TO:	Planning and Zoning Commission
FROM:	Matt Wyant
DATE:	November 10, 2023
RE:	Case #ZTA-2023-04
APPLICANT:	Pottawattamie County
REQUEST:	Zoning text to amend the Pottawattamie County, Iowa, Zoning Ordinance, Section 8.002.020 A and 8.001.050.

Proposal: On the advice of the County Attorney, in order to better align with the provisions of Chapter 335, Code of Iowa, Pottawattamie County is proposing to add a definition of Agricultural Experiences to Section 8.002.020 A and amend Agricultural Uses Exempt Section 8.001.050.

Attachment #1 – Chapter 335, Code of Iowa.

Attachment #2 – Zoning Ordinance proposed changes.

Attachment #3 – Informational Sheet and Request for Determination Form

ZTA - 2023 - 04 Attachment #1

CHAPTER 335

COUNTY ZONING

Referred to in §18B.2, 306B.2, 329.7, 331.304, 331.321, 354.1, 427B.2, 455B.305, 476A.5

335.1 Where applicable.

The provisions of this chapter shall be applicable to any county of the state at the option of the board of supervisors of any such county.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.1]

C93, §335.1

Referred to in §335.25

335.2 Farms exempt.

1. Except to the extent required to implement section 335.27, no ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings, or other buildings or structures that are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used. However, the ordinances may apply to any structure, building, dam, obstruction, deposit, or excavation in or on the floodplains of any river or stream.

2. A county shall not require an application, an approval, or the payment of a fee in order for an ordinance to be deemed inapplicable to land, farm barns, farm outbuildings, or other buildings or structures that are primarily adapted for use for agricultural purposes under this section.

3. Land, farm houses, farm barns, farm outbuildings, or other buildings or structures may qualify under this section independently or in combination with other agricultural uses. Land enrolled in a soil or water conservation program shall be considered land primarily adapted for use for agricultural purposes under this section.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §358A.2; 81 Acts, ch 117, §1070; 82 Acts, ch 1245, §16]

C93, §335.2

2019 Acts, ch 24, §104; 2020 Acts, ch 1034, §1, 5, 6

Referred to in §335.3, 368.26, 414.23

335.2A Sale of consumer fireworks — limitation.

A county shall not adopt or enforce any ordinance under this chapter to regulate, restrict, or prohibit the location of permanent buildings or temporary structures used for the sale

of consumer fireworks pursuant to section 100.19, in any location zoned for commercial or industrial purposes.

2022 Acts, ch 1019, §1, 4
Similar provision, see §414.1(1)(f)
NEW section

335.3 Powers.

1. Subject to section 335.2, the board of supervisors may by ordinance regulate and restrict the height, number of structures, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and may regulate, restrict, and prohibit the use for residential purposes of tents, trailers, and portable or potentially portable structures. However, such powers shall be exercised only with reference to land and structures located within the county but lying outside of the corporate limits of any city.

2. *a.* Except as provided in paragraph *"b"*, when there is a replacement of a preexisting manufactured, modular, or mobile home with any other manufactured, modular, or mobile home containing no more than the original number of dwelling units, or a replacement of a preexisting site-built dwelling unit with a manufactured, modular, or mobile home or site-built dwelling unit, within a manufactured home community or a mobile home park, the board of supervisors shall not adopt or enforce any ordinance, regulation, or restriction, or impose any conditions on the replacement home, home site upon which the home sits, or the owner's property that were not required of the preexisting home, home site, or property, that would prevent the continuance of the property owner's lawful nonconforming use that had existed relating to the preexisting home, home site upon which the home sat, or the owner's property.

b. Paragraph *"a"* does not apply if any of the following conditions exist:

(1) The replacement of the preexisting home with the replacement home would substantially increase the risk to the safety of life or property.

(2) The property owner has discontinued and abandoned the nonconforming use for the period of time established by ordinance, unless such discontinuance is caused by circumstances outside the control of the property owner. The period of time so established shall be not less than one year. For purposes of this subparagraph, circumstances outside the control of the property owner include floods, fires, destructive thunderstorm events such as derechos and tornadoes, and similar catastrophic events causing widespread or localized severe property damage. For purposes of this subparagraph, a property owner shall not be considered to have discontinued and abandoned the nonconforming use if the property owner demonstrates that the applicable home site continues to be available for use as a home site for a replacement home.

(3) The replacement results in the overall nature and character of the present use being substantially or entirely different from the original lawful preexisting nonconforming use.

