

CHAPTER 165

ZONING CODE — GENERAL PROVISIONS

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165.01 PURPOSE AND INTENT. The Zoning Code is enacted for the following purposes:

1. To provide for the orderly, economic, and safe development of land and urban services and facilities, and to promote the public health, safety, morals and general welfare of the inhabitants of the City;
2. To promote the character and preserve and enhance the stability of properties and areas within the City;
3. To divide the City into zones or districts as to the use, location, construction, reconstruction, alteration and use of land and structures for residence, business and industrial purposes.
4. To provide adequate light, air, privacy and safety;
5. To prevent the overcrowding of land, undue concentration of population;
6. To promote the proper use of land and structures;
7. To fix reasonable standards to which building, structures and land shall conform for the benefits of all;
8. To prohibit the use of buildings, structures and lands that are incompatible with the intended use or development of lands within the specified zones;
9. To promote the safe, rapid and efficient movement of people and goods;
10. To facilitate the provisions of public service;
11. To limit congestion in the public streets and protect the public health and welfare by providing for the off-street parking of vehicles and vehicle loading areas;
12. To protect against fire, panic, explosion, noxious fumes, offensive noise, vibration, dust, odor, heat, glare, and other pollution of the air and

other hazards in the interest of the public health, comfort and general welfare;
and

13. To define and limit the powers and duties of the administrative officers and bodies provided for herein.

165.02 SCOPE. From and after the effective date of the Zoning Ordinance, the use of all land and every building or portion of a building erected, altered with respect to height and area, added to, relocated, and every use within a building or use accessory thereto, in the City shall be in conformity with the provisions of this Zoning Code. Any existing building or structure and any existing use of properties not in conformity with the regulations herein prescribed shall be regarded as nonconforming properties or uses.

165.03 INTERPRETATION. In interpreting and applying the provisions of this Zoning Code, they shall be held to be the minimum requirements for the promotion of the public health, safety, morals, convenience and general welfare. Where the provisions of the Zoning Code impose greater restrictions than those of any statute, other ordinance or regulation, the provisions of this Zoning Code shall be controlling. Where the provisions of any statute, other ordinance or regulation impose greater restrictions than the Zoning Code, the provisions of such statute, other ordinance or regulation shall be controlling.

165.04 PRIVATE AGREEMENTS. The Zoning Code is not intended to abrogate any easement covenant, or any other private agreement provided that where the regulations of the Zoning Code are more restrictive (or impose higher standards or requirements), the requirements of the Zoning Code shall govern.

165.05 LOTS OF RECORD. Any lot which was legally recorded with the Union County Recorder and Auditor at the time of adoption of the Zoning Ordinance, and which does not meet the requirements of the Zoning Code as to area, width or open space, may, nevertheless, be utilized for single family detached dwelling purposes provided the measurements of such area, width or open space are established by the Zoning Code.

165.06 DISCLAIMER OF LIABILITY. The F-1 Flood Plain District herein established is intended to provide a reasonable approach to flood control based on present information. As additional information becomes available, the extent of various boundaries shall be so altered to maintain this reasonableness. The Zoning Code does not imply that areas beyond the district limits will be free from flooding; nor shall the Zoning Code, or districts established herein, create a liability on the part of, or cause action against the City or any office or employee thereof, for any flood damage that may result from reliance upon the Zoning Code or flood district so established.

165.07 DEFINITIONS. For use in this Zoning Code, the following words and terms are defined. In addition, the word “building” shall include “structures” of every kind, regardless of similarity to buildings; the word “lot” shall include the words “plot,” “piece” and “parcel;” the words “used for” shall include the phrases “arranged for,” “designed for,” “intended for,” “maintained for” and “occupied for;” and all measured distances shall be taken to the nearest integral foot. If a fraction is one-half (½) foot or less, the integral foot next below shall be taken.

1. “Agriculture” means the area or science of cultivating the soil and activities incidental thereto; the growing of soil crops in the customary manner on open tracts of land; the accessory raising of livestock and poultry; farming. The term includes incidental retail selling by the producer of products raised on the premises, provided that space necessary for parking of vehicles of customers shall be furnished outside the public right-of-way.
2. “Alley” means a public or private right-of-way less than 30 feet in width which affords secondary means of access to abutting property.
3. “Alteration as applied to a building or structure” means a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.
4. “Apartment” means a room or suite of rooms designed for, intended for, or used as a residence for one family or individual and equipped with cooking facilities.
5. “Apartment building” means three or more apartments grouped in one building.
6. “Automobile repair, major” means general repair, rebuilding or reconditioning of engines, motor vehicles, or trailers; collision service including body, frame or fender straightening or repair; overall painting or paint shop and vehicle steam cleaning.
7. “Automobile repair, minor” means incidental body or fender work, or other minor repairs, painting and upholstering, replacement of parts and motor service to passenger cars and trucks not exceeding one and one-half (1½) ton capacity, but not including any operation named under “Automobile repair, major” or any other similar use.
8. “Automobile or trailer sales area” means an open area, other than a street, used for the display, sale or rental of new or used motor vehicles or trailers in operable condition and where no repair work is done.
9. “Automobile service station” or “filling station” means a place where gasoline, kerosene or any other motor fuel or lubricating oil or grease for operating motor vehicles is offered for sale and delivered directly into motor

vehicles including grease and oiling but excluding “automobile repair, major” and “automobile or trailer sale area.”

10. “Basement” means a story having part but not more than one-half (½) its height below the average level of the adjoining finished grade. A basement is counted as a story for the purpose of height regulations, if subdivided and used for business or dwelling purposes.

