

**City of Cheney, Kansas
Zoning Ordinance**

CHAPTER 1

GENERAL PROVISIONS

Sections:

1.01 Short Title

1.02 Authority and Jurisdiction

1.03 Relationship to Other Provisions of the Municipal Ordinances

1.04 Relationship to Comprehensive Plan and Other Policies

1.05 Relationship to Design Guidelines

1.06 Relationship to Private Restrictions

1.07 Adequate Public Facilities and Services

1.08 Violations of Prior Regulations

1.09 Violations

1.10 Enforcement and Civil Remedies for Violations

1.11 Violation Enforcement Procedures

1.12 Severability

1.01 Short Title

This ordinance shall be known and may be cited as the Cheney Zoning Ordinance.

1.02 Authority and Jurisdiction

The Cheney zoning ordinance is adopted pursuant to the authority contained in Article 7 of Chapter 12 of the Kansas Statutes Annotated (KSA 12-741 et seq.), and amendments thereto, and Article 12, Section 5 of the Kansas Constitution. The ordinance shall be effective throughout the corporate limits of the City. Provided, however, that nothing herein shall be construed to preclude the City from engaging in extraterritorial planning activities pursuant to KSA 12-743, and amendments thereto.

1.03 Relationship to Other Provisions of the Municipal Ordinances

A. The use of buildings and land within the City shall be subject to all other applicable provisions of Cheney municipal ordinances, as well as this ordinance, whether or not such other provisions of municipal ordinances are specifically cross-referenced in this ordinance.

B. In interpreting and applying the provisions of this ordinance, they shall be construed to be the minimum requirements necessary for the promotion of public health, safety or the general welfare of the citizens of Cheney.

1.04 Relationship to Comprehensive Plan and Other Policies

It is the intention of the City that this ordinance implements the goals, objectives and policies adopted for the City, as reflected in the Comprehensive Plan and other planning policies and documents. While the City reaffirms its commitment that this ordinance and any amendment thereto are in conformity with adopted planning policies, the City hereby expresses its intent that neither this ordinance nor any amendment thereto may be challenged merely on the basis of an alleged nonconformity with the Comprehensive Plan or other planning policy.

1.05 Relationship to Design Guidelines

The provisions of this ordinance may be supplemented from time to time by design guidelines adopted by the City Council by policy, resolution or ordinance. Design guidelines shall be considered as an aid in the interpretation or implementation of the provisions of this ordinance. Design guidelines shall be considered as policy (except those parts derived from this ordinance) and may be modified when deemed appropriate in order to accomplish higher quality development design. In the event of a conflict between a design guideline and any provision of this ordinance, the provision of this ordinance shall regulate.

Related Information: Design Guidelines; Residential Neighborhood Design Manual; Traditional Neighborhood Design Manual

1.06 Relationship to Private Restrictions

The provisions of this ordinance are not intended to abrogate any deed restriction, covenant, easement or any other private agreement or restriction on the use of land. Provided, that where the provisions of this ordinance are more restrictive or impose higher standards than any such private restriction, the requirements of this ordinance shall regulate. Where the provisions of any private restriction are more restrictive or impose higher standards than the provisions of this ordinance, such private restrictions shall control if properly enforced by a person having the legal right to enforce such restrictions. Although private restrictions are supported by the City, such restrictions shall not be enforced by the City.

1.07 Adequate Public Facilities and Services

A. In order to prevent the premature development of land which might pose a threat to the health, safety or general welfare of the community at large, it shall be the policy of the City that no application for special use permit, preliminary or final development plan or preliminary or final plat shall be approved unless public facilities and services are available, or will be provided as a condition of the application, which are adequate to serve the development.

B. For purposes of this section, the determination of the adequacy of public facilities and services shall be made in accordance with the following criteria.

