

## Chapter 03

### ZONING REGULATIONS

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#### 26.0301 Purpose.

It is the purpose of this chapter to:

(1) establish certain minimum regulations for the protection and promotion of the encourage the orderly, profitable, and health development of the resources or their diversion into uses detrimental to the future growth of Samoa;

(2) assure that economic development is encouraged by enlarging the opportunity for private investment;

(3) facilitate governmental services by providing for the orderly extension of utilities, roads, and other governmental services;

(4) promote the public health, safety and general welfare by preventing unreasonable congesting and concentration of population and assuring adequate light, air, and privacy of all property;

(5) protect the unique character of Samoa, and the right of all Samoans to have a planned and attractive environment for themselves as well as for their visitors and guests; and

(6) provide and preserve space for a growing population.

History: 1965, PL 9-19.

#### 26.0302 Interpretation.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the protection and promotion of the public health, safety and general welfare, and shall be liberally construed in furtherance of these objectives.

History: 1965, PL 9-19.

#### 26.0303 Definitions.

For the purposes of this chapter:

(1) "Accessory building" means a detached subordinate building located on the same lot with a main building, the use of which is customarily secondary to that of the main building or to the use of the land.

(2) "Apartment house" means the same as "multiple dwelling".

(3) "Board" means the zoning board.

(4) "Building" means any structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind.

(5) "Dwelling" means a building or portion thereof designed exclusively for residential occupancy, including one-family, two-family and multiple dwellings, but not including hotels.

(6) "Dwelling unit" means one or more rooms and a single kitchen in a dwelling, designed as a unit for occupancy by one family for living and sleeping purposes.

(7) "Home occupation" means an occupation, carried on by occupants of a dwelling as a secondary use of such dwelling, in connection with which there is no display, stock-in-trade or commodity sold on the premises, and no other person employed.

(8) "Hotel" means any building containing space or rooms intended or designed to be used, or which is used, rented, or hired out to be occupied, or which is occupied for sleeping and/or eating purposes by transient guests.

(9) "Lot" means a parcel of land occupied or to be occupied by a use or building, and accessory buildings and uses, together with such yards, open spaces and lot area as are required by this chapter, and having frontage on a street or public thoroughfare.

(10) "Multiple dwelling" means a building containing 3 or more dwelling units.

(11) "Nonconforming building" means a building or structure which does not conform to the regulations of this chapter and which lawfully existed at the time the regulations with which it does not conform became effective.

(12) "Nonconforming use" means a use of a building or land which does not conform to the regulations of this chapter and which lawfully existed at the time the regulations with which it does not conform became effective.

(13) "One-family dwelling" means a detached building containing only 1 dwelling unit.

(14) "Private automobile parking area" means an open area, located on the same lot with a dwelling or hotel, for parking automobiles of the occupants of such building.

(15) "Public automobile parking area" means an open area, other than a street or private automobile parking area, designed to be used for the parking of 2 or more automobiles.

(16) "Story", means that portion of a building between the ground or the surface of any floor and the surface or the floor or ceiling next above it.

(17) "Structure" means anything constructed or erected on the ground or attached to something having a location on the ground.

(18) "Use" means the purpose for which land or a building is arranged, designed or intended or for which either land or a building is or may be occupied or maintained.

(19) "Yard" means an open space on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this chapter.

History: 1965, PL 9-19.

#### 26.0304 Zoning board-Members-Term- Authority.

(a) There shall be a zoning board consisting of 9 members, all of whom shall be nationals or citizens of the United States and who shall be appointed as follows: The Governor shall appoint 4 members, the district governor of each district shall each appoint 1 member, the Speaker of the House shall appoint 1 member, and the President of the Senate shall appoint 1 member. The chairman of the zoning board shall be a member thereof and shall be elected by the board.

(b) Each member shall serve a term of 2 years; however, members may be reappointed to the board.

(c) The board shall have the authority and duty to adopt such rules as it may deem necessary to carry into effect the provisions of this chapter. Rules shall be adopted in accordance with 4.1001 et seq.

History: 1971, PL, 12-7 § 1.

#### 26.0305 Zoning board-Temporary members.

When the zoning board is considering a zoning map for an individual village, 2 persons elected by the village council shall sit with the zoning board as temporary advisory members. The temporary members shall have advisory powers only and shall not be entitled to vote.

History: 1965, PL, 9-19.

#### 26.0306 Zoning board-Staff.

The Governor shall detail or assign such staff assistance as he decides may be needed and available to assist the zoning board to perform its ministerial functions. The board may not delegate its responsibility for granting variances

26.0310 Division of territory into zones. In order to carry out the purposes and provisions of this chapter, areas within the territory of American Samoa are divided into 10 zones, as follows:

- R1 Single Dwelling Zone
- R2 Multiple Dwelling Zone
- A Agricultural Zone
- C1 General Commercial Zone
- C2 Limited Commercial Zone
- M1 Limited Industrial Zone
- M2 General Industrial Zone
- WC Watershed Conservation Zone
- RC Recreation Conservation Zone
- H Hotel Zone

History: 1965, PL 9-19.