11. “Bed and breakfast home” means a private residence which provided lodging or meals for guests in which the host or hostess resides and in which no more than two guest families are lodged at the same time, and which, while it may advertise and accept reservations, does not hold itself out to the public to be a restaurant, hotel or motel; does not require reservations and serves food only to overnight guests as established by Chapter 170A and 170B of the Code of Iowa.

12. “Bed and breakfast inn” means a hotel which has nine or fewer guest rooms as established in Chapter 170A and 170B of the Code of Iowa.

13. “Block” means a tract of land bounded by streets, or a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines, waterways, or boundary lines of corporate limits of the City.

14. “Board” means the Zoning Board of Adjustment.

15. “Boarding house” means a building other than a hotel or motel, where, for compensation and by prearrangement for definite periods, meals, or lodging and meals, are provided for three (3) or more persons, but not exceeding ten (10) persons.

16. “Buildable area” means the space remaining on a zoning lot after the minimum open space and setback requirements of the Zoning Code have been met.

17. “Building” means any structure for the shelter, support or enclosure of persons, animals, chattel, or property of any kind; and when separated by party walls without openings, each portion of such building so separated shall be deemed a separate building.

18. “Building, accessory” means a subordinate building or structure on the same lot, or part of the main building, exclusively occupied by or devoted to a use incidental to the main use.

19. “Building, height of” means the vertical distance from the average contact ground level at the front wall of the building to the building to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the mean height level between eaves and ridge for gable, hip or gambrel roofs.

20. “Building line” means an imaginary line separating buildable lot area and required yards.
21. “Building line setback” means the distance between the building line and the street line in a district, lot, tract or parcel of land.
22. “Building, detached” means a building surrounded by open space, said open space being on the same zoning lot as the building.
23. “Cellar” means a story having more than one-half ($\frac{1}{2}$) of its height below the average grade of the adjoining ground.
24. “Certificate of Occupancy” means a certificate, issued to the intended occupant of a structure, prior to occupancy, which indicates that the structure complies with all Federal, State and Local codes for such structure.
25. “Clinic” means a place used for the care, diagnosis and treatment of sick, ailing, infirm and injured persons and those who are in need of medical or surgical attention, but who are not provided with board or room or kept overnight on the premises.
26. “Club” means a nonprofit association of persons who are bona fide members, paying regular dues, and are organized for some common purpose, but not including a group organized solely or primarily to render a service customarily carried on as a commercial enterprise.
27. “Commission” means the Planning and Zoning Commission of the City of Creston, Iowa, established pursuant to Chapter 23 of this Code of Ordinances.
28. “Condominium” means two or more individually owned living units which share a common area such as halls or yards or walls.
29. “Convalescent (Rest) Home” means a home designed and licensed to provide care for aged or infirm persons requiring or receiving personal care or custodial care complying with the standards established by the Iowa State Board of Health.
30. “Corner lot” — See “Lot, corner”.
31. “Court” means an unoccupied open space, other than a yard, on the same lot with a building, which is bounded on two or more sides by the walls of such building.
32. “Court, inner” means a court enclosed on not less than three sides by exterior walls and lot lines on which walls are allowable.
33. “Court, outer” means a court enclosed on not more than three sides by exterior walls and lot lines on which walls are allowable, with one side or end open to a street, driveway, alley or yard.

34. “Curb level” means the level of the established curb in front of a building measured at the center of such front. Where a building faces on more than one (1) street, the curb level shall be the average of the levels of the curbs at the center of the front of each street.

35. “Duplex” means two self-contained living units in one structure.

36. “Dwelling” means a building or portion thereof designed or used exclusively for residential occupancy, including one-family, two-family, and multiple-family units, but not including hotels, motels, boarding or lodging houses.

37. “Dwelling unit” means one (1) or more rooms which are arranged, designed, or used as living quarters for one family only. Individual bathrooms and kitchen facilities, permanently installed, shall always be included for each dwelling unit.

38. “Dwelling unit, factory-built” means a dwelling unit designed for long-term residential occupancy which is mass-produced in a factory and designed and constructed for transportation to a site for installation and use when connected to required utilities, either as an independent, individual building or as modules or sections for combination with other elements to form a building on the site. Different types of factory-built dwellings are further defined as follows:

A. “Modular dwelling” means a new factory-built dwelling unit comprised of panelized units, components, sections, modules or other assemblies of closed construction which are transported to the site for minor and incidental assembly and installation, and which is inspected and certified by the State or State-approved third party agency as complying with all requirements of the Iowa State Building Code for modular factory-built structures.

B. “Manufactured dwelling” means a new factory-built dwelling unit which is inspected and certified by the U.S. Department of Housing and Urban Development (HUD) or HUD-approved third party agency as complying with all Federal Manufactured Home Construction and Safety Standards in effect on June 15, 1976, or the date of manufacture, whichever is the later date. Such dwelling units are generally, but are not required to be, constructed on a chassis, which may or may not be removed, for transportation to a site for minor assembly.

C. “Mobile home” means a factory-built dwelling unit which has been installed or occupied on a previous site or which does not comply with Federal Manufactured Home Construction and Safety Standards or the Iowa State Building Code of modular housing, as applicable.

