

BUILDING AND PROPERTY REGULATIONS

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CHAPTER 145

DANGEROUS BUILDINGS

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145.01 ENFORCEMENT OFFICER. The Mayor is responsible for the enforcement of this chapter.

145.02 GENERAL DEFINITION OF UNSAFE. All buildings or structures that are structurally unsafe or not provided with adequate egress, or that constitute a fire hazard, or are otherwise dangerous to human life, or that in relation to existing use constitute a hazard to safety or health, or public welfare, by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, are, for the purpose of this chapter, unsafe buildings. All such unsafe buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedure specified in this chapter.

(Code of Iowa, Sec. 657A.1 & 364.12[3a])

145.03 UNSAFE BUILDING. "Unsafe building" means any structure or mobile home meeting any or all of the following criteria:

1. **Various Inadequacies.** Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration, or decay; (ii) faulty construction; (iii) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay, or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.
2. **Manifestly Unsafe.** Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
3. **Inadequate Maintenance.** Whenever a building or structure, used or intended to be used for dwelling purposes, because of dilapidation, decay, damage, faulty construction, or otherwise, is determined by any health officer to be unsanitary, unfit for human habitation or in such condition that it is likely to cause sickness or disease.
4. **Fire Hazard.** Whenever any building or structure, because of dilapidated condition, deterioration, damage, or other cause, is determined by the Fire Marshal or Fire Chief to be a fire hazard.
5. **Abandoned.** Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

145.04 NOTICE TO OWNER. The enforcement officer shall examine or cause to be examined every building or structure or portion thereof reported as dangerous or damaged and, if such is found to be an unsafe building as defined in this chapter, the enforcement

officer shall give to the owner of such building or structure written notice stating the defects thereof. This notice may require the owner or person in charge of the building or premises, within forty-eight (48) hours or such reasonable time as the circumstances require, to commence either the required repairs or improvements or demolition and removal of the building or structure or portions thereof, and all such work shall be completed within ninety (90) days from date of notice, unless otherwise stipulated by the enforcement officer. If necessary, such notice shall also require the building, structure, or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the enforcement officer.

(Code of Iowa, Sec. 364.12[3h])

1. **Notice Served.** Such notice shall be served by sending by certified mail to the owner of record, according to Section 364.12[3h] of the *Code of Iowa*, if the owner is found within the City limits. If the owner is not found within the City limits such service may be made upon the owner by registered mail or certified mail. The designated period within which said owner or person in charge is required to comply with the order of the enforcement officer shall begin as of the date the owner receives such notice.
2. **Hearing.** Such notice shall also advise the owner that he or she may request a hearing before the Council on the notice by filing a written request for hearing within the time provided in the notice.

145.05 CONDUCT OF HEARING. If requested, the Council shall conduct a hearing in accordance with the following:

1. **Notice.** The owner shall be served with written notice specifying the date, time and place of hearing.
2. **Owner's Rights.** At the hearing, the owner may appear and show cause why the alleged nuisance shall not be abated.
3. **Determination.** The Council shall make and record findings of fact and may issue such order as it deems appropriate.[†]

145.06 POSTING OF SIGNS. The enforcement officer shall cause to be posted at each entrance to such building a notice to read: "DO NOT ENTER. UNSAFE TO OCCUPY. CITY OF SHELL ROCK, IOWA." Such notice shall remain posted until the required demolition, removal or repairs are completed. Such notice shall not be removed without written permission of the enforcement officer and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building.

145.07 RIGHT TO DEMOLISH; MUNICIPAL INFRACTION. In case the owner fails, neglects, or refuses to comply with the notice to repair, rehabilitate, or to demolish and remove the building or structure or portion thereof, the Council may order the owner of the building prosecuted as a violator of the provisions of this chapter and may order the enforcement officer to proceed with the work specified in such notice. A statement of the cost

[†] **EDITOR'S NOTE:** Suggested forms of notice and of a resolution and order of the Council for the administration of this chapter are provided in the APPENDIX to this Code of Ordinances. Caution is urged in the use of this procedure. We recommend you review the situation with your attorney before initiating procedures and follow his or her recommendation carefully.

of such work shall be transmitted to the Council. As an alternative to this action, the City may utilize the municipal infraction process to abate the nuisance.

(Code of Iowa, Sec. 364.12[3h])

145.08 COSTS. Costs incurred under Section 145.07 shall be paid out of the City treasury. Such costs shall be charged to the owner of the premises involved and levied as a special assessment against the land on which the building or structure is located, and shall be certified to the County Treasurer for collection in the manner provided for other taxes. In addition, the City may take any other action deemed appropriate to recover costs incurred.

(Code of Iowa, Sec. 364.12[3h])

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CHAPTER 146

MANUFACTURED AND MOBILE HOMES

146.01 Definitions

146.03 Foundation Requirements

146.02 Conversion to Real Property

146.01 DEFINITIONS. For use in this chapter the following terms are defined:

(Code of Iowa, Sec. 435.1)

1. "Manufactured home" means a factory-built structure built under the authority of 42 U.S.C. Sec. 5403 which was constructed on or after June 15, 1976, and is required by Federal law to display a seal from the United States Department of Housing and Urban Development.
2. "Manufactured home community" means any site, lot, field, or tract of land under common ownership upon which ten or more occupied manufactured homes are harbored, either free of charge or for revenue purposes, and includes any building, structure or enclosure used or intended for use as part of the equipment of the manufactured home community.
3. "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 also includes any such vehicle with motive power not registered as a motor vehicle in Iowa. A mobile home means any such vehicle built before June 15, 1976, which was not built to a mandatory building code and which contains no State or Federal seals.
4. "Mobile home park" means any site, lot, field or tract of land upon which three (3) or more mobile homes or manufactured homes, or a combination of any of these homes, are placed on developed spaces and operated as a for-profit enterprise with water, sewer or septic, and electrical services available.

