

CHAPTER 12 – PLANNING & ZONING

ARTICLE 2 - EXCEPTIONS AND ENCROACHMENTS

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Sections 12-2-101 to 199, inclusive. Exceptions and encroachments - general provisions.

Section 12-2-101 Requirement for conforming structures to height limitations.

Any structure hereafter erected or altered shall comply with the height limitations of the district in which it is located except as specified in this article.

Section 12-2-102 Certain appurtenances may exceed height limitations - exceptions.

The following appurtenances may exceed the prescribed height limit provided they are normally required for use permitted in the district in which they are erected or constructed; flagpoles, chimneys, cooling towers, elevator bulkheads, belfries, penthouses for other than living purposes, grain elevators, stacks, silos, storage towers, observation towers, ornamental towers, monuments, cupolas, domes, spires, standpipes and other necessary mechanical appurtenances and their protective housing; provided, however, that any of the above, except flagpoles and chimneys when located in any district with a height limit of 40 feet or less, shall be allowed only upon a finding of the Board of Adjustment that such appurtenances will not be unduly detrimental to the surrounding property.

Section 12-2-103 Certain electronic towers allowed with permission of Board of Adjustment.

Radio, television, microwave and other electronic transmission or receiving towers in excess of height limits may be allowed in any district as a conditional use upon a finding by the Board of Adjustment that topographic or other physical considerations make it necessary that they be located outside a district where they are permitted as a matter of right and that the proposed tower or towers will not be unduly detrimental to surrounding property.

Section 12-2-104 No structure allowed which exceeds maximum limits established by FAA rules.

In any district, no structure shall be erected which exceeds the maximum heights permissible under the rules of the federal aeronautics administration and further provided that no structures shall be erected.

Section 12-2-105 Certain public and semi-public buildings and structures allowed to exceed height limitations with permission of Board of Adjustment.

Public and semi-public buildings and structures such as hospitals, churches, sanitariums, schools and water reservoir towers may exceed the height limits of the district in which they are located, provided that such buildings and structures shall provide at least one additional foot of yard space on each side for each additional foot that such building or structure exceeds the specified height limit of the district in which it is located and further provided that a finding is made by the Board of Adjustment that such additional height will not be materially detrimental to surrounding property.

Section 12-2-106 Requirement for conforming buildings and structures to yard space regulations.

Any building or structure hereafter erected, altered or established shall comply with the yard space requirements of the district in which it is located except as specified below.

All multiple family structures erected or moved into the local business district as a conditional use shall respectively conform to the regulations governing the multiple family districts unless the local business regulations are more restrictive then they shall govern. Any required yard space shall be open from 30 inches above the ground to the sky except as specified herein.

Any business building erected on or moved onto a lot in the multi-family district as a conditional use shall conform to the set-back regulations of the multi-family district.

Source: Ord. No. 1631, 2008;

Section 12-2-107 Allowable yard space encroachments for eaves, cornices and architectural features.

Eaves, cornices and projecting architectural features may extend two feet into a required yard space except that eaves may encroach 3 feet into a yard space when such yard space is 10 feet or more in width.

Source: Ord. No. 1631, 2008;

Section 12-2-108 Allowable yard space encroachments for fire escapes.

Open fire escapes may extend into any required side or rear yard not more than five (5) feet.

Section 12-2-109 Allowable yard space encroachments for chimneys.

Chimneys when not more than 4 feet wide may extend two feet into any required yard space.

Section 12-2-110 Allowable yard space encroachments for porches, decks, and terraces.

Open, uncovered porches, decks, or terraces no higher than the first floor above grade on the side or rear of the building may encroach one-third of the distance to the property line into the required side or rear yard.

Open, uncovered front porches, not wider than twelve (12) feet and no higher than the first floor above grade, may encroach eight (8) feet into the required front yard or one-third of the existing front yard, whichever is less, but no closer than ten (10) feet to any front property line.

Source: Ord. No. 1631, 2008;

Section 12-2-111 Allowable yard space encroachments for accessory building or structures.