39. “Dwelling, attached (group, row or townhouse)” means a dwelling joined to other dwellings by a party wall or walls.
40. “Dwelling, detached” means a dwelling entirely surrounded by open space, said space being on the same zoning lot as the dwelling.
41. “Dwelling, multiple family” means a dwelling containing three (3) or more dwelling units, designed with more than one (1) dwelling unit connecting to a common corridor or entranceway, originally constructed for said purpose; and not including converted dwellings or attached row dwellings (party-wall type) as defined herein.
42. “Dwelling, single-family” means a detached dwelling containing accommodations for and occupied by one (1) family only.
43. “Dwelling, two-family” means a dwelling designed exclusively for occupancy by two (2) families living independently of each other.
44. “Earth sheltered building” means an earth sheltered building is constructed so that 50% or more of the exterior surface area, including the roof, of the completed building is covered with earth. Garages and other accessory buildings should be excluded from calculations of earth covering. Earth covering is measured from the lowest level of livable space in nonresidential buildings. An earth sheltered building is a complete structure that does not serve just as a foundation or substructure for above grade construction. A partially completed building shall not be considered earth sheltered.
45. “Easement” means a grant by a property owner for the use of a strip of land for the purpose of constructing and maintaining utilities, including but not limited to sanitary sewers, water mains, electric lines, telephone lines, storm sewer or storm drainage ways and gas lines.
46. “Essential services” means the erection, construction, alteration or maintenance, by public utilities or municipal or other governmental agencies, of underground or overhead gas, electrical, steam or water, cable TV, transmission or distribution systems, collection, communication, supply or disposal systems, including poles, wires, mains, drains, sewers, pipe conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith; reasonably necessary for the furnishing of adequate service by such public utilities or governmental agencies or for the public health or safety or general welfare, but not including building.
47. “Family” means any number of individuals living together on the premises as a single non-profit housekeeping unit as distinguished from a group occupying a boarding house, lodging house, hotel, club, fraternity or sorority house.

48. “Farm, crop” means an area more than one (1) acre which is used for the growing of the usual farm crops such as vegetables, fruit trees, and grain, and for the packing or storage of the products produced on the premises, but not including the raising of farm animals or laboratory animals such as mice, rats, rabbits, snakes, etc.
49. “Floor area” means the floor area of a building, and is the sum of the gross horizontal areas of the several floors of the building, measured from the exterior faces of the exterior walls.
50. “Floor area (livable)” means livable floor area shall be the same as “floor area” defined above, excluding all areas occupied by cellars, garages, porches, attics, stairways and storage, utility and heating rooms.
51. “Floor area ratio (F.A.R.)” means the floor area ratio of the building or buildings on any zoning lot is the floor area of the building or buildings on that zoning lot divided by the area of such zoning lot, or, in the case of planned developments, by the net site area. The floor area ratio requirements, as set forth under each zoning district, shall determine the maximum floor area allowable for the building or buildings (total floor area of both principal and accessory buildings) in direct ratio to the gross area of the zoning lot.
52. “Frontage” means all the property fronting on one (1) side of a street between the nearest intersecting streets, or between a street and right-of-way, waterway, or other similar barrier.
53. “Garage, private” means an accessory building designed or used for the storage of automobiles owned and used by the occupants of the building to which it is accessory.
54. “Garage, public” means any premises used for the storage or care of motor-driven vehicles except private garages, or premises where any such vehicles are equipped for operation, repaired, or are kept for remuneration, for hire, or for sale.
55. “Garage, truck” means a building which is used or intended to be used for the storage of motor trucks, truck trailers, tractors, and commercial vehicles exceeding one and one half (1½) tons capacity.
56. “High rise building” means any structure, designed for a specific use that exceeds the fourth floor of elevation.
57. “High water mark” means a mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The normal high water mark is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

58. “Home occupation” means any use customarily conducted entirely within a dwelling and carried on by members residing therein, which use is clearly incidental and secondary to the use of the dwelling purposes and does not change the character thereof.

59. “Hotel” means a building occupied as a temporary abiding place of individuals who are lodged with or without meals in which there are more than five (5) sleeping rooms and wherein no provisions are made for cooking in any individual room or apartment.

60. “Junk yard” means land or building where waste, discarded or salvaged materials are bought, sold, stored, exchanged, cleaned, packed, disassembled or handled, including, but not limited to scrap metal, rags, paper, hides, rubber products, glass products, lumber products and products resulting from the wrecking of automobiles or other machinery.

61. “Kennel” means any structures or premises on which three (3) or more domestic animals over four (4) months of age are kept.

62. “Loading space” means an off-street space or berth on the same lot with a building or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley or other appropriate means of access.

63. “Lodging house” means a building where lodging is provided for compensation, to three (3) or more persons in contradistinction to hotels open to transients.

64. “Lot” means land occupied or to be occupied by a building and its accessory buildings together with such open spaces as are required under the Zoning Code and having its principal frontage upon a street or officially approved place. (Plot)

65. “Lot area” means the lot area is the land area within the lot lines.

66. “Lot coverage” means the total allowable amount of lot area, expressed as a percentage, which may be covered by a principal use and its accessory structures.

67. “Lot depth” means the mean horizontal distance between the mean front road and the mean rear lot line. The greater frontage of a corner lot is its depth, and its lesser frontage is its width.

68. “Lot of record” means a lot which is a part of a subdivision, the map of which has been recorded in the office of the County Recorder, or a lot described by metes and bounds, the deed to which has been recorded in the office of the County Recorder at the time the Zoning Ordinance was passed.