1. The road network serving the site shall be capable of handling the increased traffic generated by the development. At a minimum, if the property does not abut a collector street or arterial containing a paved surface conforming to the standards established in the City then traffic from the site must be able to travel to a collector or arterial conforming to such standards on a continuous system of temporary paved roadways consisting of hot mix asphalted concrete pavement or overlay, or Portland cement concrete, with a pavement depth of three (3) inches and a minimum width of twenty-seven (27) feet (31" curb back to curb back). The Governing Body has the discretion to require the creation of a benefit district for the improvement of nearby arterial streets to ensure that the road network is capable of handling present and future traffic caused by development in the area. A traffic impact study may be required.

2. The development must be served by a public sanitary sewer system. Sewer lines and sewage treatment facility capacity must be certified by the City Engineer as being capable of handling the waste flows from the development.

3. The development must have access to a public water supply. Water lines must be certified by the City as being capable of serving the development.

4. The development must have an adequate drainage system. The utilization of on-site or on-stream detention and or retention and natural drainage ways are required. Storm drainage shall be carried by enclosed systems or open channels, as certified by the City.

5. Fire protection services shall be available to the development with fire flows from water lines adequate to serve the development.

C. Where adequate public facilities and services are not in place or scheduled to be constructed within one (1) year of the consideration of the application, the City may make approval of the application subject to adequate facilities being provided as described in subsection D. In determining whether such conditional approval is appropriate, the governing body shall consider the following factors:

1. The nature, extent and estimated cost of the required facilities or services.

2. The proposed method of providing the adequate facilities.

3. The extent to which other property owners would be required to share in the cost of the improvements.

4. Any public amenities to be provided by the development, such as the donation or dedication of land or improvements for public facilities or services including, but not limited to, water, natural gas, sewer, storm sewer and streets.

D. An applicant may propose to provide adequate facilities as described in subsection B above, by either providing the facilities or services at their own expense or by agreeing with the City to fund all or a part of the cost of such improvements. The intent of the effect of either method shall be to offset fairly and equitably the timing of the costs of the improvements or any higher net public costs resulting from the impact of the development. In any computations of additional net public costs, the differences between otherwise anticipated public costs and development impact costs, and otherwise anticipated public revenue and development impact revenues shall be considered, among other factors. The governing body may require expert determination and analysis of public costs and revenues and the development's impact thereon.

1.08 Violations of Prior Regulations

All violations of prior zoning regulations of the City, or any Sedgwick County or township regulations that have accrued in the corporate area of the City as of the effective date of this ordinance shall continue to be violations and shall not be considered to be legal nonconforming situations under this ordinance. The City shall have the same authority to secure civil remedies for violations of such regulations to the same extent that it may secure civil remedies for violations of this ordinance.

1.09 Violations

Any of the following shall be considered a violation of any permit, approval, certificate or other form of authorization and shall be subject to the enforcement remedies provided by this section and by Kansas state law:

A. Development or use without, or inconsistent with, permit or approval: To erect, construct, reconstruct, remodel, alter, maintain, move or use any building, structure or sign or to use, alter or maintain any land without, or in any way inconsistent with, all of the required permits, approvals, certificates and other forms of authorization required by this ordinance in order to conduct or engage in such activity.

B. Development or use inconsistent with ordinance: To erect, construct, reconstruct, remodel, alter, maintain, move or use any building, structure or sign or to use, alter or maintain any land in violation of any zoning, subdivision or general regulation of this ordinance or any amendment thereof.

C. Development or use inconsistent with conditions: To violate, by act or omission, any term, condition or qualification placed by the City upon a required permit, certificate, rezoning, plan approval or other form of authorization granted by the City to allow the use, development or other activity upon land or improvements thereon. This includes occupying any building or structure which requires a Certificate of Occupancy for which there is not a valid Certificate of Occupancy.

D. Making lot or yard nonconforming: To reduce or diminish any lot area so that the yards or open spaces shall be smaller than prescribed by these requirements or the final plat or plan.

E. Increasing use intensity: To increase the intensity and/or density of use of any land or structure, except in accordance with the procedural and substantive requirements of this ordinance.

F. Removing, defacing, obscuring notice: To remove, deface or obscure any sign required by this ordinance or otherwise interfere with any notice required by this ordinance.

