconforming tower.

B. A nonconforming tower within one thousand (1,000) feet of a historic preservation district shall be considered a legal nonconforming tower. As such, the tower may remain until it has been abandoned.

C. Should any lawful nonconforming tower be destroyed by any means to an extent of more than seventy-five percent (75%)

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<sup>†</sup> **EDITOR'S NOTE:** Ordinance No. 669 establishing regulations for the placement of towers and antennas was adopted by the Council on July 7, 1999.

of its replacement cost at the time of destruction, it may only be reconstructed in conformance with the provisions of this section, provided that the destruction was caused by an accident or act of God occurring after the adoption of the ordinance codified herein, and such reconstruction does not increase the degree of nonconformity that existed prior to destruction.

9. Abandonment. The operator of a tower shall provide the City with a copy of the notice to the FCC of intent to cease operations. The operator shall have ninety (90) days from the date of ceasing operations to remove the tower and support facilities. Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of issue date of the notice to remove the tower or antenna. A maximum of two (2) twelve-month extensions may be granted by the City Administrator if the tower operator is actively seeking tenants for the subject tower. If the owner of a tower fails, after notice, to remove the tower, the City shall begin the civil citation process.

<b>EDITOR'S NOTE</b>			
The following ordinances have been adopted amending the Official Zoning Map described in Section 165.06 of this chapter and have not been included as a part of this Code of Ordinances but have been specifically saved from repeal and are in full force and effect.			
Ordinance No.	Date Adopted	Ordinance No.	Date Adopted
538	12-21-87	651	9-2-97
543	5-16-88	654	11-3-97
546	6-6-88	655	11-3-97
552	12-5-88	663	5-18-98
567	4-2-90	664	7-20-98
571	6-18-90	670	7-19-99
575	8-6-90	674	2-14-00
576	8-6-90	677	10-2-00
577	9-6-90	680	11-6-00
581	11-5-90	703	3-29-04
590	8-5-91	709	8-2-04
592	12-16-91	713	4-4-05
597	8-3-92	722	6-2-06
599	9-8-92	723	10-26-06
610	5-17-93	735	1-7-08
614	6-21-93	748	4-6-09
619	5-2-94	750	8-3-09
621	9-19-94	751	8-3-09
623	11-21-94	762	8-2-10
628	3-20-95	765	9-7-10
629	3-20-95		
631	4-17-95		
633	6-19-95		
639	4-29-96		
640	4-29-96		
643	9-3-96		
644	9-3-96		
649	3-17-97		
650	5-19-97		

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