69. “Lot, corner” means a lot abutting upon two (2) or more streets at their intersection or upon two parts of the same street, such streets or parts of the same street forming an interior angle of less than one hundred thirty-five (135) degrees. The point of intersection of the street lines is the “corner.”
70. “Lot, double frontage” means a lot having frontage on two (2) non-intersecting streets as distinguished from a corner lot.
71. “Lot frontage” — See “lot line, front”.
72. “Lot, interior” means a lot other than a corner or reversed corner lot.
73. “Lot line, front” means a boundary of a lot butting a street. On a corner lot, the shortest street lot line is the front lot line.
74. “Lot line, rear” means the lot line opposite and most distant from the front lot line.
75. “Lot line, side” means any lot line other than a front or rear lot line. A side lot line separating a lot from a street is called a side street lot line. A side lot line separating a lot from another lot or lots is called an interior side lot line.
76. “Lot width” means the horizontal distance between the side lot lines measured at right angles to the lot depth at the established front building line.
77. “Metes and bounds” means a method of property description by means of their direction and distance from an easily identifiable point.
78. “Mobile home” see “dwelling unit, factory-built.”
79. “Manufactured Housing” — See “dwelling unit, factory-built.”
80. “Mobile home park” means any park, mobile park, mobile court, mobile camp, court, campsite, lot, parcel or tract of land designed, maintained, or intended for the purpose of supplying a long term location or accommodations for any mobile home and upon which any mobile home, coach, or mobile home coaches are parked, and includes all buildings used or intended for use as a part of the equipment thereof, whether or not a change is made for the use of the mobile home park and its facilities. Mobile home parks do not include automobile or mobile home sales lots on which unoccupied mobile homes are parked for the purpose of inspection, display and sale.
81. “Mobile home lot” means a parcel of land rented or sold for the exclusive use of the occupants of a single mobile home.
82. “Mobile home stand” means that part of an individual lot which has been reserved for the placement of the mobile home, appurtenant structures or additions.

83. “Nonconforming building” means a building or portion thereof, lawfully existing at the time of adoption of the Zoning Ordinance, which was designed, erected, or structurally altered for a use that does not conform to the use regulations of the district in which it is now located.

84. “Nonconforming use” means a use lawfully in existence on the effective date of the Zoning Code and not conforming to the regulations for the district in which it is situated, except that such a use is not nonconforming if it would be authorized under a conditional use permit where located.

85. “Nonconforming lot” means a lot which does not comply with the minimum lot area or frontage requirements of the district in which it is located.

86. “Nonconforming structure” means a structure which does not comply with the bulk, yard, setback or height regulations of the district in which it is located.

87. “Nonconforming use of land” means any use of a lot which does not conform to the applicable use regulations of the district in which it is located.

88. “Nonconforming use of structure” means a use of a structure which does not conform to the applicable use regulations of the district in which it is located.

89. “Obstruction” means any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, bridge conduit, culvert, building, wire, fence, rock gravel, refuse, fill, structure or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood hazard area which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the flow of water might carry the same downstream to the damage of life or property.

90. “Parking space” means a land area of not less than two hundred (200) square feet, exclusive of driveways and aisles, of such shape and dimensions and so prepared as to be usable for the parking of a motor vehicle, and so located as to be readily accessible to a public street or alley. Truck loading and unloading space are not included in such area.

91. “Planned Unit Development” means a tract of land developed as a unit rather than as individual development wherein two or more buildings may be located in relationship to each other rather than to lot lines or zoning district boundaries.

92. “Premises” means a lot or plat with the required front, side and rear yards for a dwelling or other uses as allowed under the Zoning Code.

93. “Private open space” means any land owned by private persons or homes associations wherein the land is dedicated for a use such as public open space but for use by the private persons or association.

94. “Public open space” means any publicly owned open area, including but not limited to the following: parks, playgrounds, school sites, parkways, and streets.

95. “Public utility” means any person, firm, corporation, municipal department, or board fully authorized to furnish and furnishing under municipal regulation to the public, electricity, gas, steam, communication services, telegraph services, transportation, cable TV, or water.

96. “Public waters” means a body of water capable of substantial beneficial public use. This shall be construed to mean, for the purpose of these regulations, any body of water which has the potential to support any type of recreational pursuit or water supply purpose. A body of water created by a private user where there was no previous shoreland for a designated private use authorized by the Department of Natural Resources shall be exempt.

97. “Railroad right-of-way” means a strip of land with tracks and auxiliary facilities for track operation, but not including depots, loading platforms, station, train sheds, warehouses, car shop, car yards, locomotive shops, or water towers.

98. “Recreational vehicles” means a self-propelled vehicle or wheeled vehicle capable of being towed which can be licensed for travel on any public street or highway, or a unit which can be mounted on a pickup or other vehicle, which is arranged for residential occupancy, customarily of a temporary or transient nature, and having less than 320 square feet of floor area.

99. “Recreational vehicle camp” constitutes any area used on a daily, nightly, or weekly basis for the accommodation of three or more occupied tents, expandable camp trailers, travel trailers and converted buses or trucks; whether privately or publicly owned; and whether use of such accommodation is granted free of charge or for compensation.

100. “Regulatory flood protection elevation” means the elevation to which uses regulated by the Zoning Code are required to be elevated or floodproofed. It corresponds to a point not less than one foot above the water surface profile associated with the regional flood plus any increases in flood heights attributable to encroachments on the floodway.

101. “Rest home” or “nursing home” means a private home for the care of children or the aged or infirm, or a place of rest for those suffering bodily

disorders. Such home does not contain equipment for surgical care or for treatment of disease or injury.

102. “Road” means a public right-of-way affording primary access by pedestrians and vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, through-way, road, avenue, boulevard, lane, place or however otherwise designated.