The term "manufactured home community" or "mobile home park" is not to be construed to include manufactured or mobile homes, buildings, tents, or other structures temporarily maintained by any individual, educational institution, or company on its own premises and used exclusively to house said entity's own labor or students. The manufactured home community or mobile home park shall meet the requirements of any zoning regulations that are in effect.

146.02 CONVERSION TO REAL PROPERTY. A mobile home or manufactured home that is located outside a manufactured home community or mobile home park shall be converted to real estate by being placed on a permanent foundation and shall be assessed for real estate taxes except in the following cases:

(Code of Iowa, Sec. 435.26 & Sec. 435.35)

1. Retailer's Stock. Mobile homes or manufactured homes on private property as part of a retailer's or a manufacturer's stock not used as a place for human habitation.

2. Existing Homes. A taxable mobile home or manufactured home that is located outside of a manufactured home community or mobile home park as of January 1, 1995, shall be assessed and taxed as real estate, but is exempt from the permanent foundation requirement of this chapter until the home is relocated.

146.03 FOUNDATION REQUIREMENTS. A mobile home or manufactured home located outside of a manufactured home community or mobile home park shall be placed on a permanent frost-free foundation system that meets the support and anchorage requirements as recommended by the manufacturer or required by the State Building Code. The foundation system must be visually compatible with permanent foundation systems of surrounding residential structures. Any such home shall be installed in accordance with the requirements of the State Building Code.

(Code of Iowa, Sec. 103A.10 & 414.28)

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CHAPTER 150

BUILDING NUMBERING

150.01 Definitions

150.02 Owner Requirements

150.03 Determining and Assigning Numbers

150.04 Enforcement

150.01 DEFINITIONS. For use in this chapter, the following terms are defined:

1. "Owner" means the owner of the principal building.
2. "Principal building" means the main building on any lot or subdivision thereof.

150.02 OWNER REQUIREMENTS. Every owner shall comply with the following numbering requirements:

1. Obtain Building Number. The owner shall obtain the assigned number to the principal building from the Clerk.

(Code of Iowa, Sec. 364.12[3d])

2. Display Building Number. The owner shall place or cause to be installed and maintained on the principal building the assigned number in a conspicuous place to the street in figures not less than three (3) inches in height and of a contrasting color with their background.

(Code of Iowa, Sec. 364.12[3d])

3. Failure to Comply. If an owner refuses to number a building as herein provided, or fails to do so for a period of thirty (30) days after being notified in writing by the City to do so, the City may proceed to place the assigned number on the principal building and assess the costs against the property for collection in the same manner as a property tax.

(Code of Iowa, Sec. 364.12[3h])

150.03 DETERMINING AND ASSIGNING NUMBERS. A number shall be determined and allowed at intervals of 20 feet, commencing with baseline designations as hereinafter described, the said 20-foot intervals to be measured along the length of the streets abutting the lots on which the structures to be numbered are erected. Even numbers shall be on the south sides, east sides, southwesterly sides, and southeasterly sides of the streets. Odd numbers shall be on the north sides, west sides, northwesterly, and northeasterly sides of the streets. The method of assigning numbers shall be as follows:

1. For Cherry Street, streets parallel to Cherry Street, and streets running in a north and south direction, the base line shall be the Shell Rock River. The blocks from the River to Main Street on the southwest and to Water Street on the northeast shall each be numbered 100 to 199, the next blocks shall be the 200 block; and each successive block shall be numbered 100 higher.
2. For Main Street, streets parallel to Main Street (as it runs in the plat of the Original Town of Shell Rock), and streets running in an east and west direction or a northwesterly-southeasterly direction, the base line shall be Cherry Street. The blocks

on either side of Cherry Street shall each be numbered 100 to 199, the next blocks shall be the 200 block; and each successive block shall be numbered 100 higher.

3. The east-west section of Cherry Street (formerly Waverly Road) shall not establish a new base line, and shall be numbered as a continuation of the southwesterly-northeasterly section of Cherry Street. The north-south section of Washington Street (formerly Grape Street) shall be numbered as a continuation of Washington Street. Streets running in an east-west direction or an easterly-westerly direction, or a north-south direction, shall be numbered in conformity with the streets which they join or of which they are extensions.

In the event this section does not require a specific block number for a street, the Clerk shall assign numbers to lots on new and existing streets consistent with this numbering system.

150.04 ENFORCEMENT. The Clerk shall be responsible for enforcing the provisions of this chapter.

CHAPTER 151

TREES

151.01 Purpose	151.10 Nuisance and Condemnation
151.02 Definitions	151.11 Protection of Trees
151.03 Tree Committee	151.12 Tree Trimming by Contractors
151.04 Authority	151.13 Disease Control
151.05 Permits	151.14 Inspection and Removal
151.06 Removal	151.15 Appeals
151.07 Species and Varieties	151.16 Interference
151.08 Trees Planted on City Property	151.17 New Subdivisions
151.09 Obstruction	

151.01 PURPOSE. It is the purpose of this chapter to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the City.

151.02 DEFINITIONS. For use in this chapter, the following terms are defined:

1. "Park" means any public parks.
2. "Parking" means that part of the street, avenue, or highway in the City not covered by sidewalk and lying between the lot line and the curb line or, on unpaved streets, that part of the street, avenue, or highway lying between the lot line and that portion of the street usually traveled by vehicular traffic.
3. "Public Works Director" means the Public Works Director of the City or such other person as may be designated by the Council.