(4) The replacement results in an obstruction to a shared driveway or shared sidewalk providing vehicular or pedestrian access to other homes and uses unless the property owner makes modifications to such shared driveway or sidewalk that extinguishes such obstruction or the effects of such obstruction.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §358A.3; 81 Acts, ch 117, §1071]
C93, §335.3
2019 Acts, ch 43, §1; 2022 Acts, ch 1070, §17
Subsection 2 amended

335.4 Areas and districts.

The board of supervisors may divide the county, or any area or areas within the county, into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations and restrictions shall be uniform for each class or kind of buildings

throughout each district, but the regulations in one district may differ from those in other districts.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.4]

C93, §335.4

2020 Acts, ch 1063, §180

Referred to in §335.7

335.5 Regulations and comprehensive plan — considerations and objectives — notice, adoption, distribution.

1. The regulations shall be made in accordance with a comprehensive plan and designed to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban development patterns; to lessen congestion in the street or highway; to secure safety from fire, flood, panic, and other dangers; to protect health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote reasonable access to solar energy; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. However, provisions of this section relating to the objectives of energy conservation and access to solar energy shall not be construed as voiding any zoning regulation existing on July 1, 1981, or to require zoning in a county that did not have zoning prior to July 1, 1981.

2. The regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such county.

3. The regulations and comprehensive plan shall be made with consideration of the smart planning principles under section 18B.1 and may include the information specified in section 18B.2, subsection 2.

4. *a.* A comprehensive plan recommended for adoption or amendment by the zoning commission established under section 335.8 may be adopted by the board of supervisors. The board of supervisors shall not hold a public hearing or take action on the recommendation until it has received the zoning commission's final report containing the recommendation.

b. Before taking action on the recommendation, the board of supervisors shall hold a public hearing at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the hearing shall be published as provided in section 331.305.

c. The board of supervisors may amend a proposed comprehensive plan or amendment prior to adoption. The board of supervisors shall publish notice of the meeting at which the comprehensive plan or amendment will be considered for adoption. The notice shall be published as provided in section 331.305.

d. Following its adoption, copies of the comprehensive plan or amended plan shall be sent or made available to neighboring counties, cities within the county, the council of governments or regional planning commission where the county is located, and public libraries within the county.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §358A.5; 81 Acts, ch 125, §1; 82 Acts, ch 1245, §17]

C93, §335.5

2010 Acts, ch 1184, §21; 2020 Acts, ch 1034, §2, 6, 7

Referred to in §335.8

2020 amendment to subsection 4 applies to comprehensive plans and amendments to comprehensive plans proposed or adopted on or after July 1, 2020; 2020 Acts, ch 1034, §7

335.6 Procedure — hearings — notice.

The board of supervisors shall provide for the manner in which the regulations and restrictions and the boundaries of the districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, the regulation, restriction, or boundary shall not become effective until after a public hearing, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the hearing shall be published as provided in section 331.305. The notice

shall state the location of the district affected by naming the township and section, and the boundaries of the district shall be expressed in terms of streets or roads if possible. The regulation, restriction, or boundary shall be adopted in compliance with section 331.302.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.6]

87 Acts, ch 31, §1; 87 Acts, ch 43, §12

C93, §335.6

Referred to in §329.9, 335.7, 427B.1, 427B.20, 657.9

335.7 Changes — protest.

The regulations, restrictions, and boundaries may be amended, supplemented, changed, modified, or repealed. Notwithstanding section 335.4, as a part of an ordinance changing land from one zoning district to another zoning district or an ordinance approving a site development plan, a board of supervisors may impose conditions on a property owner which are in addition to existing regulations if the additional conditions have been agreed to in writing by the property owner before the public hearing required under this section or any adjournment of the hearing. The conditions must be reasonable and imposed to satisfy public needs which are directly caused by the requested change. In case, however, of a protest against the change signed by the owners of twenty percent or more either of the area included in the proposed change, or of the area immediately adjacent to the proposed change and within five hundred feet of the boundaries of the proposed change, the amendment shall not become effective except by the favorable vote of at least sixty percent of all of the members of the board of supervisors. The provisions of section 335.6 relative to public hearings and official notice shall apply equally to all changes or amendments.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.7]

85 Acts, ch 9, §1

C93, §335.7

335.8 Commission appointed — powers and duties.

1. In order to avail itself of the powers conferred by this chapter, the board of supervisors shall appoint a commission consisting of eligible electors, as defined in section 39.3, who reside within the county, but outside the corporate limits of any city, to be known as the county zoning commission. The commission may recommend the boundaries of the various districts and appropriate regulations and restrictions to be enforced in the districts. The commission shall, with due diligence, prepare a preliminary report and hold public hearings on the preliminary report before submitting the commission's final report. The board of supervisors shall not hold its public hearings or take action until it has received the final report of the commission. After the adoption of the regulations, restrictions, and boundaries of districts, the zoning commission may, from time to time, recommend to the board of supervisors amendments, supplements, changes, or modifications. The commission's report and any recommendations may include a proposed ordinance or amendments to an ordinance.