103. “Rooming house” — see “lodging house.”

104. “Setback line” means the allowable building line as defined by the yard regulations of the Zoning Code.

105. “Sign” means a name, identification, description, display, illustration or device which is affixed to or represented directly or indirectly upon a building, structure or land in view of the general public and which directs attention to a product, place, activity, person, institution or business.

106. “Sign, advertising” means a sign which directs attention to a business, commodity, service, activity or entertainment not necessarily conducted, sold or offered upon the premises where such a sign is located.

107. “Sign, area of” — see “sign, surface area of.”

108. “Sign, business” means a sign which directs attention to a business or profession of a commodity, service, or entertainment sold or offered upon the premises where such a sign is located.

109. “Sign, display” means an advertising device.

110. “Sign, flashing” means any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times where such sign is in use.

111. “Sign, illuminated” means any sign which has characters, letters, figures, designs or outlines illuminated by electric lights or luminous tubes as a part of the sign.

112. “Sign, marquee” means any sign affixed to any hood, marquee or canopy over the entrance to a building.

113. “Sign, nameplate” means any sign which states the name or address or both of the business or occupant of the lot where the sign is placed.

114. “Sign, rotating” means a sign which revolves or rotates on its axis by mechanical means.

115. “Sign, surface area of” means the entire area within a single continuous perimeter enclosing the extreme limits of the actual sign surface, not including any structural elements outside the limits of such sign and not

forming an integral part of the display. Only one side of a double-face or V-type sign structure shall be used in computing total surface area.

116. “Standard, performance” means a criterion established in the interest of protecting the public health and safety for the control of noise, odor, smoke, noxious gases and other objectionable or dangerous elements generated by an inherent in or incidental to land use.

117. “Story” means that portion of the building included between the surface of any floor and the surface of the next floor above it, or, if there is no floor above it, the space between the floor and the ceiling next above it.

118. “Story, half” means a space under a sloping roof which has the line of intersection of roof decking and wall face not more than three (3) feet above the top floor level, and in which space not more than two-thirds (2/3) of the floor area is finished off for use. A half-story contained independent apartment or living quarters shall be counted as a full story.

119. “Street” means a public or private right-of-way forty (40) feet or more in width, approved or accepted by public authority or user, which provides a primary means of public access to abutting property. The term “street” includes avenue, drive, circle, road, parkway, boulevard, highway, thoroughfare or any other similar term.

120. “Street line” means the right-of-way line of a street.

121. “Structure” means anything constructed or erected, the use of which requires permanent location on the ground. When a structure is divided into separate parts by an unpierced wall each part shall be deemed a separate structure.

122. “Structure alterations” means any change in the supporting members of a building such as bearing walls, columns, beams, or girders, or any substantial changes in the roof and exterior walls.

123. “Subdivision” means a described tract of land which is to be or has been divided into two (2) or more lots or parcels, any of which resultant parcels is less than five (5) acres in area and three hundred (300) feet in width, for the purpose of transfer of ownership or building development or if a new street is involved, any division of a parcel of land. The term includes resubdivision, and, where it is appropriate to the context, relates either to the process or subdivision or to the land subdivided.

124. “Trailer” means a vehicle with or without motor power used or adaptable for temporary living, sleeping, business, or storage purposes, having no foundation other than wheels, blocks, skids, jacks, horses, or skirting, which does not meet building code requirements and has been or reasonably may be equipped with wheels or other devices for transporting

from place to place. The term “trailer” shall include “camp car,” “travel trailer,” “camping trailer,” and “house car.” A permanent foundation shall not change its character unless the entire structure is erected in accordance with Building Code.

125. “Townhouse” means a multiple family dwelling which maintains private ingress and egress, attached to its own foundation, contains no independent dwellings above or below it and is attached to other similar dwellings by a common wall.

126. “Unit, dwelling” — See “dwelling unit.”

127. “Unit, Lodging, Rooming, Dormitory” means a room rented as sleeping and living quarters but without cooking facilities and with or without individual bathroom. In a suite of rooms without cooking facilities, each room which provides sleeping accommodations shall be counted as one lodging room or rooming unit for the purpose of the Zoning Code.

128. “Use” means the purpose for which land or premises or a building thereon is designated, arranged or intended, or for which it is or may be occupied or maintained.

129. “Use, accessory” means a use subordinate to the main use on the same lot and used for purposes customarily incidental to those of the main use.

130. “Use, conditional” means a use which, because of unique characteristics, cannot be classified as a permitted use in any particular district. After due consideration, in each case, of the impact of such use upon neighboring land and of the public desirability or the particular use of the particular location, a “conditional use permit” may or may not be granted. If granted, the Zoning Board of Adjustment may attach conditions and guarantees upon the zoning permit deemed necessary for the protection of the public interest.

131. “Use, principal permitted” means a use which is permitted outright in a district for which a zoning certificate may be issued by the Zoning Administrator in accordance with the provisions of the Zoning Code.

132. “Variance” means a modification or variation of the provisions of the Zoning Code, as applied to a specific piece of property, except that modification in the allowable uses within a district shall not be considered a variance.

133. “Vet clinic” means a place used for the care, diagnosis and treatment of sick, ailing, infirm and injured animals and those who are in need of medical or surgical attention.

134. “Yard” means an open space on the same zoning lot with a building or structure, which yard is unoccupied and unobstructed from its lowest level to the sky, except as otherwise permitted in Chapter 168.

135. “Yard, front” means a yard extending across the front of the lot between the side yard lines and lying between the front street line of the lot and the nearest line of the building.