151.03 TREE COMMITTEE. There is hereby created and established a Tree Board (also referred to as the Tree Committee) for the City, which shall consist of three (3) members, who shall be appointed by the Mayor annually, for overlapping three-year terms. Members of the Board shall serve without compensation. The Public Works Director shall serve as ex-officio member of the Tree Board. In the event of a Board vacancy, the Mayor shall appoint a new member to the Board.

151.04 AUTHORITY. The Tree Committee shall have the authority of regulating the planting, maintenance, and removal of trees on the parking, on public property, and in parks to ensure safety or preserve or enhance the aesthetics of such public sites. The Tree Committee shall have the authority to supervise or inspect all work done in accordance with terms of this chapter. The Tree Committee shall have the authority to formulate and publish a master tree plan with advice, hearing, and approval of the Council.

151.05 PERMITS. No citizen shall plant, preserve, remove, cut or otherwise disturb any tree on any parking, public property, or park without first filing an application and procuring a permit from the Clerk. A written permit will be issued at no cost. The person receiving the permit shall abide by the standards of practice adopted by the Tree Board. Contractors hired by the City to perform tree work are not required to have a permit, but must have sufficient liability insurance before performing tree service within the community. City employees are not required to have a permit, but must work directly under the Public Works Director.

151.06 REMOVAL. All public trees designated for removal shall be completely removed from the growing site and disposed of in an authorized manner. Unless otherwise provided below, all costs incurred will be paid by the City.

151.07 SPECIES AND VARIETIES. The Tree Committee will develop and maintain a list of desirable trees for planting along streets in three sizes: small, medium and large. No person shall plant in any street any fruit-bearing tree or any tree of the kinds commonly known as:

American Elm	Fruit trees (except ornamental)
Austrian Pine	Mountain Ash
Black Locust	Mulberry
Bolleana Poplar	Russian Olive
Box Elder	Siberian Elm
Catalpa	Silver Maple
Chinese Elm	Tree of Heaven
Cottonwood	Weeping Birch
Crabapple	White Poplar
Lombardy Poplar	Willow
Poplar	Nut bearing trees
Evergreens	

151.08 TREES PLANTED ON CITY PROPERTY. Any person planting a tree on public property shall first obtain approval of the Tree Committee. No tree that will attain a height of 30 feet may be planted under existing utility lines. All trees planted in any street shall be planted no closer to the curb (or pavement in the absence of a curb) than midway between the outer edge of the sidewalk and the curb or pavement, or in the absence of a sidewalk, midway between the property line and the curb or pavement and at least 6 feet from the property line. In the absence of a curb, trees shall not be planted within 10 feet of the closest edge of the pavement (or traveled portion of the road, in the absence of pavement). Trees shall not be planted on the parking if the parking is less than 12 feet in length and 4 feet 9 inches in depth (sidewalk to curb), or contains less than 50 square feet of exposed soil or grass surface. No tree shall be planted closer than 25 feet to an intersection and 4 feet 9 inches from a driveway. For any tree privately planted in the parking, it shall be the responsibility of the property owner of the property abutting the parking to maintain the tree, and in the event the tree becomes dangerous or diseased, remove the tree, at the property owner's expense.

151.09 OBSTRUCTION. It is the duty of any person owning or occupying real property bordering on any street upon which property there may be trees, and any person owning or occupying real property abutting parking on which there may be trees, to prune such trees in a manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or alley intersection. The minimum clearance of any overhanging portion thereof shall be 8 feet over sidewalks for trees on private property, and 18 feet over all streets and parking and sidewalks on parking.

151.10 NUISANCE AND CONDEMNATION. All trees planted in violation of, or not maintained in strict compliance with the provisions of this chapter are declared to constitute a public nuisance. The Public Works Director shall cause written notice to be served on the property owner or abutting property owner (in the case of a tree in the parking) requiring such nuisances to be corrected within 30 days or the cost of correction will be assessed against the property owner.

151.11 PROTECTION OF TREES. During development, redevelopment, razing, or renovation, no more than 50 percent of the trees shall be cut, damaged, or removed except by specific permit. If more than 50 percent are removed a minimum of 25 percent of the trees removed must be replaced with trees on the approved tree list. Any ditches, tunnels, trenches to be excavated or any drive to be laid within a radius of 10 feet from any tree must have prior approval of the Tree Board. No person shall intentionally damage, cut, carve, attach any rope, wire, nails, advertising posters, or other contrivance to any tree; allow any gaseous, liquid, chemical or solid substance that is harmful to such trees to come in contact with them; or set fire or permit fire to burn when such fire or the heat will injure any portion of any tree. Tree topping is not allowed on any public-owned tree unless approved by the Tree Committee.

151.12 TREE TRIMMING BY CONTRACTORS. Any person who trims, cuts, removes, or otherwise disturbs any tree for hire shall be responsible for the disposal of all wood, branches, brush, and bark and the cleanup of the same.