#### 26.0311 Zoning map.

(a) The zone symbols in 26.0310, and the boundaries, must be shown upon a map made a part of this chapter. The map must be designated as the "zoning map", and it and all the notations and references and other information shown thereon shall be as much a part of this chapter as if the matters and information set forth in the map were fully described in this

section.

(b) For purposes of convenience, it is necessary to divide the zoning map into separate parts, inasmuch as a comprehensive survey and study of the entire territory of American Samoa, for planning and zoning purposes, takes time to complete. As rapidly as possible, various parts of the zoning map shall be adopted by act of the zoning board until the entire territory has been covered by the zoning map.

History: 1965, PL 9-19.

Reviser's Comment.

Section 30.0202 of the code of American Samoa, 1961 Ed., adopted a map entitled "Zoning Map Part 1 Tutuila" as a part of the zoning map.

26.0312 Zone boundaries.

(a) Where the zone boundaries are indicated by lines on the zoning map, the map and all the notations, references, and their extensions must be construed to be the zone boundaries.

(b) Where the zone boundaries indicated on the map are not street, alley, or lot or boundary lines, or extensions thereof, the zone boundaries must be determined by the use of the scale appearing on the zoning map unless otherwise specifically shown by dimension.

(c) In any case where there is uncertainty as to the intended location of a zone boundary, the zoning board shall have the power to determine its intended location.

History: 1965, PL, 9-19.

26.0313 Conformance of use to zone.

No building or structure may be erected or maintained, and no existing building or structure may be altered, enlarged, moved or maintained, and no building or land may be used for any purpose, except for a use permitted in the zone in which such building or land is located as provided in this chapter.

History: 1965, PL, 9-19.

26.0314 Single dwelling zones, R1.

The uses permitted in single dwelling zones are:

- (1) one-family dwellings;
- (2) schools and churches;
- (3) parks, playgrounds and community buildings;
- (4) gardening for noncommercial purposes;
- (5) uses customarily accessory to any of the above uses, including home occupations and private automobile parking areas and private garages.

History: 1965, PL, 9-19.

26.0315 Multiple dwelling zones, R2.

The uses permitted in multiple dwelling zones are:

- (1) any use permitted in the R1 single dwelling zone;
- (2) keeping of poultry and domestic livestock for noncommercial purposes;
- (3) accessory buildings and structures, stables, barns, corrals, pens, and other similar structures;
- (4) two-family dwellings and multiple dwellings;
- (5) hospitals, sanatoriums and institutional uses.

History: 1965, PL, 9-19.

#### 26.0316 Agricultural zones, A.

The uses permitted in agricultural zones are:

- (1) any use permitted in R1 and R2 zones;
- (2) farming, including all types of activities and pursuits customarily carried on the fields of agriculture and horticulture, and farms and ranches for the raising of poultry and the raising and grazing of domestic livestock, including dairies and hog raising;
- (3) uses customarily accessory to any of the above uses, including home occupations and private automobile parking areas;
- (4) accessory buildings and structures, including private garages, stables, barns, corrals, pens, and other similar structures.

History: 1965, PL, 9-19.

#### 26.0317 General commercial zones, C1.

The uses permitted in general commercial zones are:

- (1) any use permitted in the R1, R2 and C2 zones;
- (2) wholesale and retail stores, shops and businesses;
- (3) amusement enterprises;
- (4) automobile service stations, public automobile parking areas and public garages (not including automobile repair shops):

- (5) bakeries;
- (6) hospitals and clinics;
- (7) laundries and dry cleaners;
- (8) offices, business or professional, and banks;
- (9) personal service shops, including barber-shops, beauty parlors and the like;
- (10) public utility buildings and uses, including fire and police stations, telephone exchanges, electric distributing substations and the like;
- (11) repair shops and service shops, including shoe repair shops, plumbing shops, dressmaking shops and the like, but not including automobile repair shops;
- (12) restaurants and cafes;
- (13) studios;
- (14) other uses which in the judgment of the board, as evidenced by a resolution in writing, are similar to those listed in this section;
- (15) uses customarily accessory to any of the above uses, including only those accessory to manufacturing, compounding or processing activities as are necessary for the ordinary conduct of the listed uses and which are an integral part thereof;
- (16) accessory buildings and structures;
- (17) public vehicle parking areas.

History: 1965, PL, 9-19.

#### 26.0318 Limited commercial zones, C2.

The uses permitted in limited commercial zones are: personal service shops and general stores, including barbershops, beauty parlors and the like; provided, that such personal services are carried on exclusively within a dwelling.

History: 1965, PL, 9-19.

26.0319 Limited industrial zones, M1.

(a) The uses permitted in limited industrial zones are:

- (1) any use permitted in the C1 zone;
- (2) the manufacturing, compounding, processing or treating of such products as bakery goods, drugs, cosmetics, and food products (not including fish and meat products or the rendering of fats and oils);
- (3) the manufacturing, compounding, assembling or treating of articles or merchandise from previously prepared materials;
- (4) automobile repair shops, including painting, body and fender work and rebuilding; truck and tractor repairing; and tire retreading;
- (5) bottling and packing plants;
- (6) ceramic products manufacturing.
- (7) machine shops, welding shops and sheet-metal shops;
- (8) warehouses and cold storage plants;
- (9) lumber yards, building material sales yards, contractors' equipment storage yards and the like;
- (10) other uses which in the judgment of the board, as evidenced by a resolution in writing, are similar to those listed in this section;
- (11) uses customarily accessory to any of the above-listed uses, and accessory buildings and structures.