136. “Yard, rear” means an open space occupied except for accessory buildings on the same lot with a building between the rear lines of the building and the rear line of the lot, for the full width of the lot.

137. “Yard, side” means an open, unoccupied space on the same lot with a building between the building and the side of the lot and extending from the front lot line to the rear yard.

138. “Zoning Administrator” means the designated Zoning Administrator of the City or an authorized representative as appointed by the City Council by resolution.

139. “Zoning certificate” means a document issued by the Zoning Administrator authorizing buildings, structures, or uses consistent with the terms of the chapter and for the purpose of carrying out and the enforcement of its provisions.

140. “Zoning district” means an area or areas within the limits of the Community for which the regulations and requirements governing use are uniform.

141. “Zoning lot” means a plot of ground, made up of one (1) or more parcels of land, which is or may be occupied by a use, building, or buildings, including the open spaces required by the Zoning Code.

142. “Zoning map” means the map or maps incorporated into the Zoning Code as part hereof, designating the zoning districts.

165.08 ADMINISTRATION AND ENFORCEMENT.

1. The Zoning Administrator. The Public Works Director is hereby authorized and directed to enforce all the provisions of the Zoning Code. Said official may delegate the enforcement of the Zoning Code to any administrative official of the City and supporting staff if deemed necessary, who shall be directly under the control of the Public Works Director and shall be known as the Zoning Administrator or Zoning Enforcement Officer. The Zoning Administrator shall perform the following duties.

A. Examine all applications pertaining to use of land, building, or structure, and approve same when the application conforms with the provisions of the Zoning Code.

- B. Keep a record of all nonconforming uses.
 - C. Inspect buildings, structures and uses of land to determine compliance with the terms of the Zoning Code, upon request or upon apparent violation. In regard to performance standards the Zoning Administrator may require the service of a testing laboratory to determine compliance. The cost of employing said laboratory shall be paid for by the owner if a violation of the Zoning Code is established, otherwise by the City.
 - D. Notify, in writing, any person responsible for violating a provision of the Zoning Code, indicating the nature of the violation and ordering the action necessary to correct it.
 - E. Order discontinuance of illegal use of land, buildings or structures; order removal of illegal buildings, structures, additions, alterations; order discontinuance of illegal work being done; or take any action authorized by the Zoning Code to insure compliance with or to prevent violations of its provisions.
 - F. Maintain permanent and current records of the Zoning Code, including all maps, amendments, conditional uses and variations.
 - G. Maintain a current file of all permits, all certificates, and all copies of notices of violations, discontinuances, or removal for such time as necessary to insure a continuous compliance with the provisions of the Zoning Code, and, on request, provide information to any person having a proprietary or tenancy interest in any specific property.
 - H. Provide technical assistance to the Zoning Board of Adjustment.
2. Zoning Board of Adjustment.
- A. There is hereby established a Zoning Board of Adjustment for the City, consisting of five (5) members. Appointments to the Board shall be for a term of three (3) years. Any vacancy shall be filled in the same manner as the original appointment.
(Ord. 04-77 – Oct. 04 Supp.)
 - B. The members shall elect one of their number as Chairperson and shall appoint a Secretary, who may be a member of the Board.
 - C. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of the Zoning Code. Meetings shall be held at the call of the Chairperson and at such other times as the Board may determine. The Chairperson or in the absence of the Chairperson the acting Chairperson, may

administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

D. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon 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 a public record and filed in the office of the Zoning Administrator.

E. Hearing; Appeals; Notice Appeals to the Board of Adjustment concerning interpretation or administration of the Zoning Code may be taken by any person aggrieved or by any officer or bureau of the governing body of the City affected by any decision of the Zoning Administrator. Such appeals shall be taken within a reasonable time, not to exceed sixty (60) days or such lesser period as may be provided by the rules of the Board of Adjustment a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. The Board of Adjustment shall fix a reasonable time for the hearing or appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

F. A copy of all applications for a Variance or a Conditional Use under the provisions of the Flood Plain District shall be forwarded to the Department of Natural Resources ten (10) days prior to said hearing.

G. An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certified to the Board of Adjustment after the notice of appeal is filed with said official, that by reason of facts stated in the certificate, a stay would, in the opinion of such official, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a Court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

H. The Board shall have the power and duty of hearing and deciding appeals or requests in the following cases. The Council may review actions by the Board of Adjustment before their effective date. However, the Council may only remand a decision concerning action

by the Board for the further study. The cases which may be presented to the Board of Adjustment are as follows:

- (1) Appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the Zoning Code.
- (2) Requests for a variance from the literal provisions of the Zoning Code in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration.

I. In granting any variance the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the Zoning Code. Violations of such conditions and safe-guards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the Zoning Code and shall be punishable under Section 165.09 of the Zoning Code.

J. In exercising the aforementioned powers, the Board may, so long as such action is in conformity with the terms of the Zoning Code, reverse or affirm, in whole or in part or may modify the order, requirements, decisions or determination appealed from and may such order, requirements, decision or determination as ought to be made and to that end shall have powers of the administrative official from whom any appeal is taken.

K. The concurring vote of a majority of the Board shall be necessary to reverse any order, requirements, decision or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under the Zoning Code, or to effect any variation of the Zoning Code.

(Ord. 97-20 - Oct. 97 Supp.)

L. A copy of all decisions granting Variances or Conditional Use Permits in the Floodway and/or Flood Fringe portions of the Flood Plain District shall be forwarded to the Department of Natural Resources within ten (10) days of such action.