2. The zoning commission may recommend to the board of supervisors for adoption a comprehensive plan pursuant to section 335.5, or amendments thereto.

3. The zoning commission, with the approval of the board of supervisors, may contract with professional consultants, regional planning commissions, the economic development authority, or the federal government, for local planning assistance.

[C50, 54, 58, §358A.8; C62, 66, 71, 73, §358A.8, 373.21; C75, 77, 79, 81, §358A.8]

C93, §335.8

2010 Acts, ch 1184, §22; 2011 Acts, ch 118, §85, 89; 2020 Acts, ch 1034, §3, 6, 8; 2020 Acts, ch 1121, §116, 118, 119

Referred to in §329.9, 331.321, 335.5, 657.9

335.9 Administrative officer.

The board of supervisors shall appoint an administrative officer authorized to enforce the resolutions or ordinances adopted by the board of supervisors. The administrative officer may be a person holding other public office in the county, or in a city or other governmental

subdivision within the county, and the board of supervisors is authorized to pay to the officer compensation as it deems fit.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.9]
83 Acts, ch 123, §161, 209
C93, §335.9
Referred to in §331.321

335.10 Board of adjustment — review and remand.

1. The board of supervisors shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this chapter shall provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinances or regulations in harmony with its general purpose and intent and in accordance with the general or specific rules contained in the ordinances or regulations, and provide that any property owner aggrieved by the action of the board of supervisors in the adoption of such regulations and restrictions may petition the said board of adjustment direct to modify regulations and restrictions as applied to such property owners.

2. The board of supervisors may provide for its review of variances granted by the board of adjustment before their effective date. The board of supervisors may remand a decision to grant a variance to the board of adjustment for further study. If remanded, the effective date of the variance is delayed for thirty days from the date of the remand.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.10]
89 Acts, ch 55, §1
C93, §335.10
2020 Acts, ch 1063, §181
Referred to in §329.12, 331.321

335.11 Membership of board.

The board of adjustment shall consist of five members who are eligible electors, as defined in section 39.3, and who reside within the county, but outside the corporate limits of any city, each to be appointed for a term of five years, excepting that when the board shall first be created one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.11]
C93, §335.11
2020 Acts, ch 1034, §4, 6, 8; 2020 Acts, ch 1121, §117 - 119
Referred to in §331.321

335.12 Rules.

The board of adjustment shall adopt rules in accordance with the provisions of any regulation or ordinance adopted pursuant to this chapter. Meetings of the board of adjustment shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.12]
C93, §335.12
2021 Acts, ch 80, §213
Referred to in §329.12

335.13 Appeals to board.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.13]

C93, §335.13

Referred to in §8C.7A, 329.12

335.14 Stay of proceedings.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with the officer that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.14]

C93, §335.14

Referred to in §329.12

335.15 Powers of board.

The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

3. To authorize upon appeal, in specific cases, such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.15]

C93, §335.15

Referred to in §329.12, 335.16

335.16 Decision.

In exercising the powers in section 335.15, the board of adjustment may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.16]

C93, §335.16

2021 Acts, ch 80, §214

Referred to in §329.12

335.17 Vote required.

The concurring vote of three members of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of an administrative official, or to

decide in favor of the applicant on any matter upon which the board is required to pass under an ordinance or to effect any variation in an ordinance.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.17]
C93, §335.17
2021 Acts, ch 80, §215
Referred to in §329.12

335.18 Petition to court.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer, or any officer, department, board, or bureau of the county, 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 thirty days after the filing of the decision in the office of the board.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.18]
C93, §335.18
Referred to in §329.12, 335.19, 335.22

335.19 Review by court.

Upon the presentation of a petition under section 335.18, the court may allow a writ of certiorari directed to the board of adjustment to review the decision of the board of adjustment and shall prescribe within the writ the time within which a return must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board, and on due cause shown, grant a restraining order.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.19]
C93, §335.19
2021 Acts, ch 80, §216; 2022 Acts, ch 1021, §84
Referred to in §329.12, 335.20, 335.22
Section amended

335.20 Record advanced.

The board of adjustment shall not be required to return the original papers acted upon by the board, but it shall be sufficient to return certified or sworn copies of the originals or of such portions of the originals as may be called for by the writ under section 335.19. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.20]
C93, §335.20
2021 Acts, ch 80, §217
Referred to in §329.12, 335.22

335.21 Trial to court.

1. If upon the hearing which shall be tried de novo it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take such evidence as the court may direct and report the evidence to the court with the referee's findings of fact and conclusions of law. The evidence and the referee's findings and conclusions shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

2. Costs shall not be allowed against the board of adjustment unless it appears to the court that the board acted with gross negligence or in bad faith or with malice in making the decision appealed from.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.21]
C93, §335.21
2019 Acts, ch 24, §104; 2020 Acts, ch 1063, §182; 2021 Acts, ch 80, §218
Referred to in §329.12, 335.22