151.13 DISEASE CONTROL. Any dead, diseased or damaged tree or shrub, which may harbor serious insect or disease pests or disease injurious to other trees, is hereby declared to be a nuisance.

151.14 INSPECTION AND REMOVAL. The Tree Board shall inspect or cause to be inspected any trees or shrubs in the City reported or suspected to be dead, diseased or damaged, and such trees and shrubs shall be subject to the following:

1. City Property. If it is determined that any such condition exists on any public property, including the parking, the Tree Board may cause such condition to be corrected by treatment or removal. The Council may order the removal of any trees on the streets of the City which interfere with the making of improvements or with travel thereon.
2. Private Property. If it is determined with reasonable certainty that any such condition exists on private property and that danger to other trees or to adjoining property or passing motorists or pedestrians is imminent, the Tree Board shall notify by certified mail the owner, occupant or person in charge of such property to correct such condition by treatment or removal within 14 days of said notification. If such owner, occupant or person in charge of said property fails to comply within 14 days of receipt of notice, the Tree Board may cause the condition to be corrected and the cost assessed against the property.

(Code of Iowa, Sec. 364.12[3b and h])

151.15 APPEALS. Any person who receives an order from the Tree Board or Public Works Director and objects to all or a part thereof may, within eight days of receipt thereof, notify the Council, in writing, of the nature of the objection and request a hearing thereon. The hearing shall be held within eight days of notice to the appellant. Within eight days after such hearing, the Mayor shall notify the appellant of the final decision.

151.16 INTERFERENCE. No person shall prevent, delay, or interfere with the Tree Board or Public Works Director in the execution or enforcement of this chapter.

151.17 NEW SUBDIVISIONS. In subdivisions approved after January 1, 2010, no trees shall be planted in the parking unless approved by the Tree Committee.

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CHAPTER 160

FLOOD PLAIN MANAGEMENT

160.01 Statutory Authority, Finding of Fact and Purpose	160.12 Floodway (Overlay) District (FW)
160.02 Definitions	160.13 Floodway Fringe (Overlay) District (FF)
160.03 Lands to Which Chapter Applies	160.14 General Flood Plain (Overlay) District (FP)
160.04 Establishment of Official Flood Plain Zoning Map	160.15 Shallow Flooding (Overlay) District (SF)
160.05 Rules for Interpretation of District Boundaries	160.16 Appointment, Duties and Responsibilities of Zoning Administrator
160.06 Compliance	160.17 Flood Plain Development Permit
160.07 Abrogation and Greater Restrictions	160.18 Conditional Uses, Appeals and Variances
160.08 Interpretation	160.19 Nonconforming Uses
160.09 Warning and Disclaimer of Liability	160.20 Penalties for Violation
160.10 Severability	160.21 Amendments
160.11 Establishment of Zoning (Overlay) Districts	

160.01 STATUTORY AUTHORITY, FINDINGS OF FACT AND PURPOSE.

1. Statutory Authority. The Legislature of the State of Iowa has, in Chapter 414, *Code of Iowa*, as amended, delegated the power to cities to enact zoning regulations to secure safety from flood and to promote health and the general welfare.
2. Findings of Fact.
 - A. The flood hazard areas of the City are subject to periodic inundation, which can result 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 of the community.
 - B. These flood losses, hazards, and related adverse effects are caused by: (i) the occupancy of flood hazard areas by uses vulnerable to flood damages, which create hazardous conditions as a result of being inadequately elevated or otherwise protected from flooding; and (ii) the cumulative effect of obstructions on the flood plain, causing increases in flood heights and velocities.
 - C. This chapter relies upon engineering methodology for analyzing flood hazards, which is consistent with the standards established by the Department of Natural Resources.
3. Statement of Purpose. It is the purpose of this chapter to protect and preserve the rights, privileges, and property of the City and its residents and to preserve and improve the peace, safety, health, welfare, and comfort and convenience of its residents by minimizing those flood losses described in Section 160.01(2)(A) of this chapter with provisions designed to:
 - A. Reserve sufficient flood plain area for the conveyance of flood flows so that flood heights and velocities will not be increased substantially.
 - B. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood or which cause excessive increases in flood heights or velocities.

- C. Require that uses vulnerable to floods, including public facilities that serve such uses, be protected against flood damage at the time of initial construction or substantial improvement.
- D. Protect individuals from buying lands that may not be suited for intended purposes because of flood hazard.
- E. Assure that eligibility is maintained for property owners in the community to purchase flood insurance through the National Flood Insurance Program.

160.02 DEFINITIONS. Unless specifically defined below, words or phrases used in this chapter shall be interpreted to give them the meaning they have in common usage and to give this chapter its most reasonable application.

1. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year. (See "100-year flood.")
2. "Basement" means any enclosed area of a building which has its floor or lowest level below ground level (subgrade) on all sides. (Also see "lowest floor.")
3. "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.
4. "Existing construction" means any structure for which the "start of construction" commenced before the effective date of the community's Flood Insurance Rate Map, and may also be referred to as "existing structure."
5. "Existing factory-built home park or subdivision" means a factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the effective date of the first flood plain management regulations adopted by the community.
6. "Expansion of existing factory-built home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
7. "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 a building site. For the purpose of this chapter, factory-built homes include mobile homes, manufactured homes, and modular homes and also includes recreational vehicles that are placed on a site for greater than 180 consecutive days and not fully licensed for and ready for highway use.
8. "Factory-built home park" means a parcel or contiguous parcels of land divided into two or more factory-built home lots for sale or lease.
9. "Flood" means a general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid runoff of surface waters from any source.