Accessory buildings or structures shall be permitted to occupy a required yard with the following restrictions:

1. No such accessory structure shall be greater than 16 feet in height nor be closer than 20 feet from any street line.

(Exception: A height for accessory structures not to exceed 20 feet in average height or the height of the principal building, whichever is greater, may be approved by the board of Adjustment to meet architectural features of the principal building.)

2. An accessory structure may be constructed within 3 feet of an inside lot line or alley line when as measured from the roof overhang when the entire structure is entirely to the rear of the principal building on the lot and the principal building on the adjacent lot.
3. A detached garage, when being entered at an angle more than 45 degrees from an alley, shall be located such that the total turning radius into the garage is a minimum of thirty-five (35) feet, including the width of the adjacent alley, but no less than fifteen (15) feet measured at a right angle from the alley property line adjacent to the garage. Detached garages, not located in a side-yard, with sidewalls that are placed at less than a 10 degree deflection from the edge of an alley, may be located three (3) feet, as measured to the roof overhang, from the alley property line.

Source: Ord. No. 1527, 2002; Ord. No. 1631, 2008; Ord. No. 1760, 2016.

Section 12-2-112 Certain automobile storage garages excepted from yard space requirements with permission of Board of Adjustment.

Automobile storage garages may be allowed within a required front or side yard when such garage will be entirely below the grade of the lot and after a finding by the Board of Adjustment that topographic conditions make such a location necessary, that such orientation will not create a hazard to automobile or pedestrian traffic in the street, and that such orientation will be in harmony with the character of development of the neighborhood.

Section 12-2-113 Certain one-family dwellings allowed on lots smaller than yard space requirements with permission of Board of Adjustment.

No dwelling may be erected on any lot, separately owned or under contract of sale and containing, at the time of the passage of this chapter, an area or a width smaller than that required for a one-family dwelling, unless allowed by the Board of Adjustment.

Section 12-2-114 Requirements for wall, hedges and fences to provide unobstructed view at intersections - exceptions.

Except in districts allowing the construction of buildings or structures to the property line, there shall be provided an unobstructed view across the triangle formed by joining points measured 20 feet distant along the property line from the intersection of two streets or 15 feet along both the street and alley line from the intersection of a street and an alley. Within said triangle there shall be no sight obscuring or partly obscuring walls, fence or foliage higher than

30 inches above grade or in the case of trees, foliage lower than 8 feet. Vertical measurement shall be made at the top of the curb on the street or alley adjacent to the nearest side of the triangle or if no curb exists, from the edge of the nearest traveled way. This provision does not apply to chain link fences, on which no obstructions are attached thereto.

Section 12-2-115 Requirements for hedges, fences and foliage at places other than intersections.

On portions of a lot not covered by street or alley intersection restrictions, the height of fences of any length and foliage continuous for five (5) feet or more shall be limited to 48 inches on any street line which is designated a front or side yard or is adjacent to any front yard. Fences located in side street yards may be 48 inches in height with an additional two (2) feet of lattice or chain link that is more than 50 per cent open if the fence is not located adjacent to another front yard and is not closer than 25 feet from the intersecting front property line.

Fences shall be limited to 48 inches on any adjacent side lot line from the front property line to the front of the principal building or any adjacent principal building, whichever is furthest from the front property line. If the neighboring lot does not have an existing structure the fences and hedges shall be limited to 48 inches from the front property line to the front of the principal building. On all other portions of lot lines, fences, hedges and continuous foliage barriers may not exceed a height of 80 inches.

This provision does not apply to chain link fences, on which no obstructions are attached thereto, but all fences placed parallel to any exterior building wall must be a minimum of three feet away from such exterior wall.

Retaining walls placed near property lines must be positioned so that no part of the structure or footing encroaches onto any adjacent lot or public right-of-way. Owners are responsible for the maintenance of their respective lot area on both sides of any retaining wall.

Source: Ord. No. 1329, 1993; Ord. No. 1516, 2002; Ord. No. 1632, 2008;

Section 12-2-116 Requirements for hedges and fences on zoning lots allowing principal buildings only.