335.22 Precedence.

All issues in any proceedings under sections 335.18 through 335.21 shall have preference over all other civil actions and proceedings.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.22]
C93, §335.22
2009 Acts, ch 133, §127

335.23 Restraining order.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure, or land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the board of supervisors, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.23]
C93, §335.23

335.24 Conflict with other regulations.

If the regulations made under this chapter require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under this chapter govern. If any other statute or local ordinance or regulation requires a greater width or size of yards, courts, or other open spaces, or requires a lower height of building or a less number of stories, or a greater percentage of lot to be left unoccupied, or imposes other higher standards than are required by the regulations made under this chapter, the other statute or local ordinance or regulation governs. If a regulation proposed or made under this chapter relates to any structure, building, dam, obstruction, deposit, or excavation in or on the floodplains of any river or stream, prior approval of the department of natural resources is required to establish, amend, supplement, change, or modify the regulation or to grant any variation or exception from the regulation.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.24; 82 Acts, ch 1199, §67, 96]
C93, §335.24
2003 Acts, ch 108, §69

335.25 Zoning for family homes.

1. It is the intent of this section to assist in improving the quality of life of persons with a developmental disability or brain injury by integrating them into the mainstream of society by making available to them community residential opportunities in the residential areas of this state. In order to implement this intent, this section shall be liberally construed.

2. *a.* *"Brain injury"* means brain injury as defined in section 135.22.

b. *"Developmental disability"* means a disability of a person which has continued or can be expected to continue indefinitely and which is one of the following:

(1) Attributable to an intellectual disability, cerebral palsy, epilepsy, or autism.

(2) Attributable to any other condition found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with an intellectual disability or requires treatment and services similar to those required for the persons.

(3) Attributable to dyslexia resulting from a disability described in either subparagraph (1) or (2).

(4) Attributable to a mental or nervous disorder.

c. *"Family home"* means a community-based residential home which is licensed as a residential care facility under chapter 135C or as a child foster care facility under chapter 237 to provide room and board, personal care, habilitation services, and supervision in

a family environment exclusively for not more than eight persons with a developmental disability or brain injury and any necessary support personnel. However, family home does not mean an individual foster family home licensed under chapter 237.

d. "Permitted use" means a use by right which is authorized in all residential zoning districts.

e. "Residential" means regularly used by its occupants as a permanent place of abode, which is made one's home as opposed to one's place of business and which has housekeeping and cooking facilities for its occupants only.

3. Notwithstanding the optional provision in section 335.1 and any other provision of this chapter to the contrary, a county, county board of supervisors, or a county zoning commission shall consider a family home a residential use of property for the purposes of zoning and shall treat a family home as a permitted use in all residential zones or districts, including all single-family residential zones or districts, of the county. A county, county board of supervisors, or a county zoning commission shall not require that a family home, its owner, or operator obtain a conditional use permit, special use permit, special exception, or variance. However, new family homes owned or operated by public or private agencies shall be dispersed through the residential zones and districts and shall not be located within contiguous areas equivalent in size to city block areas. Section 135C.23, subsection 2, shall apply to all residents of a family home.

4. A restriction, reservation, condition, exception, or covenant in a subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property in a county which permits residential use of property but prohibits the use of property as a family home for persons with a developmental disability or brain injury, to the extent of the prohibition, is void as against the public policy of this state and shall not be given legal or equitable effect.

83 Acts, ch 11, §1
CS83, §358A.25
C93, §335.25
93 Acts, ch 90, §2; 94 Acts, ch 1023, §107; 94 Acts, ch 1170, §8; 96 Acts, ch 1129, §113; 2012 Acts, ch 1019, §126
Referred to in §135C.9, 335.32, 335.33, 504C.1
Similar provision, see §414.22

335.26 Shooting ranges.

In approving the improvement of property acquired to establish, use, and maintain a new shooting range or in approving a substantial change to an existing shooting range pursuant to section 657.9, subsection 1, the county zoning commission, or if there is not a county zoning commission, the county board of supervisors, shall apply and enforce regulations and restrictions established for each zoning district adopted pursuant to this chapter but shall not otherwise require a person seeking approval to comply with any conditions relating to the establishment, use, or maintenance of the shooting range that are more stringent than those imposed by state law.

2020 Acts, ch 1099, §1
Similar provision, see §414.26

335.27 Agricultural land preservation ordinance.

If a county adopts an agricultural land preservation ordinance under this chapter which subjects farmland to the same use restrictions provided in section 352.6 for agricultural areas, then section 6B.3, subsection 1, paragraph *"f"*, and sections 352.10 through 352.12 shall apply to farms and farm operations which are subject to the agricultural land preservation ordinance.