(b) The uses listed in subsection (a) must be conducted within a building, or within an area enclosed by a fence or wall at least 6 feet in height, except for necessary gates.

26.0320 General industrial zones, M2.

The uses permitted in general industrial zones are:

- (1) any use permitted in the C1 and M1 zones except dwellings and hotels;
- (2) any other uses not specifically prohibited by law, including those which are or may be objectionable, obnoxious or offensive by reason of odor, dust, smoke, noise, gas, fumes, cinders, vibration or water-carried waste;
- (3) uses customarily accessory to buildings and structures.

History: 1965. PL, 9-19.

26.0321 Hotel zones, H.

The use permitted in hotel zones is hotels.

History: 1965, PL 9-19.

26.0322 Watershed conservation zones, WC.

(a) The uses permitted in watershed conservation zones are: any use permitted in R1, R2 and A zones.

(b) The uses listed in subsection (a) shall be conducted to insure maximum protection against erosion and contamination of water supplies, and to insure preservation of the natural characteristics of the watershed area.

History: 1965, PL, 9-19.

26.0323 Recreation conservation zones, RC.

(a) The uses permitted in recreation conservation zones are:

- (1) agricultural crops;
- (2) recreational facilities.

(b) No structure of any sort other than as approved by the territorial park and recreation board may be constructed between roads parallel to and near the ocean, and the mean high water mark of the ocean. Where no road parallels the ocean, there may be no structure between the mean high water mark and a point 30 feet inland from the mean high water mark of the ocean.

(c) The uses and limitations listed in this section must be conducted to insure the development of recreational facilities and the retention of the natural scenic beauty of the area.

History: 1965, PL, 9-19.

#### 26.0330 Nonconforming buildings.

(a) A nonconforming building may be maintained and repaired, except as otherwise provided in this section.

(b) A building nonconforming as to use regulations may not be added to or enlarged in any manner unless the building, including such additions and enlargements, is made to conform to all the regulations of the zone in which it is located.

(c) A building nonconforming as to height or yard regulations may be added to or enlarged if such addition or enlargement conforms to all the regulations of the zone in which it is located.

(d) A nonconforming building which is damaged or partially destroyed by fire, flood, wind, earthquake or other calamity to the extent of not more than 50% of its value at the time of such damage or destruction may be restored if the total cost of such restoration does not exceed 50% of the value of the building at the time of such damage or destruction. Where the damage or destruction exceeds the value, the building may not be repaired or reconstructed unless the entire building is made to conform to all regulations for a new building in the zone in which it is located.

History: 1965, PL, 9-19.

#### 26.0331 Nonconforming use of building.

(a) The nonconforming use of a building, existing at the time this chapter became effective, may be continued.

(b) The nonconforming use of a building may be changed to any other use which is permitted in the same zone as the use for which the building or structure is designed or intended. The nonconforming use of a building may also be changed to any use permitted in a more restricted zone classification, it may not thereafter be changed to a use of a less restricted zone classification.

History: 1965, PL, 9-19.

#### 26.0332 Nonconforming use of land.

The nonconforming use of land existing at the time this chapter became effective may be continued, except that such use may not be extended either on the same or on to adjoining property. Where a nonconforming use of land is discontinued or changed, any future use of such land must be in conformity with the provisions of this chapter.

History: 1965, PL, 9-19.

#### 26.0333 Buildings, land and uses which become nonconforming.

The provisions of 26.0330 through 26.0332 apply to buildings, land and uses which hereafter become nonconforming due to any classification or reclassification of zone or to any change in the provisions of this chapter.

History: 1965, PL, 9-19; and 1979, PL 16-14 § 1.

Amendment: 1979 Changed manner of appeal.

#### 26.0334 Identification and notification of nonconformance.

The zoning board shall identify nonconforming uses and notify the owner and occupant in writing.

History: 1965, PL, 9-19.

#### 26.0340 Variances.

(a) The zoning board may grant a variance from the regulations applicable to a zone if it finds that the variance is necessary to make possible a reasonable use of land or a building, or that the refusal of a variance would impose a hardship, and that the variance would not be injurious to the neighborhood.

(b) Variances shall be granted only on request, after notice and public hearing, and on the basis of written finding. Appropriate conditions and safeguards may be included.

History: 1965, PL, 9-19.

#### 26.0341 Review of zoning board action.

An appeal from an action of the zoning board may be taken in like manner to appeals under the Administrative Procedure Act 4.1040 through 4.1044.

#### 26.0342 Violation-Penalty.

Any person and any firm, corporation or officer thereof, violating any provision of this chapter, is guilty of a class B misdemeanor.

History: 1965, PL9-19; and 1980, PL 16-90 § 91.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.