Fences and hedges erected within a portion of a zoning lot on which a principal building, but not an accessory building, may be erected, may conform with height limits of the principal buildings which can be erected on such lot, but shall be subject to any building code provisions which may be applicable.

Section 12-2-117 Rule of measurement for hedges and fences.

The height of fences, hedges and other continuous foliage shall be measured from the

adjacent top of the street curb surface of an alley or the official established grade thereof, whichever is the higher. On inside lot lines the measurement shall be from the grade of the lot measured five (5) feet perpendicular from the fence or foliage.

Source: Ord. No. 1516, 2002

Section 12-2-118 Power of Board of Adjustment to approve or require fences or plantings - exception.

The Board of Adjustment may approve, or may direct as a condition for granting an appeal, that fences or plantings of a height in excess of these regulations be placed as shielings between different uses, or between like uses upon agreement between the parties affected thereby, provided that no such approval shall have the effect of reducing corner visibility as provided for herein.

Section 12-2-119 Power of Board of Adjustment to grant interim special use permits for certain uses.

It is recognized that there may be extensive areas of undeveloped land within the city upon which the planned type of development will not take place for a considerable time. It is therefore reasonable and proper that interim uses not in conformity with the land use plan be allowed.

The Board of Adjustment is authorized to grant special use permits for property within the district allowing for uses not allowed as a matter of right in said district under the following conditions:

1. The proposed use shall be an open land type of use and shall not involve the erection of permanent buildings or other permanent improvements and shall be located in an undeveloped area of the city, provided however, that permanent buildings shall be allowed which conform with the zoning in force upon the parcel.
2. The proposed use and the placement thereof upon the land shall be such that it shall not be unsightly to the general public nor interfere with the enjoyment or use of neighboring properties.
3. All permanent structures shall comply with all provisions of the district in which the proposed use is located.
4. All temporary uses and structures shall comply with all provisions of the uniform building code.
5. The Board of Adjustment may append reasonable conditions to any special use permit to the end that the objectives of this chapter may be upheld.

Section 12-2-120 Procedures, conditions and restrictions on interim special use permits.

Before issuing any special use permit, the board shall hold a public hearing and shall give notice thereof to all property owners within 200 feet and to the planning commission and city commission. The city inspector shall enforce compliance with the terms of the special use permit and shall initiate actions for renewal or cessation of the activity at the expiration of the special use permit.

No special use permit shall be issued for a period to exceed two years, provided however, that such special use permit may be renewed for additional periods not to exceed two years each, upon finding that conditions have not changed sufficiently to warrant denial of such a renewal.

No property owner or owner of other interest in the land shall have a vested right in the renewal of any special use permit.

Source: R.O. Pierre, Ord. No. 1372, 1995.

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Section 12-2-121 Airport Noise Zone A

This zone provides for development around the Airport that will allow the highest use of the land, yet will be compatible with airport operations. Airport Noise Zone A is a relatively high noise area best suited for agricultural use or industrial use when a high noise level can be tolerated. This zone limits or restricts the uses which are permitted for the zoning districts which lie within the boundaries of Airport Noise Zone A. Any structural development must meet the criteria for height restriction as well as compatibility. In this zone the regulation governing the various districts upon which the Airport Noise Zone A is superimposed are unchanged except that the following uses are declared incompatible with the purpose of Airport Noise Zone A and are hereby expressly excluded:

1. All residential dwellings.
2. Auditoriums, concert halls, music shells, and outdoor theaters.
3. Churches, schools, colleges, rest homes, retirement homes, and similar facilities.
4. Hospitals and clinics.
5. Office buildings.
6. Mortuaries, funeral homes and funeral chapels.

7. Industrial and manufacturing establishments or other uses which produce smoke interfering with the safe use of the airport.

8. Any other use which would create electrical interference with radio communications between the airport and aircraft, make it difficult for fliers to distinguish between airport lights and others, result in glare in the eyes of fliers using the airport, impair visibility in the vicinity of the airport.

Source: Ordinance No. 1029, 1979.