[82 Acts, ch 1245, §15, 20]
C83, §358A.27
C93, §335.27
2021 Acts, ch 80, §219
Referred to in §335.2, 352.6

335.28 Agricultural experiences.

1. For purposes of this section, *"agricultural experience"* includes any agriculture-related activity, as a secondary use in conjunction with agricultural production, on a farm which activity is open to the public with the intended purpose of promoting or educating the public about agriculture, agricultural practices, agricultural activities, or agricultural products.

2. To assist in the promotion of agricultural experiences, a county shall not require a conditional use permit, special use permit, special exception, or variance for agricultural experiences on property of which the primary use is agricultural production.

2020 Acts, ch 1033, §1

335.29 Reserved.

335.30 Manufactured and modular homes.

1. A county shall not adopt or enforce zoning regulations or other ordinances which disallow the plans and specifications of a proposed residential structure solely because the proposed structure is a manufactured home. However, a zoning ordinance or regulation shall require that a manufactured home be located and installed according to the same standards, including but not limited to a permanent foundation system, set-back, and minimum square footage, which would apply to a site-built, single family dwelling on the same lot, and shall require that the home is assessed and taxed as a site-built dwelling. A zoning ordinance or other regulation shall not require a perimeter foundation system for a manufactured home which is incompatible with the structural design of the manufactured home structure. A county shall not require more than one permanent foundation system for a manufactured home. For purposes of this section, a permanent foundation may be a pier footing foundation system designed and constructed to be compatible with the structure and the conditions of the site. When units are located outside a manufactured home community or mobile home park, requirements may be imposed which ensure visual compatibility of the permanent foundation system with surrounding residential structures. As used in this section, *"manufactured home"* means a factory-built structure, which is manufactured or constructed under the authority of 42 U.S.C. §5403 and is to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles. This section shall not be construed as abrogating a recorded restrictive covenant.

2. A county shall not adopt or enforce construction, building, or design ordinances, regulations, requirements, or restrictions which would mandate width standards greater than twenty-four feet, roof pitch, or other design standards for manufactured housing if the housing otherwise complies with 42 U.S.C. §5403. A county shall not adopt or enforce zoning or subdivision regulations or other ordinances which mandate width standards for a single modular or manufactured home which is sited upon land otherwise zoned as agricultural land. However, this subsection shall not prohibit a county from adopting and enforcing zoning regulations related to transportation, water, sewerage, or other land development.

3. A county shall not require an inspection of a manufactured home that has been inspected according to requirements of the United States department of housing and urban development and constructed in conformance with the federal manufactured home construction and safety standards provided in 24 C.F.R. pt. 3280.

84 Acts, ch 1238, §1
C85, §358A.30
C93, §335.30
93 Acts, ch 154, §3; 94 Acts, ch 1110, §1; 97 Acts, ch 86, §1; 2001 Acts, ch 153, §16; 2020 Acts, ch 1062, §46; 2021 Acts, ch 80, §220; 2022 Acts, ch 1134, §1
NEW subsection 3

335.30A Land-leased communities.

1. A county shall not adopt or enforce zoning or subdivision regulations or other ordinances which disallow or make infeasible the plans and specifications of land-leased

communities because the housing within the land-leased community will be manufactured housing.

2. *"Land-leased 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 shall include any building, structure, or enclosure used or intended for use as part of the equipment of the land-leased community. The term *"land-leased community"* shall not be construed to include homes, buildings, or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students. A manufactured home located in a land-leased community shall be taxed under section 435.22 as if the manufactured home were located in a mobile home park.

97 Acts, ch 86, §2; 98 Acts, ch 1107, §10, 33; 2020 Acts, ch 1062, §94
Referred to in §331.301, 364.3, 435.1, 441.21, 562B.7

335.31 Elder family homes. Repealed by 2004 Acts, ch 1101, §95.

335.32 Homes for persons with disabilities.

A county board of supervisors or county zoning commission shall consider a home for persons with disabilities a family home, as defined in section 335.25, for the purposes of zoning, in accordance with chapter 504C.

93 Acts, ch 90, §3; 94 Acts, ch 1023, §108; 2010 Acts, ch 1079, §14
Similar provision, see §414.30

335.33 Elder group homes.

A county board of supervisors or county zoning commission shall consider an elder group home a family home, as defined in section 335.25, for purposes of zoning, in accordance with section 231B.4, and may establish limitations regarding the proximity of one proposed elder group home to another.

93 Acts, ch 72, §7; 2005 Acts, ch 62, §22
Similar provision, see §414.31

335.34 Home and community-based services waiver recipient residence.

1. A county, county board of supervisors, or county zoning commission shall consider the residence of the recipient of services under a home and community-based services waiver as a residential use of property for the purposes of zoning and shall treat the use of the residence as a permitted use in all residential zones or districts, including all single-family residential zones or districts, of the county.