10. "Flood elevation" means the elevation floodwaters would reach at a particular site during the occurrence of a specific flood. For instance, the 100-year flood elevation is the elevation of floodwaters related to the occurrence of the 100-year flood.
11. "Flood Insurance Rate Map" (FIRM) means the official map prepared as part of (but published separately from) the Flood Insurance Study that delineates both the flood hazard areas and the risk premium zones applicable to the community.
12. "Flood plain" means any land area susceptible to being inundated by water as a result of a flood.
13. "Flood plain management" means an overall program of corrective and preventive measures for reducing flood damages and promoting the wise use of flood plains, including but not limited to emergency preparedness plans, flood control works, flood proofing, and flood plain management regulations.
14. "Flood proofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures, including utility and sanitary facilities, which will reduce or eliminate flood damage to such structures.
15. "Floodway" means the channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to carry and discharge floodwaters or flood flows so that confinement of flood flows to the floodway area will not cumulatively increase the water surface elevation of the base flood by more than one foot.
16. "Floodway fringe" means those portions of the flood plain, other than the floodway, which can be filled, leveed, or otherwise obstructed without causing substantially higher flood levels or flow velocities.
17. "Historic structure" means any structure that is:
 - A. Listed individually in the National Register of Historic Places, maintained by the Department of Interior, or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing in the National Register;
 - B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (i) by an approved State program as determined by the Secretary of the Interior; or (ii) directly by the Secretary of the Interior in states without approved programs.
18. "Lowest floor" means the floor of the lowest enclosed area in a building including a basement except when all the following criteria are met:

- A. The enclosed area is designed to flood to equalize hydrostatic pressure during floods with walls or openings that satisfy the provisions of Section 160.13(2)(D); and
- B. The enclosed area is unfinished (not carpeted, dry-walled, etc.) and used solely for low damage potential uses such as building access, parking, or storage; and
- C. Machinery and service facilities (e.g., hot water heater, furnace, electrical service) contained in the enclosed area are located at least one foot above the 100-year flood level; and
- D. The enclosed area is not a “basement” as defined in this section.

In cases where the lowest enclosed area satisfies criteria A, B, C and D above, the lowest floor is the floor of the next highest enclosed area that does not satisfy the criteria above.

19. “New construction” (new buildings, factory-built home parks) means those structures or development for which the start of construction commenced on or after the effective date of the first flood plain management regulations adopted by the community.

20. “New factory-built home park or subdivision” means a factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the first flood plain management regulations adopted by the community.

21. “100-Year Flood” means a flood, the magnitude of which has a one percent chance of being equaled or exceeded in any given year or which, on the average, will be equaled or exceeded at least once every 100 years.

22. “Recreational vehicle” means a vehicle that is:

- A. Built on a single chassis;
- B. Four hundred (400) square feet or less when measured at the largest horizontal projection;
- C. Designed to be self-propelled or permanently towable by a light duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

23. “Special flood hazard area” means the land within a community subject to the “100-year flood.” This land is identified as Zone A on the Flood Insurance Rate Map.

24. “Start of construction” includes substantial improvement, and means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement or permanent construction of a structure on a site, such as pouring of a slab or footings, the installation of pile, the construction of columns, or any work beyond the stage of excavation; or the placement of a factory-built home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling,

nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

25. "Structure" means anything constructed or erected on the ground or attached to the ground, including (but not limited to) buildings, factories, sheds, cabins, factory-built homes, storage tanks, and other similar uses.

26. "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

27. "Substantial improvement" means any improvement to a structure which satisfies either of the following criteria:

A. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure, either: (i) before the start of construction of the improvement; or (ii) if the structure has been substantially damaged and is being restored, before the damage occurred. The term does not, however, include any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications that are solely necessary to assure safe conditions for the existing use. The term also does not include any alteration of a historic structure, provided the alteration will not preclude the structure's designation as a historic structure.

B. Any addition that increases the original floor area of a building by 25 percent or more. All additions constructed after the effective date of the first flood plain management regulations adopted by the community shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.

28. "Variance" means a grant of relief by a community from the terms of the flood plain management regulations.

29. "Violation" means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations.

160.03 LANDS TO WHICH CHAPTER APPLIES. The provisions of this chapter apply to all lands within the jurisdiction of the City shown on the Official Flood Plain and Shallow Flooding (Overlay) Districts, as established in this chapter.

160.04 ESTABLISHMENT OF OFFICIAL FLOOD PLAIN ZONING MAP. The Flood Insurance Rate Map for Butler County and Incorporated Areas, City of Shell Rock, Panels 19023C0352D, 0354D, 0375D, dated September 16, 2011, which were prepared as part of the Flood Insurance Study for Butler County, is hereby adopted by reference and declared to be the Official Flood Plain Zoning Map. The flood profiles and all explanatory material contained with the Flood Insurance Study are also declared to be a part of this chapter.

160.05 RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES. The boundaries of the zoning district areas shall be determined by scaling distances on the Official

Flood Plain Zoning Map. When an interpretation is needed as to the exact location of a boundary, the Zoning Administrator shall make the necessary interpretation. The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Zoning Administrator in the enforcement or administration of this chapter.