Section 12-2-122 Airport Noise Zone B

Airport Noise Zone B ordinarily is a relatively lower noise area with no restrictions. Hospitals, churches, auditoriums and such should consider sound control in design of facilities if located in areas of this zone closest to the airport. The reason for the establishment of Noise Zone B is to notify the general public that such an area is in the established airport approach zones and as such may be subjected to noise pollution.

Source: Ordinance No. 1029, 1979.

Section 12-2-123 Conditional Use Permits

The City Commission may authorize by conditional use permit the uses designated in this chapter when located in a zoning district allowing such use. The City Commission shall impose such conditions as are appropriate and necessary to ensure compliance with the comprehensive plan and protect the health, safety and general welfare in the issuance of such conditional use permit. Unless expressly modified by the Board of Adjustment, all regulations of the zoning district in which the use is located shall apply.

1. **Application.** An application shall be filed with the Planning Commission. The owner may be required to submit plans, drawn to scale, indicating the location and dimensions of all existing and proposed buildings or additions, parking, landscaping, building setbacks, screenings, and the use conducted therein or the use of any land.

2. **Notification.** Notification of surrounding property owners, tenants and interested parties shall be accomplished by posting a sign on the property noting the fact that a conditional use permit is pending and by mailing notices of public hearing to neighboring property owners not less than seven days before the public hearing before the planning commission.

3. **Planning Commission Recommendation.** For each application for a conditional use, the City Planning Commission shall report to the City Commission its findings and recommendations, including the stipulation that additional conditions regarding the location, character, or other features of the proposed use or buildings may be imposed

when they are deemed necessary for protection of public interest.

4. Public Hearing. Upon application and review by the City Planning Commission, the City Commission shall hold a public hearing thereon, after having given a seven-day notification in a daily newspaper of general circulation.

5. Criteria for Review. In reviewing applications for conditional use permits, due consideration shall be given to the following:

- a. The location, character and natural features of the property;
- b. The location, character and design of the adjacent buildings;
- c. Proposed fencing, screening and landscaping;
- d. Proposed vegetation, topography, and natural drainage;
- e. Proposed pedestrian and vehicular access, circulation and parking, including that related to bicycles and other unpowered vehicles and provisions for handicapped persons;
- f. Existing traffic and traffic to be generated by the proposed use;
- g. Proposed signs and lighting;
- h. The availability of public utilities and services;
- I. The objectives of the adopted comprehensive plan and the purpose of the ordinance codified herein;
- j. The overall density, yard, height, and other requirements of the zone in which it is located;
- k. The effects of noise, odor, smoke, dust, air and water pollution and the degree of control through the use of clarifiers, screening, setbacks and orientation; and
- l. The degree to which conditions imposed will mitigate any probable adverse impacts of the proposed use on existing adjacent uses.

6. Expiration of Conditional Use Permit. A conditional use permit shall automatically expire if the use permitted has not been started within 12 months or if the use permitted ceases for a period of 12 months.

7. Preexisting Uses. An existing use eligible for a conditional use permit which was lawfully established on the effective date of this title shall be deemed to have received a conditional use permit and shall be provided with such permit upon request, and it shall

not be a nonconforming use; provided, however, for any enlargement, extension or relocation of such existing use, an application in conformance with this chapter shall be required.

Source: Ord. 1439, 1999.

Section 12-2-124 Small Wind Energy Systems (SWES).

A. Purpose.

The purpose of this section is to ensure that the placement, location, installation, construction and modification of a Small Wind Energy System (SWES) facility is consistent with the City's land use policies, to minimize the impact of SWES facilities, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of environmental impacts of such facilities, and to protect the health, safety and welfare of the City's citizens.

B. Federal and State Requirements.

All SWES facilities shall meet or exceed standards and regulations of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), the U.S. Fish and Wildlife Service (USF&WS), South Dakota Game, Fish & Parks (SDGF&P), South Dakota Department of Transportation (SDDOT), State Historic Preservation Office (SHPO), South Dakota State Statutes and any other agency of federal or state government with the authority to regulate SWES facilities.