2. A county, county board of supervisors, or a county zoning commission shall not require that the recipient, or the owner of such a residence if other than the recipient, obtain a conditional use permit, special use permit, special exception, or variance. A county, county board of supervisors, or county zoning commission shall not establish limitations regarding the proximity of one such residence to another.

3. This section applies to the residence of a recipient of services under a home and community-based services waiver if the residence meets any of the following conditions:

a. The residence is a single-family dwelling owned or rented by the recipient.

b. The residence is a multifamily dwelling which does not hold itself out to the public as a community-based residential provider otherwise regulated by law, including but not limited to a residential care facility, and which provides dwelling units to no more than four recipients of services under a home and community-based services waiver at any one time.

4. For the purposes of this section, *"home and community-based services waiver"* means *"waiver"* as defined in section 249A.29.

2007 Acts, ch 218, §130, 132
Similar provision, see §414.32

335.35 Home-based businesses.

1. For purposes of this section:

a. *"Goods"* means any merchandise, equipment, products, supplies, or materials.

b. *"Home-based business"* means any business for the manufacture, provision, or sale of goods or services that is owned and operated by the owner or tenant of the residential property on which the business operates.

c. *"No-impact home-based business"* means a home-based business for which all of the following apply:

(1) The total number of on-site employees and clients does not exceed the county occupancy limit for the residential property.

(2) The business activities are characterized by all of the following:

(a) The activities are limited to the sale of lawful goods and services.

(b) The activities do not generate on-street parking or a substantial increase in traffic through the residential area.

(c) The activities occur inside the residential dwelling or in the yard of the residential property.

(d) The activities are not visible from an adjacent property or street.

2. The use of a residential property for a home-based business is a permitted use. However, this subsection does not supersede any of the following:

a. A deed restriction, covenant, or agreement restricting the use of land.

b. A master deed, bylaw, or other document applicable to a common interest ownership community.

3. A county shall not prohibit a no-impact home-based business or otherwise require a person to apply, register, or obtain any permit, license, variance, or other type of prior approval from the county to operate a no-impact home-based business.

4. A county may establish reasonable regulations on a home-based business if the regulations are narrowly tailored for any of the following purposes:

a. The protection of the public health and safety, including rules and regulations related to fire or building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, pollution, or noise control.

b. Ensuring that the business is all of the following:

(1) Compatible with residential use of the property and surrounding residential use.

(2) Secondary to the use of the property as a residence.

(3) Complying with state and federal laws and paying applicable taxes.

c. Limiting or prohibiting the operation of a home-based business for the purposes of selling alcoholic beverages or illegal drugs, operating or maintaining a structured sober living home, creating or selling pornography, providing nude or topless dancing, or operating any other adult-oriented business.

5. A county shall not require as a condition of operating a home-based business that the property be rezoned for commercial use or that the business owner install or equip fire sprinklers in a single-family detached residential dwelling or any residential dwelling with not more than two dwelling units.

6. In any proceeding alleging that a county regulation does not comply with this section, the county that enacted the regulation must establish by clear and convincing evidence that the regulation complies with this section.

2022 Acts, ch 1129, §12
Similar provisions, see §414.33
NEW section

ZTA-2023-04 Attachment #2

8.002.020 A .030 AGRICULTURE: The use of land for agricultural purposes including farming, dairying, pasturage, agriculture, apiculture, horticulture, floriculture, viticulture, aquatic farming, and animal and poultry husbandry, and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of such accessory use shall be secondary to that of normal agricultural activities. ~~If the tract of land is less than thirty-five (35) acres, it shall be presumed that the tract is not primarily used for agricultural purposes.~~ (Ordinance #2004-14/07-01-04)

AGRICULTURAL EXPERIENCES: Any agriculture-related activity, as a secondary use in conjunction with agricultural production, on a farm which activity is open to the public with the intended purpose or promoting or educating the pubic about agriculture, agricultural practices, agricultural activities, or agricultural products.

8.001.050 AGRICULTURAL USES EXEMPT: In accordance with the provisions of Chapter 335, Code of Iowa, as amended, no regulations or restrictions adopted under the provisions of this Ordinance shall be construed to apply to land, farm houses, farm barns, farm outbuildings, or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes. WHILE SO USED; provided, however, that such regulations or ordinances which relate to any structure, building, dam, obstruction, deposits or excavation in or on the flood plains of any river or stream shall apply thereto. (Ordinance #2004-14/07- 01-04)

.01 No Building Permit or Certificate of Occupancy shall be required for the use of land for agricultural purposes or the construction or use of buildings or structures incidental to the use for agricultural purposes of the land on which such buildings or structures are located. (Ordinance #2015-05/12-18-2015)

.02 ~~If a tract of land is less than thirty-five (35) acres, it shall be presumed that the tract is not primarily used for agricultural purposes.~~ (Ordinance #81-6/10-01-81)

.02 Land enrolled in a soil or water conservation program shall be considered land primarily adapted for use for agricultural purposes.