160.06 COMPLIANCE. No structure or land shall hereafter be used and no structure shall be located, extended, converted, or structurally altered without full compliance with the terms of this chapter and other applicable regulations that apply to uses within the jurisdiction of this chapter.

160.07 ABROGATION AND GREATER RESTRICTIONS. It is not intended by this chapter to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provision of this chapter shall prevail. All other ordinances inconsistent with this chapter are hereby repealed to the extent of the inconsistency only.

160.08 INTERPRETATION. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State statutes.

160.09 WARNING AND DISCLAIMER OF LIABILITY. The standards required by this chapter are considered reasonable for regulatory purposes. This chapter does not imply that areas outside the designated Flood Plain (Overlay) District areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the City or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

160.10 SEVERABILITY. If any section, clause, provision or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

160.11 ESTABLISHMENT OF ZONING (OVERLAY) DISTRICTS. The flood plain areas within the jurisdiction of this chapter are hereby divided into the following districts: (i) Floodway District (FW); (ii) Floodway Fringe District (FF); (iii) General Flood Plain District (FP); and (iv) Shallow Flooding District (SF). The boundaries shall be as shown on the Official Flood Plain Zoning Map. Within these districts, all uses not allowed as permitted uses or permissible as conditional uses are prohibited unless a variance to the terms of this chapter is granted after due consideration by the Board of Adjustment.

160.12 FLOODWAY (OVERLAY) DISTRICT (FW).

1. Permitted Uses. 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 material or equipment, excavation or alteration of a watercourse.

A. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck fanning, 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.
2. Conditional Uses. The following uses which involve structures (temporary or permanent), fill, storage of materials or equipment, excavation or alteration of a watercourse may be permitted only upon issuance of a conditional use permit by the Board of Adjustment as provided for in Section 160.18. 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 and wharves.
 - F. Utility transmission lines and underground pipelines.
 - G. Other uses similar in nature to uses described in subsections 1 and 2 of this section, which are consistent with the provisions of subsection 3 of this section and the general spirit and purpose of this chapter.
3. Performance Standards. 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 of 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.

F. Storage of materials or equipment that are buoyant, flammable, explosive or injurious to human, animal or plant life prohibited. Storage of other material may be allowed if readily removable from the Floodway District within the time available after flood warning.

G. Watercourse alterations or relocations (channel changes and modifications) must be designed to maintain the flood carrying capacity within the altered or relocated portion. In addition, such alterations or relocations must be approved by the Department of Natural Resources.

H. Any fill allowed in the floodway must be shown to have some beneficial purpose and shall be limited to the minimum amount necessary.

I. Pipeline river or stream crossings shall be buried in the streambed and banks or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering or due to the action of flood flows.

160.13 FLOODWAY FRINGE (OVERLAY) DISTRICT (FF).

1. Permitted Uses. All uses within the Floodway Fringe District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet applicable performance standards of the Floodway Fringe District.

2. Performance Standards. All uses must be consistent with the need to minimize flood damage and meet the following applicable performance standards.

A. All Structures. All structures shall:

(1) Be adequately anchored to prevent flotation, collapse or lateral movement of the structure.

(2) Use construction methods and practices that will minimize flood damage.

(3) Use construction materials and utility equipment that are resistant to flood damage.

B. Residential Buildings. All new or substantially improved residential structures shall have the lowest floor, including the basement, 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 Board of Adjustment, 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 withstand the various forces and hazards associated with flooding. All new residential structures shall be provided with a means of access, which will be passable, by wheeled vehicles during the 100-year flood.

C. **Nonresidential Buildings.** All new or substantially improved nonresidential buildings shall have the lowest floor (including basement) elevated a minimum of one foot above the 100-year flood level or, together with attendant utility and sanitary systems, be flood proofed to such a level. When flood proofing is utilized, a professional engineer registered in the State of Iowa shall certify that the flood proofing 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 North American Vertical Datum) to which any structures are flood proofed shall be maintained by the Administrator.

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 they permit the automatic entry and exit of floodwaters.

Such areas shall used solely for parking of vehicles, building access and low damage potential storage.

(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.**

(1) All factory-built homes, including those placed in existing factory-built home parks or subdivisions, shall be elevated on a permanent foundation such that the lowest floor of the structure is a minimum of one foot above the 100-year flood level.

(2) All factory-built homes, including those placed in existing factory-built home parks or subdivisions, shall be anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may

include, but are not limited to, use of over-the-top or frame ties to ground anchors.

F. Utility and Sanitary Systems.

(1) On-site waste disposal and water supply systems shall be located or designed to avoid impairment to the system or contamination from the system during flooding.

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

(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 (other than on-site systems) shall be provided with a level of protection equal to or greater than one foot above the 100-year flood elevation.

(4) Utilize 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 Flammable Materials and Equipment. Storage of equipment and materials 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 subject to major flood damage and anchored to prevent movement due to flood waters; or (ii) readily removable from the area within the time available after flood warning.

H. Flood Control Structures. Flood control structural works such as levees, flood walls, etc. shall provide, at a minimum, protection from a 100-year flood with a minimum of three feet 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. Watercourse Alterations. Watercourse alterations or relocations must be designed to maintain the flood within the altered or relocated portion. In addition, the Department of Natural Resources must approve such alterations or relocations.