3. Appeal for Variance. Application for any adjustment permissible under the hardship provision in subsection H above, shall be made to the Zoning Administrator in the form of a written application for a permit to use the land or building or both as set forth in said application. No nonconforming use of neighboring lands, structure or buildings in the same district and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance. The application shall present a statement and adequate evidence showing:

- A. That there are exceptional or extraordinary circumstances or conditions applying to the land, building, or use referred to in the application, which circumstances or conditions do not apply generally to land, building, or uses in the same zone classification.
 - B. That the granting of the application is necessary for the preservation and employment of substantial property rights of the petitioner.
 - C. That the reasons set forth in the application justify the granting of the variance.
 - D. The variance is the minimum variance that will make possible the reasonable use of land, building or structure.
 - E. That the granting of such application will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant, and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood.
 - F. That the special conditions and circumstances do not result from the actions of the applicant.
 - G. That granting the application will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or building in the same district. No variance in a Flood Plain District should provide a lesser degree of flood protection than the Flood Protection elevation for that area.
4. Notification and Public Hearing for Variance Requests.
- A. Application for any adjustment permissible under the provisions of this Section shall be made to the Zoning Administrator, in the form of a written application for a building permit or for a permit to use the property or premises as set forth in the application. An application for a variance shall be accompanied by payment of a fee as established by the City Council in addition to the regular building permit fee.
 - B. Upon receipt of any applications, such officer shall set a time and place for public hearing before the Zoning Board of Adjustment for such application. The Board shall fix a reasonable time for the hearing, and give not less than four (4) days or more than twenty (20) days' public notice in a paper of general circulation in the City, and shall decide the same within ten (10) days.

- C. Any person may appear or be represented by an agent or attorney.
 - D. The applicant shall be required to produce proof of notice to affected property owners immediately adjacent to the applicant's property. Such proof may be by return receipt mail or by written approval by said affected property owners.
 - E. Within a reasonable time after the hearing, the Board shall make its order deciding the matter and serve a copy of such order upon the applicant or the petitioner by mail.
5. Duties of Zoning Administrator, Board of Adjustment, City Council and Courts on Matters of Appeal.
- A. It is the intent of the Zoning Code that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator and that recourse from the decisions of the Board of Adjustment shall be to the City Council, then the Courts as established by Chapter 414 of the Code of Iowa. (See Section 165.08(2)(H)(2) of this Code of Ordinances)
 - B. The duties of the City Council in regard to the Zoning Code shall include hearing and deciding questions of interpretation and enforcement that may arise in such case where the decision of the Board of Adjustment is challenged. The City Council shall also have the duties of considering and adopting or rejecting proposed amendments to the repeal of the Zoning Code, as provided by law and establishing a schedule of fees and charges as stated in Section 165.13.

165.09 VIOLATIONS AND PENALTIES. Any person who shall violate any of the provisions hereof or who shall fail to comply with any of the provisions hereof or who shall make any false statement in any document required to be submitted under the provisions hereof, is guilty of a misdemeanor and, upon conviction therefor, shall be punished by a fine not to exceed one hundred dollars (\$100.00) or by imprisonment for a period not to exceed thirty (30) days or both, and in addition shall pay all court costs. Each day that such violation continues shall constitute a separate offense.

165.10 AMENDMENTS TO THE ZONING CODE. The Council may on its own motion, or on request of the Commission, or a petition or appeal of the affected property owners:

1. Transfer land, or a portion thereof, from the district in which it is situated into another district, by amendment to the Zoning Code.

2. Change any of the regulations of the Zoning Code as to the use of land in any district, or as to the restrictions upon buildings or structures herein, by amendment to the Zoning Code.

165.11 PROCEDURE TO AMEND ZONING CODE.

1. An application for amendment shall be filed with the Zoning Administrator in duplicate, accompanied by a fee as determined by the City Council. The Zoning Administrator shall forward one (1) copy to the Commission.
2. The Commission shall take action on such application within thirty (30) days and transmit its recommendations to the City Council. The Commission may recommend that the application be granted as requested, or it may recommend a modification of the zoning amendment requested in the application, or it may recommend that the application be denied. These recommendations shall be certified to the Council.
3. The Commission shall give notice of the time and place of the public hearing. Notice shall be given not more than thirty (30) days or less than fifteen (15) days in advance of the hearings by publishing a notice thereof at least once in a newspaper of general circulation and by notifying by mail, at least fifteen (15) days prior to the meeting, the property owners within three hundred (300) feet of the subject property. The current County Assessor's tax record shall be deemed sufficient for the location or certification of ownership of said properties.
4. All amendments concerning Floodway and Flood Fringe portions of the Flood Plain District must be submitted and approved by the Department of Natural Resources prior to adoption.
5. The City Council, upon receiving reports of the Commission, and without further public hearing, may vote on the adoption of any proposed amendment or it may refer it back to the Commission for further consideration. If no recommendation is transmitted by the Commission within thirty (30) days after the hearing, the City Council may take action without awaiting such notifications. In considering such recommendations, due allowances shall be made for existing conditions, for the conservation of property values, for the direction of building development to the best advantage of the entire City and for the uses to which the property affected is being devoted at the time; and no change shall be recommended unless it is required for the public good. The Council may over-rule the recommendations of the Commission by three-fourths (3/4) vote of the full membership of the Council.

165.12 CONDITIONAL USE PERMITS AND PROCEDURES. Conditional Use Permits may be issued for any and only the uses or purposes for which such permits are required or permitted by provisions of the Zoning Code.