.03 It shall be the responsibility of any person or group claiming that certain property is entitled to exemption on the basis of this section to demonstrate that the property is used for agricultural purposes. (Ordinance #81-6/10-01-81)

.04 The factors which may be considered when determining whether land or structures are primarily used for agricultural purposes include, but are not limited to: the number of acres used for agricultural activities, the nature of those activities, the financial input by the owner or occupant, the role of the occupant in the agricultural activities, the time spent engaged in these activities, and the income derived from agricultural activities.

.05 No conditional use permit, special use permit, special exception, or variance shall be required for agricultural experiences on property of which the primary use is agricultural production.

ZTA-2023-04 Attachment #3

FORM #514

INFORMATIONAL SHEET
AND
REQUEST FOR DETERMINATION

Pottawattamie County
Planning & Development Department
Building & Safety Division

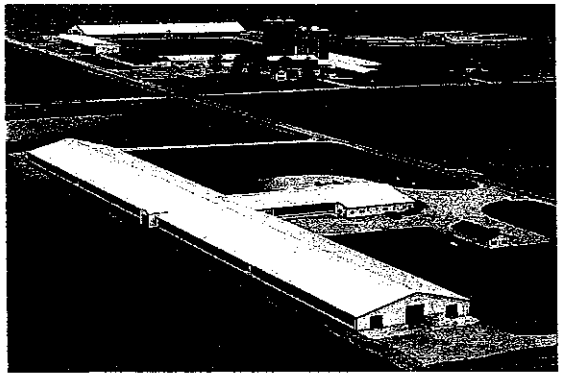
Agricultural Exemption From Zoning & Building Regulations

What is the "farm exemption" and what qualifies for the exemption?

The State of Iowa has given counties the authority to develop zoning regulations and to adopt building codes for their unincorporated areas. However, the State has declared that farms should be able to operate relatively free from local restrictions. This "right to farm" is contained in the following sections from the Code of Iowa:

335.2 Farms exempt.
Except to the extent required to implement section 335.27, no ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used. However, the ordinances may apply to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream.

331.304.3.b Farms exempt.
A county building code shall not apply to farm houses or other farm buildings which are primarily adapted for use for agricultural purposes, while so uses or under construction for that use.



NOTE: Some financial institutions may require a "Certificate of Occupancy" as part of mortgage financing. The County will only issue a Certificate of Occupancy if building permits have been issued, building codes have been adhered to and inspections performed. If your proposed dwelling is granted a farm exemption, no permits will be issued and no inspections are performed, therefore, the County WILL NOT ISSUE A CERTIFICATE OF OCCUPANCY. However, if you choose to apply for building permits, pay the required fees and have inspections performed, a Certificate of Occupancy can be granted provided the structures are constructed to the applicable codes.

Farm Exemption and related definitions from the Pottawattamie County, Iowa, Zoning Ordinance, Chapter 8.002-Defintions.

8.002.020.030 AGRICULTURE: The use of land for agricultural purposes including farming, dairying, pasturage, agriculture, apiculture, horticulture, floriculture, viticulture, aquatic farming, and animal and poultry husbandry, and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of such accessory use shall be secondary to that of normal agricultural activities. If the tract of land is less than thirty-five (35) acres, it shall be presumed that the tract is not primarily used for agricultural purposes.

8.002.0070.040 FARM: A tract or area of land which is primarily used for agricultural purposes and the growing and production of all farm products thereon, and their storage on the area, or for the raising thereon of poultry or livestock.

8.02.70.50 FARMSTEAD: The buildings and adjacent service areas of a farm.

Please complete and submit a Farm Exemption Request Information Sheet. The Development Director will make a determination and inform you of the decision within 7 to 10 working days. Any appeal of the Director's decision must be made within 30 days of the date of the decision to the Zoning Board of Adjustment (for an appeal of a denial of the exemption from zoning) or to the Building Board of Appeals (for an appeal of a denial of the exemption from building regulations).

If your proposal qualifies for an agricultural exemption you will be notified in writing. Exemptions are applicable to a particular improvement only. If your proposal does not qualify for an agricultural exemption, county zoning and building regulations will apply.