1.10 Enforcement and Civil Remedies for Violations

The City shall have the following remedies and enforcement powers:

A. Withhold permits or approvals: The City may deny or withhold all permits, certificates, plan or plat approvals or other forms of authorization on any building, structure or land, or improvements thereon, upon which there is an uncorrected violation of any provision of this ordinance or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the City. The City may, instead of withholding or denying an authorization, grant such authorization subject to the condition that the violation be corrected. The provisions of this subsection shall apply regardless of whether the current owner or applicant is responsible for the violation in question.

B. Revoke permits:

1. A permit may be revoked by the official issuing the permit or his/her designee at any time prior to the completion of the use, building, structure or sign for which the same was issued, when it appears to such official that one (1) or more of the following conditions are present:

a. There is departure from the plans, specifications or conditions as required under the terms of the permit.

b. That the permit was procured by false representation.

c. That the permit was issued by mistake.

d. Or that any of the provisions of this ordinance are being violated.

2. Written notice of such revocation shall be served upon the owner, the owner's agent or contractor, or upon any person employed in the building or structure for which such permit was issued or shall be posted in a prominent location on the property. Where notice of revocation has been served or posted, no further construction or use of the property shall proceed.

3. Any revocation of a permit may be appealed in writing to the City Administrator within five (5) days.

C. Stop work: With or without revoking permits, the City may stop work on any development, building, or structure on any land on which there is an uncorrected violation of a provision of this ordinance or a violation of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the City.

D. Revoke plan or other approvals: Where a violation of this ordinance involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the City shall, upon notice to the applicant, revoke the plan or approval or condition and adhere its continuance on strict compliance, the provision of security or such other conditions as the City may reasonably impose.

E. Civil remedies: The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this ordinance and to abate nuisances maintained in violation thereof. In the event that any building or structure is proposed to be erected, constructed, altered, converted, occupied, or maintained in violation of this ordinance or any building, structure or land is proposed to be used in violation of this ordinance, the City Attorney, or other appropriate authority of the City, may institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, occupation, or use, or to correct or abate such violation or to prevent the occupancy of such building, structure or land.

F. Penalties: The violation of any provision of this ordinance is hereby declared to be a public offense, subject to the jurisdiction of the municipal court of the City of Cheney, Kansas. Any person, firm, association, partnership or corporation convicted thereof shall be punished by either a fine not to exceed five hundred (\$500) dollars for each offense or imprisonment for not more than six (6) months, or both. Each day's violation of this ordinance shall constitute a separate offense.

G. Cumulative: These remedies shall be cumulative.

H. Other remedies: In addition to the enforcement powers and remedies specified in this title, the City may exercise any and all enforcement powers and remedies granted to it by Kansas state law, as it may be amended from time to time.

1.11 Violation Enforcement Procedures

A. Notice: In the case of violations not involving continuing construction or development or any emergency situation, the City shall give written notice of the nature of the violation to the owner, occupant or agent of the property at the last known address. The contents of the notice shall give a description of the nature of the violation that would reasonably allow the property owner or other responsible person, representative or tenant to determine the nature of the violation to allow for self-abatement. Said person shall correct the violation before further enforcement action. The notice shall be personally served or sent by certified mail, return receipt requested. Failure to sign for

the certified mail or failure to pick up said notice from the post office shall not be deemed a lack of notice under this ordinance where delivery was attempted and a record of this attempt was provided as required by procedures for restricted mail.

B. Immediate enforcement: If an authorized building official, public officer or the City makes a reasonable determination that an emergency situation exists in violation of this ordinance, the City may immediately use the enforcement powers and remedies available to it pursuant to this code, including, but not limited to, permit revocation, stop work, withdrawal of a Certificate of Occupancy, and/or filing a complaint, seeking criminal penalties in Municipal Court and no other notification procedures are required as a prerequisite to such action.

1.12 Severability

It is hereby declared to be the intention of the City that the sections, subsections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any such section, subsection, paragraph, sentence, clause or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any of the remaining sections, subsections, paragraphs, sentences, clauses or phrases of this ordinance since the same would have been enacted without the incorporation into this ordinance of such unconstitutional or invalid section, subsection, paragraph, sentence, clause or phrase.