
Chapter 1202: General Provisions

1202.01 PURPOSE (REVISED 1214.02)

It is the purpose of this development code to promote and protect the public health, safety, comfort, convenience, and general welfare of the people of the City of Middletown through the establishment of minimum regulations governing the development, subdivision, and use of land. Furthermore, the intent of these regulations is:

- (a) To implement the City of Middletown Master Plan, City of Middletown Street Master Plan, and other plans and policies adopted by the City Council;
- (b) To encourage and facilitate orderly, efficient, and appropriate growth and development within the City;
- (c) To preserve and enhance the character and quality of neighborhoods;
- (d) To establish appropriate development density and intensity to prevent or reduce congestion and to secure the economy in the cost of providing water supply systems , electricity, sewage systems, streets, and highways, fire and police protection, schools, parks and recreation facilities, and other governmental services;
- (e) To conserve the value of buildings and land;
- (f) To protect residential, business, commercial and industrial areas alike from harmful encroachment by incompatible uses and to ensure that land allocated to a class of uses shall not be usurped by other inappropriate uses;
- (g) To avoid the inappropriate development of lands and provide for adequate drainage, curbing of erosion, and reduction of flood damage; and
- (h) To foster a more rational pattern of relationship between agricultural, conservation, residential, business, commercial industrial and institutional uses for the mutual benefit of all.

1202.02 TITLE (REVISED 1214.01)

These regulations shall be known, and may be cited as, the "City of Middletown Development Code", or referred to as the "development code" or the "code."

1202.03 AUTHORITY (NEW)

The authority for the preparation, adoption, and implementation of this code is derived from Ohio Revised Code (ORC) Chapters 711 and 713, which permits the adoption of uniform rules and regulations governing the zoning and subdivision of land, and by the City of Middletown Charter.

1202.04 EFFECTIVE DATE (NEW)

This code was originally adopted by City Council on December 27, 1968 (Ordinance 4886). Any amendment to this code shall become effective 30 days after the adoption by City Council.

1202.05 APPLICABILITY AND COMPLIANCE (NEW)

(a) General Applicability

- (1)** The provisions of this code shall apply to all land, buildings, structures, and uses of land, buildings, and structures, or portions thereof, located within the municipal boundaries of the City of Middletown. The provisions of this code are the minimum requirements adopted to meet the purposes of this code as established in Section [1202.01: Purpose \(Revised 1214.02\)](#).
- (2)** The regulations established for each district in this code shall apply uniformly to each class or type of use, land, building, or structure.
- (3)** No building, structure, or land shall be used or occupied and no building or structure or part thereof shall be structurally altered except in conformity with all of the regulations herein specified for the district in which it is located.

(b) Essential Services Exempted (Revised 1224.05)

- (1)** The erection, construction, alteration, or maintenance by municipal utilities or municipal departments, boards, or commissions, of overhead, surface or underground gas, electrical steam, or water, distribution or transmission systems, collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, tunnels, wires, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, poles, electrical substation, gas regulator stations and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such municipal utility or municipal department, board, or commission or for the public health, safety, or general welfare, shall be exempt from the regulations of this chapter. Provided, however, that the installation shall conform to Federal Communications Commission and Federal Aviation Agency rules and regulations, and those of other authorities having jurisdiction.
- (2) Utility Structures**
 - A.** Large ground-mounted utility structures or cabinets that exceed six square feet of surface area on any one side shall not be exempt from the provisions of this code.
 - B.** Such structures or cabinets, that may include Video-Ready Access Device (VRAD) cabinets, shall be classified and reviewed as "utility structures" in Section [1204.07](#), regardless if the structure is a principal use or accessory use on the subject site.

1202.06 PLAN COMPLIANCE (REVISED 1202.04 AND 1204.01)

- (a) The administration, enforcement, and amendment of this code should be consistent with the City of Middletown Master Plan, the City of Middletown Street Master Plan, and other plans and development policies adopted by City Council, as amended. Such plans and policies shall be collectively referred to as the “master plan” or by the individual plan’s official name.
- (b) Amendments to this code should maintain and enhance the consistency between this code and the master plan.

1202.07 INTERPRETATION AND CONFLICT (REVISED 1214.03)

(a) Interpretation of Provisions

The provisions of this code shall be held to be the minimum requirements, adopted for the promotion of the public health, safety, comfort, convenience, and general welfare.

(b) Conflict with Other Public Laws, Ordinances, Regulations, or Permits

This code is intended to complement other City, State, and federal regulations that affect land use and division of land. This code is not intended to revoke or repeal any other public law, ordinance, regulation, or permit. However, where conditions, standards, or requirements imposed by any provision of this code are more restrictive than comparable standards imposed by any other public law, ordinance, or regulation, the provisions of this code shall govern.

(c) Repeal of Conflicting Ordinance

All ordinances or parts of ordinances in conflict with this code or inconsistent with the provisions of this code are hereby repealed to the extent necessary to give this code full force and effect.