J. Subdivision. 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 (including the installation of public utilities) shall meet the applicable performance standards of this chapter. Subdivision proposals intended for residential use shall provide all lots with a means of access, which will be passable by wheeled vehicles during the 100-year flood. Proposals for subdivisions greater than five acres or 50 lots (whichever is less) shall include 100-year flood elevation data for those areas located within the Flood Plain (Overlay) District.

K. Accessory Structures.

(1) Detached garages, sheds, and similar structures accessory to a residential use are exempt from the 100-year flood elevation requirements where the following criteria are satisfied.

- a. The structure shall not be used for human habitation.
- b. The structure shall be designed to have low flood damage potential.
- c. The structure shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters.
- d. The structure shall be firmly anchored to prevent flotation which may result in damage to other structures.
- e. The structure's service facilities such as electrical and heating equipment shall be elevated or flood proofed to at least one foot above the 100-year flood level.

(2) Exemption from the 100-year flood elevation requirements for such a structure may result in increased premium rates for flood insurance coverage of the structure and its contents.

L. Recreational Vehicles. Recreational vehicles are exempt from the requirements of E of this subsection regarding anchoring and elevation of factory-built homes when the following criteria are satisfied.

- (1) The recreational vehicle shall be located on the site for less than 180 consecutive days; and
- (2) The recreational vehicle must be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system and is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

Recreational vehicles that are located on the site for more than 180 consecutive days and are not ready for highway use must satisfy requirements of paragraph E of this subsection regarding anchoring and elevation of factory-built homes.

M. Pipeline Crossings. Pipeline river and stream crossings shall be buried in the streambed and banks, or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering.

160.14 GENERAL FLOOD PLAIN (OVERLAY) DISTRICT (FP).

1. Permitted Uses. The following uses shall be permitted within the General Flood Plain 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 obstructions, 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.
2. **Conditional Uses.** Any uses that involve placement of structures, factory-built homes, fill or other obstructions, storage of materials or equipment, excavation or alteration of a watercourse may be allowed only upon issuance of a conditional use permit by the Board of Adjustment as provided for in Section 160.18. All such uses shall be reviewed by the Department of Natural Resources to determine: (i) whether the land involved is either wholly or partly within the floodway or floodway fringe; and (ii) the 100-year flood level. The applicant shall be responsible for providing the Department of Natural Resources with sufficient technical information to make the determination.
3. **Performance Standards.**
- A. All conditional uses, or portions thereof, to be located in the floodway as determined by the Department of Natural Resources shall meet the applicable provisions and standards of the Floodway (Overlay) District (Section 160.12).
 - B. All conditional uses, or portion thereof, to be located in the floodway fringe as determined by the Department of Natural Resources shall meet the applicable provisions and standards of the Floodway Fringe (Overlay) District (Section 160.13).

160.15 SHALLOW FLOODING (OVERLAY) DISTRICT (SF).

1. **Permitted Uses.** All uses within the Shallow Flooding District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet the applicable performance standards of the Shallow Flooding District.
2. **Performance Standards.** The performance standards for the Shallow Flooding District shall be the same as the performance standards for the Floodway Fringe District with the following exceptions:
- A. In shallow flooding areas designated as an AO Zone on the Flood Insurance Rate Map, the minimum flood proofing/flood protection elevation shall be equal to the number of feet as specified on the FIRM (or a minimum of two feet if no number is specified) above the highest natural grade adjacent to the structure.
 - B. In shallow flooding areas designated as an AH Zone on the Flood Insurance Rate Map, the minimum flood proofing/flood protection elevation shall be equal to the elevation as specified on the FIRM.

160.16 APPOINTMENT, DUTIES AND RESPONSIBILITIES OF ZONING ADMINISTRATOR.

1. The Co-Zoning Administrators are hereby appointed to implement and administer the provisions of this chapter and will herein be referred to as the Administrator.
2. Duties and responsibilities of the Administrator shall include, but not necessarily be limited to, the following:
 - A. Review all flood plain development permit applications to assure that the provisions of this chapter will be satisfied.
 - B. Review flood plain development applications that all necessary permits have been obtained from Federal, State and local governmental agencies including approval when required from the Department of Natural Resources for flood plain construction.
 - C. Record and maintain a record of: (i) the elevation (in relation to North American Vertical Datum) of the lowest floor (including basement) of all new or substantially improved structures; or (ii) the elevation to which new or substantially improved structures have been flood proofed.
 - D. Notify adjacent communities/counties and the Department of Natural Resources prior to any proposed alteration or relocation of a watercourse and submit evidence of such notifications to the Federal Emergency Management Agency.
 - E. Keep a record of all permits, appeals and such other transactions and correspondence pertaining to the administration of this chapter.
 - F. Submit to the Federal Insurance Administration an annual report concerning the community's participation, utilizing the annual report form supplied by the Federal Insurance Administrator.
 - G. Notify the Federal Insurance Administration of any annexations or modifications to the community's boundaries.
 - H. Review subdivision proposals to insure such proposals are consistent with the purpose of this chapter and advise the City Council of potential conflict.

160.17 FLOOD PLAIN DEVELOPMENT PERMIT.

1. Permit Required. A flood plain development permit issued by the Administrator shall be secured prior to any flood plain development (any manmade change to improved and 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.
2. Application for Permit. Application shall be made on forms furnished by the Administrator and shall include the following:
 - A. Description of the work to be covered by the permit for which application is to be made.