C. Definitions.

Net Metering. The generation of electric power by an electric customer of the Utility and the measurement of electrical energy flow both into and out of the customer's facilities for the purpose of offsetting the customer's cost for electric energy from the Utility by the customer's production of electric energy.

Occupied Building. Any residence, office building, church, public building or other principal building or accessory building that is occupied or in use when a permit application is submitted.

Owner. The "owner" shall mean the individual, entity or entities having an equity interest in the SWES, including their successors or assigns that intend to own and operate the system in accordance with this ordinance.

Rotor. The blades and the hub together are called the rotor.

Small Wind Energy System(s) (SWES). A wind energy conversion system consisting of a wind turbine, a tower (including footing), and associated control or conversion electronics, which has

a rated capacity of not more than 100 kw and which is primarily intended to reduce on-site consumption of utility power.

System Height. The height above grade as measured from the base of the tower to the tallest point of the SWES including the rotor radius.

Tower. The steel monopole, freestanding structure that supports a wind generator.

Tower Height. The height above grade of the fixed portion of the tower, excluding the wind turbine.

Utility. Pierre Municipal Utilities (PMU)

Wind Generator. The blades and associated mechanical and electrical conversion components mounted on top of the tower.

D. General Requirements.

Small wind energy systems shall require a Conditional Use Permit (CUP) in all zoning districts and flood plain areas of the city and shall be subject to certain requirements as set forth below;

1. An operational plan is required with the CUP application and shall include the following:
 - a. Property lines and physical dimensions of the property,
 - b. Location, dimensions, and types of existing structures on the property,
 - c. Proposed location of the SWES tower with distance to all structures and property lines,
 - d. The public rights-of-way and easements that are contiguous with the property,
 - e. Wind system specifications, including manufacturer, model, rotor diameter and tower height,
 - f. Tower and foundation drawings.
2. Small Wind Energy Systems proposed to be installed within the 100 year floodplain shall have approval of the City Floodplain Administrator and, where applicable, the U.S. Army Corps of Engineers. Such SWES sites shall take such measures, as required by the Floodplain Administrator, to protect the site from damage from potential flooding. The Floodplain Administrator shall require a floodplain permit per FEMA regulations.

3. If the operational plan is approved, the City will return one copy of the operational plan to the owner and will retain the other copy with the original CUP application.
4. If the CUP application is rejected, the City will notify the applicant in writing and provide a written record of why the application was rejected. If the specified deficiencies are resolved, the applicant may reapply after 6 months.
5. The maximum system height shall not exceed sixty (60) feet.
6. All SWES must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
7. The tower for a SWES shall be setback a distance equal to 1.1 times the system height from all property lines, public rights-of-way, overhead power lines and occupied buildings.
8. There shall not be more than one SWES located on each tract of land recorded by the County Equalization office and associated with the principal building.
9. No SWES shall be erected closer than 75 feet or a distance of five times the diameter of the larger rotor, whichever is the greater distance, to another SWES.
10. All SWES shall be equipped with a redundant braking system. This includes both aerodynamic over speed controls, including variable pitch, tip and other similar systems, and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.
11. A clearly visible warning sign measuring at least 7"x10" that states "Caution – High Voltage" must be placed at the base of the tower at a height of five feet above adjacent grade.
12. Climb Prevention Locks.
 - a. All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
 - b. The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible for a minimum height of 12 feet from the ground.
 - c. All access doors to SWES shall be locked, as appropriate, to prevent entry by non-authorized persons.
13. All electrical wires associated with a SWES, other than wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires, shall be located underground.