1202.08 RELATIONSHIP WITH THIRD-PARTY AGREEMENTS (NEW)

- (a) This code is not intended to interfere with or abrogate any third party private agreements including, but not limited to, easements, covenants, or other legal agreements between third parties. However, where this code proposes a greater restriction or imposes higher standards or requirements than such easement, covenant, or other private third-party agreement, then the provisions of this code shall govern.
- (b) Nothing in this code shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not excuse any failure to comply with this code.
- (c) In no case shall the City be obligated to enforce the provisions of any easements, covenants, or agreements between private parties unless the City is a named party or beneficiary in the agreement or instrument.

1202.09 SEVERABILITY (REVISED 1214.04)

- (a) If any court of competent jurisdiction invalidates any provision of this code, then such judgment shall not affect the validity and continued enforcement of any other provision of this code.
- (b) If any court of competent jurisdiction invalidates the application of any provision of this code to a particular property, structure, or situation, then such judgment shall not affect the application of that provision to any other property, structure, or situation not specifically included in that judgment.
- (c) If any court of competent jurisdiction judges invalid any condition attached to the approval of a development review application, then such judgment shall not affect any other conditions or requirements attached to the same approval that are not specifically included in that judgment.
- (d) Whenever a condition or limitation is included in an administrative action authorizing regulated activity, then it shall be conclusively presumed that the authorizing staff member, commission, or board considered such condition or limitation necessary to carry out the spirit and intent of this code, and that the staff member, commission, or board would not have granted the authorization to which the condition or limitation pertained except in belief that the condition or limitation was lawful.

1202.10 TRANSITIONAL RULES (REVISED 1214.05)

(a) Purpose

The purpose of these transitional rules is to resolve the status of properties with pending applications or recent approvals, and properties with outstanding violations, on the effective date of this code.

(b) Violations Continue

- (1) Any violation that existed at the time this amendment became effective shall continue to be a violation under this code and is subject to penalties and enforcement under [Chapter 1228: Enforcement and Penalties](#), unless the use, development, construction, or other activity complies with the provisions of this code.
- (2) Payment shall be required for any civil penalty assessed under the previous regulations, even if the original violation is no longer considered to be a violation under this code.

(c) Processing of Applications Commenced or Approved Under Previous Regulations

(1) Pending Projects

- A.** Any complete application that has been submitted or accepted for approval, but upon which no final action has been taken by the appropriate decision-making body prior to the effective date of this code or applicable amendment, shall be reviewed in accordance with the provisions of the regulations in effect on the date the application was deemed complete by the City.
- B.** If a complete application is not filed within the required application filing deadlines in effect prior to the effective date of this code, or applicable amendment, the application shall expire and subsequent applications shall be subject to the requirements of this code.
- C.** Any re-application for an expired project approval shall meet the standards in effect at the time of re-application.
- D.** An applicant with a pending application may waive review available under prior regulations through a written letter to the City and request review under the provisions of this code.

(2) Approved Projects

- A.** Approved planned use modifications, developments, site plans, development plans, variances, certificates of appropriateness, conditional uses, certificate of zoning compliance, certificates of occupancy, or other approved plans or permits that are valid on the effective date of this code shall remain valid until their expiration date, where applicable.
- B.** Any building or development for which a building permit or certificate was granted prior to the effective date of this code shall be permitted to proceed to construction, even if such building or development does not conform to the provisions of this code, as long as the permit or certificate remains valid.
- C.** If the development for which the permit or certificate is issued prior to the effective date of this code fails to comply with the time frames for development established for the permit or certificate, the permit or certificate shall expire, and future development shall be subject to the requirements of this code.

1202.11 RESTORATION OF UNSAFE BUILDINGS (NEW)

Except as provided in [Chapter 1224: Nonconformities](#), nothing contained in this code shall prevent the strengthening or restoring to a safe condition any part of any building or structure declared unsafe by proper authority.

**1202.12 USE OF GRAPHICS, ILLUSTRATIONS, FIGURE, AND CROSS-REFERENCES
(REVISED 1214.06)**

- (a) Graphics, illustrations, section titles, and figures are provided for organizational and illustrative purposes only, and shall not be construed as regulations. Where a conflict may occur between the text and any graphic, illustration, section title, or figure, the text shall control.
- (b) In some instances, cross-references between chapters, sections, and subsections are provided that include the chapter, section, or subsection number along with the name of the reference. Where a conflict may occur between the given cross-reference number and name, the name shall control.
- (c) A table shall be considered text for the purposes of this code unless specifically identified as a figure.

1202.13 BURDEN OF PROOF (NEW)

The burden of demonstrating that an application or any development subject to this code complies with applicable review and approval standards is on the applicant. The burden is not on the City or other parties to show that the standards have been met by the applicant or person responsible for the development.