1. **Application.** An application for the Conditional Use Permit shall be filed with the Zoning Administrator indicating the section of the Zoning Code under which the Conditional Use Permit is sought and stating the ground on which it is requested. The application shall be accompanied by such plans and elevations and site plans as prescribed by the Commission and presented by the Zoning Administrator to the Commission. A copy of all applications for a Conditional Use Permit under the provisions of the Floodway and/or Flood Fringe portions of the Flood Plain District shall be forwarded to the Department of Natural Resources ten (10) days prior to a public hearing.
2. **Notification and Public Hearing.** Upon receipt in proper form of the application and other requested material, the Commission shall hold at least one (1) public hearing in a location to be prescribed by the Commission at least fifteen (15) days in advance of each hearing, a notice of the hearing shall be published in the official newspaper of the City and like notification at least fifteen (15) days prior to the hearing to the owner or owners of property within three hundred (300) feet of the subject property. Notices of such hearings shall be posted at the City Hall at least fifteen (15) days prior to the public hearing. The County Assessor's current tax records shall be deemed sufficient for the location or certification of ownership of said adjacent properties.
3. **Findings.** No conditional use shall be recommended by the Commission unless the Commission shall find:
 - A. That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, or substantially diminish and impair property values within the immediate vicinity.
 - B. That the establishment of a conditional use will not impede the normal and orderly development and improvement of surrounding vacant property values within the immediate vicinity.
 - C. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
 - D. The adequate measures have been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use.
 - E. That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that

none of these will constitute a nuisance and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.

4. Fees. To defray administrative costs for processing requests for Conditional Use Permits, a fee shall be paid by the applicant. Such fee shall be established by the City Council.
5. Conditions and Safeguards. The Planning Commission shall prescribe appropriate Conditions and Safeguards in conformity with the Zoning Code. The Commission shall prescribe a time limit within which the action for which the conditional use is required shall commence, or be completed or both. Failure to commence, or complete, or both, such action within the time limit set shall void the Conditional Use Permit.
6. Violations. Violations of such Conditions and Safeguards, when made part of the terms under which the Conditional Use Permit is granted, shall be deemed a violation of the Zoning Code and punishable under Section 165.09 of the Zoning Code.

165.13 BUILDING AND USE PERMITS. Except as hereinafter provided, no person, firm or corporation shall construct, erect, alter, wreck or move any building or structure or parts thereof within the jurisdiction of the Planning and Zoning Commission and the Board of Adjustment without first securing a building or use permit from the City. Application for permit shall apply as set forth in the City Building Code. Application for a building permit shall be made to the City on blank forms to be furnished by the City. Each application for a permit to construct or alter a building shall be accompanied by a plan drawn to scale showing the dimensions of the lot to be built upon and the size and location of the building and accessory buildings to be erected. Application shall contain such other information as may be deemed necessary for the proper enforcement of this or any other ordinance. The City shall issue or may direct the Director of Public Works to issue the building permit only after determining that the building plans together with the application comply with the terms of the Zoning Code.

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1. Certification of Occupancy.
 - A. No land shall be occupied or used and no building hereafter erected, reconstructed or structurally altered shall be occupied or

used, in whole or in part, for any purpose whatsoever, until a Certificate of Occupancy shall have been issued by the Zoning Administrator stating that the building and use complies with all of the provisions of the Zoning Code applicable to the building or premises or the use in the district in which it is to be located.

B. No change in use shall be made in any building or part thereof, now or hereafter erected, reconstructed or structurally altered, with or without a Certificate of Occupancy having been issued by the Zoning Administrator, and no such permit shall be issued to make such change unless it is in compliance with the provisions of the Zoning Code.

C. No vacant flood plain land shall be occupied or used and no building hereafter erected, altered or moved shall be occupied until the applicant submits to the appropriate local official a certification by a registered professional engineer, land surveyor or other qualified person designated by the local governing body that the finished fill and building floor elevations or other flood protection measures are in compliance with appropriate flood plain zoning provisions and other flood plain regulations.

D. Certification of Occupancy shall be applied for coincidentally with the application for a building permit and shall be issued within ten (10) days after the lawful erection, reconstruction or structural alteration is completed.

E. A record of all Certificates of Occupancy shall be kept on file in the Office of the Zoning Administrator, and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the structure, building or land affected.

F. A temporary Certificate of Occupancy may be issued by the administrative official for a period not exceeding six (6) months, during alterations or partial occupancy of a building pending its completion, provided that such temporary certificate may require such conditions and safeguards as will protect the safety of the occupants and the public.

G. Failure to obtain a Certificate of Occupancy shall be considered a violation of the Zoning Code and subject to penalty under Section 165.09 of the Zoning Code.

2. Schedules of Fees, Charges and Expenses. The City Council shall establish a schedule of fees, charges, and expenses and a collection procedure, for building permits, certificates of occupancy, appeals, and other matters pertaining to the Zoning Code. The schedule of fees shall be posted

in the office of the Zoning Administrator, and may be altered or amended only by the City Council. No permit, certificate, conditional use permit, or variance shall be issued unless or until such costs, charges, fees or expenses have been paid in full, nor shall any action be taken on proceedings before the Board of Adjustment unless or until preliminary charges and fees have been paid in full.

3. Complaints Regarding Violations. Whenever a violation of the Zoning Code occurs, or is alleged to have occurred, any person may file written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator, who shall record properly such complaint, immediately investigate, and take action thereon as provided by the Zoning Code.