14. Authorized employees of the City of Pierre shall be permitted to enter all properties for the purpose of inspecting connections to and safety features related to the City electric utility.
15. Noise produced by SWES shall not incrementally exceed fifty-five (55) dBA, as measured outside of the closest neighboring inhabited dwelling.
16. Visual Appearance.
 - a. A SWES shall not be artificially lighted unless such lighting is required by the FAA.
 - b. The SWES shall remain painted or finished the color or finish that was originally applied by the manufacturer.
 - c. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a SWES visible from any public road, shall be prohibited.
 - d. A lattice type tower structure shall be prohibited. Only monopole type structures shall be permitted.
17. SWES shall be sited to prevent the impact of shadow flicker or blade glint upon any inhabited structures, except for the owner's, or city roadways. Systems found to be in violation of this condition shall be shut down until the flicker or glint problem is remedied.
18. Visible Disconnect – A disconnecting device shall be installed to electrically isolate the SWES from the distribution system. The visible disconnect shall provide a visible air gap between Interconnection Customer's Generation and Pierre Municipal Utilities (PMU) distribution system in order to establish the safety isolation required for work on PMU's distribution system. This disconnecting device shall be readily accessible 24 hours per day by PMU field personnel and shall be capable of being padlocked by PMU field personnel. The disconnecting device shall be lockable in the open position.
19. Sharing or the sale of generated energy across a common property line is prohibited.
20. Interconnection – Customers who desire to interconnect and operate in parallel with the electric distribution system will be required to execute a contractual agreement with PMU and/or Missouri River Energy Services (MRES). The agreement may include, among others, an interconnection agreement, power purchase agreement (or a combined interconnection and power purchase agreement), operating agreement, and/or maintenance agreement. The Customer is responsible for the actual costs to

interconnect with PMU including, but not limited to, any equipment installed due to the interconnection and associated design.

Interconnection requirements can be found in the MRES/PMU Distributed Generation Workbook available at City Hall.

E. Roof Mounted Systems

Where wind energy systems are to be attached to a building structure for support, the documents submitted for the required permit shall show the method of construction and shall include a structural analysis prepared and stamped by a South Dakota licensed professional engineer.

Wind energy systems that are attached to a building shall meet the height requirements for the zoning district in which they are located and shall require a Conditional Use Permit (CUP).

F. Building Permits Required.

Building Permits shall be required for the installation of a SWES.

1. The owner shall submit a building permit application to the building office. The application shall be accompanied by standard drawings of the SWES, a line drawing of the electrical components, two copies of the operational plan and the required building permit fee.
2. The application shall include drawings of the tower, base and footing. An engineering analysis of the tower, the tower base and the footing showing compliance with the International Building Code (IBC) and American National Standards Institute (ANSI) standards and stamped by a South Dakota licensed professional engineer shall also be submitted.
3. Building permit applications for SWES shall include a line drawing of the system electrical components in sufficient detail to allow for a determination that the manner of installation conforms to meet or exceed applicable standards provided by the NESC (National Electrical Safety Code), IEEE (Institute of Electrical and Electronic Engineers), NEC (National Electrical Code), UL (Underwriter's Laboratory), technical requirements and local building codes.
4. An issued building permit shall expire if the SWES is not installed and functioning within six (6) months, with a required inspection, from the date the permit is issued.

G. Abandonment.

1. A SWES that is out-of-service for a continuous 12-month period will be deemed to be abandoned and the Director of Engineering/Planning or designee may issue a Notice of Abandonment to the owner. The owner shall have the right to respond to the

Notice of Abandonment within 30 days from the Notice receipt date. The Director of Engineering/Planning or designee shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the SWES has not been abandoned.

2. If the SWES is determined to be abandoned, the owner of the SWES shall remove the wind energy structure and associated appurtenances from the property at the owner's sole expense within 90 days of receipt of the Notice of Abandonment. If the owner fails to remove the wind generator, tower, and any associated appurtenances, the Director of Engineering/Planning or designee may pursue legal action to have the SWES removed at the owner's expense.

H. Penalty

Any person, firm, association of persons, company, corporation, or their agents, servants, or employees violating or failing to comply with any of the provisions of this section shall be guilty of a misdemeanor and fined, upon conviction, not less than one dollar (\$1.00) nor more than five-hundred (\$500.00) as authorized in State Statute 9-19-3. Each day any violation of noncompliance continues shall constitute a separate and distinct offense. The penalty provided herein shall be cumulative of other remedies provided by State Law as may be, and may be exercised in enforcing this section whether or not there has been a complaint filed.

Source: Ord. 1694, 2012.

Sections 12-2-125 to 199, inclusive. Reserved.