- B. Description of the land on which the proposed work is to be done (i.e., lot, block, track, street address or similar description) that will readily identify and locate the work to be done.
 - C. Indication of the use or occupancy for which the proposed work is intended.
 - D. Elevation of the 100-year flood.
 - E. Elevation (in relation to North American Vertical Datum) of the lowest floor (including basement) of buildings or of the level to which a building is to flood proofed.
 - F. For buildings being improved or rebuilt, the estimated cost of improvements and market value of the building prior to the improvements.
 - G. Such other information as the Administrator deems reasonably necessary (e.g., drawings or a site plan) for the purpose of this chapter.
3. Action on Permit Application. The Administration shall, within a reasonable time, make a determination as to whether the proposed flood plain development meets the applicable standards of this chapter and shall approve or disapprove the application. For disapprovals, the applicant shall be informed, in writing, of the specific reasons therefor. The Administrator shall not issue permits for variances except as directed by the Board of Adjustment.
4. Construction and Use to be as Provided in Application and Plans. Flood plain development permits based on the basis of 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, flood proofing, or other flood protection measures were accomplished in compliance with the provisions of this chapter, prior to the use or occupancy of any structure.

160.18 CONDITIONAL USES, APPEALS AND VARIANCES.

1. Appointment and Duties of Board of Adjustment. A Board of Adjustment is hereby established, which shall hear and decide: (i) applications for conditional uses upon which the Board is authorized to pass under this chapter; (ii) appeals; and (iii) requests for variances to the provisions of this chapter, and shall take any other action which is required of the Board.
2. Conditional Uses. Requests for conditional uses shall be submitted to the Administrator, who shall forward such to the Board of Adjustment for consideration. Such requests shall include information ordinarily submitted with applications as well as any additional information deemed necessary to the Board of Adjustment.
3. Appeals. Where it is alleged there is any error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter, the aggrieved party may appeal such action. The notice of appeal shall be filed with the Board of Adjustment and with the official from whom the appeal is taken and shall set forth the specific reason for the appeal. The official from whom

the appeal is taken shall transmit to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.

4. Variance. The Board of Adjustment may authorize upon request in specific cases such variances from the terms of this chapter that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship. Variances granted must meet the following applicable standards.

A. Variances shall only be granted upon: (i) a showing of good and sufficient cause; (ii) determination that failure to grant the variance would result in exceptional hardship to the applicant; and (iii) a determination that the granting of the variance 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 codes or ordinances.

B. Decisions. The Board shall arrive at a decision on an appeal, conditional use or variance within a reasonable time. In passing upon an appeal, the Board may, so long as such action is in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or modify the order, requirement, decision, or determination appealed from, and it shall make its decision, in writing, setting forth the findings of fact and the reasons for its decision. In granting a conditional use or variance, the Board shall consider such factors as contained in this section and all other relevant sections of this chapter and may prescribe such conditions as contained in subsection 6 of this section.

5. Factors Upon Which the Decision of the Board of Adjustment Shall be Based. In passing upon applications for variances, the Board shall consider all relevant factors specified in other sections of this chapter and:

A. The danger to life and property due to increased flood heights or velocities caused by encroachments.

B. The danger that materials may be swept on to other land or downstream to the injury of others.

C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.

D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

E. The importance of the services provided by the proposed facility to the City.

F. The requirements of the facility for a flood plain location.

G. The availability of alternative locations not subject to flooding for the proposed use.

H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

I. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.

- J. The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - K. The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.
 - L. The cost of providing governmental services during and after flood conditions, including maintenance and repair of public utilities (sewer, gas, electrical and water systems), facilities, streets and bridges.
 - M. Such other factors which are relevant to the purpose of this chapter.
6. **Conditions Attached to Variances.** Upon consideration of the factors listed above, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose of this chapter. Such conditions may include, but not necessarily be limited to:
- A. Modification of waste disposal and water supply facilities.
 - B. Limitations of periods of use and operation.
 - C. Imposition of operational controls, sureties, and deed restrictions.
 - D. Requirements for construction of channel modifications, dikes, levees, and other protective measures, provided such are approved by the Department of Natural Resources and are deemed the only practical alternative to achieving the purpose of this chapter.
 - E. **Flood proofing measures.** Flood proofing measures shall be designed consistent with the flood protection elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The Board of Adjustment shall require that the applicant submit a plan or document certified by a registered professional engineer that the flood proofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.
7. **Appeals to the Court.** Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Board.

160.19 NONCONFORMING USES.

- 1. A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance codified in this chapter, but which is not in conformity with the provisions of this chapter, may be continued subject to the following conditions:
 - A. If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this chapter.
 - B. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.
 - C. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50

percent of the market value of the structure before the damage occurred, unless it is reconstructed in conformity with the provisions of this chapter.

2. Except as provided in subsection 1(B) of this section, any use which has been permitted as a conditional use or variance shall be considered a conforming use.

160.20 PENALTIES FOR VIOLATION. Violations of the provisions of this chapter or failure to comply with any of the requirements (including violations of conditions and safeguards established in connection with grants of conditional uses or variances) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof fined not more than \$500.00 or imprisoned for not more than 30 days. Each day such violation continues shall be considered a separate offense. Nothing herein contained prevent the City of Shell Rock from taking such other lawful action as is necessary to prevent or remedy violation.

160.21 AMENDMENTS. The regulations and standards set forth in this chapter may from time to time be amended, supplemented, changed, or repealed. No amendment, supplement, change, or modification shall be undertaken without prior approval of the Department of Natural Resources.

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