EFFECTIVE MARCH 1, 2009 ALL AGRICULTURAL BUILDINGS AND DWELLINGS WILL BE REQUIRED TO OBTAIN ELECTRICAL PERMITS. EFFECTIVE JULY 1, 2009 AGRICULTURAL ELECTRICAL PERMITS WILL BE ISSUED AND INSPECTED BY THE STATE OF IOWA

State Electrical Division
(515) 725-6147 or (866) 923-1082

http://iowaelectrical.gov
einspinfo@dps.state.ia.us

Area Electrical Inspector:

POTTAWATTAMIE COUNTY, IOWA
AGRICULTURAL EXEMPTION REQUEST
INFORMATION SHEET

PROPERTY OWNER	Name				
	Mailing Address	Street		City, State, Zip	
	Contact Information ☆Best Way to Contact	Email ☐		Home # ☐ Work # ☐ Cellular ☐	
OCCUPANT (if other than property owner)	Name				
	Mailing Address	Street		City, St, Zip	
	Contact Information ☆Best Way to Contact	Email ☐		Home # ☐ Work # ☐ Cellular ☐	
PROPERTY INFORMATION	Job Site Address	☐ Same as above #1 ☐ To be assigned by Planning Dept.			
	Civil Township				
	Zoning District	☐A-1 ☐A-2 ☐A-3 ☐A-4 ☐R-1 ☐R-2 ☐R-3 ☐R-5 ☐C-1 ☐C-2 ☐C-3 ☐I-1 ☐I-2 ☐I-3			

Parcel #	Legal Description	Acres

Use of Structure	☐ Agricultural ☐ Residential					
IMPROVEMENTS Description of Work ☐ All that apply	☐	Single-Family Dwelling				
	☐	Manufactured Home (Connected to and under State or Federal HUD Approved) Make and Year				
	☐	Addition of Finished Single-Family Dwelling				
	☐	Storage Building for Home		☐	Other	
	☐	New Or Remodel to Non-Residential Home		☐	Addition to	
	☐	Demolition of		☐	Move In	
	☐	Detached Garage		☐	Change Use From	
	☐	Deck			Change to Use	
Septic System Design	☐	Septic System Designed for _____ bedrooms. Modifying bedrooms may require septic system upgrades per County's review.				

AGRICULTURAL INFORMATION FOR ANY BUILDINGS & BARNS	Use of the structure. List what will be stored or kept in the structure, i.e. farm tractor, combine, agricultural chemicals, seed, hay, boat, camper or livestock.	
	Describe the percentage the structure that will be utilized for the agricultural purpose.	☐ 50% or less ☐ Greater than 50%

Additionally, in order to qualify for the exemption as a farm house, the occupants must be engaged in agricultural as defined. Please provide a detailed answer as appropriate to the following questions. Attach additional sheets if necessary. Engaged in agriculture shall include but not limited to any of the following:			
AGRICULTURAL INFORMATION CONSTRUCTION OF A DWELLING OR ADDITION/REMODEL A DWELLING	*Describe the percentage of monetary input you furnish to the agricultural operation.*	*☐ 50% or less* *☐ Greater than 50%*	
	Describe what your active role is relating to the agricultural activities that take place on the properties described above.		
	Describe the average number of hours per week that you dedicate towards the agricultural activities on the properties described above on an annual basis.		
	Based on the 2000 Census Bureau information, the median household income in Pottawattamie County, Iowa, is $40,089. Provide written documentation, such as the front page of your 1040 and IRS Schedule F, to document that you derive 50% of your gross income from agricultural. Please cross out your social security number.	*Total gross income* $_____ *Total gross income derived from agricultural* $_____	
OTHER PERMITS REQUIRED	*Will the proposed construction be serviced with electricity?*	*☐ Yes* *☐ No.*	*If yes, an Electrical Permit is required. Effective July 1, 2009 agricultural electrical permits and inspections will be done by the State of Iowa. Contact Ed Henke, State Electrical Inspector, 712.438.0530, henke@dps.state.ia.us.*
	Is the proposed construction located in a floodplain or a floodway?	*☐ Yes* *☐ No.*	*If yes, a floodplain Development Permit is required. See the Planning Department for this permit application.*

I hereby acknowledge that should the use of the land or buildings change, or are discovered to not qualify under the exemption; such use shall be subject to the zoning and building regulations of Pottawattamie County, Iowa. To the best of my knowledge, the foregoing information is true and correct. I hereby give my consent for the Director (or designee) of Pottawattamie County Planning and Development reasonable access to conduct a site inspection of the property for the purpose of reviewing the request for exemption as described in this application.

Property Owner	Signature	Date
	Type or Print Name	

COUNTY DEVELOPMENT DIRECTOR'S DETERMINATION *After having reviewed the above provided information, it has been determined that the described construction*		
Zoning Ordinance	☐ *will be exempt* ☐ *will not be exempt*	
Building Codes	☐ *will be exempt* ☐ *will not be exempt*	
If it has been determined that the described construction is not exempt, a building permit will be required prior to starting construction. This decision can be appealed to the Zoning Board of Adjustment (Zoning Code appeal) or the Board of Appeals (Building Code appeal) within 30 days of the date of this decision		
DEVELOPMENT DIRECTOR	Signature	Date
	Type or Print Name	