

TITLE XV: LAND USAGE

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MASTER PLAN

§ 150.01 DESIGNATION OF MASTER PLAN.

Sections 150.01 through 150.03 shall be known as a master plan for the development of the city and the contiguous unincorporated area outside of the city which bears reasonable relation to the development of the city.

(1979 Code, § 150.01) (Ord. 1684, passed 1-21-1958)

§ 150.02 CONTENT OF PLAN.

The plan consists of a descriptive report accompanied by maps and charts, which fully set forth the provisions and policies of the plan.

(1979 Code, § 150.02) (Ord. 1684, passed 1-21-1958)

§ 150.03 CERTAIN MATTERS TO CONFORM TO MASTER PLAN.

Hereafter, the laying out, location, relocation, extension or widening of thoroughfares, the general design of the neighborhoods and their street patterns, and the general location of sites for schools, parks and playgrounds, shopping centers and community facilities, shall conform to the principles, policies and provisions of the plan.

(1979 Code, § 150.03) (Ord. 1684, passed 1-21-1958)

§ 150.04 GENERAL POLICY OF MASTER PLAN TO BE GUIDE.

The Council, the Board of County Commissioners or any governing body within the territorial jurisdiction of the city's Plan Commission, shall be guided by and give consideration to the general policy and pattern of development set out in the plan in the:

- (A) Authorization, construction, alteration or abandonment of public ways, public places, public structures or public utilities; and
- (B) Authorization, acceptance or construction of water mains, sewers, connections, facilities or utilities.

(1979 Code, § 150.04) (Ord. 1684, passed 1-21-1958)

§ 150.05 POWER OF CITY'S PLAN COMMISSION.

The city's Plan Commission may:

- (A) Determine lines for new, extended, widened or narrowed streets or highways in the city or the contiguous unincorporated area outside of the city; and
- (B) Certify to the Council the amended or additional plan under the same procedure as established for the certification and approval of the original plan.

(1979 Code, § 150.05) (Ord. 1684, passed 1-21-1958)

§ 150.06 MASTER PLAN AVAILABLE FOR PUBLIC INSPECTION IN CITY ENGINEER'S OFFICE.

Maps, charts and a descriptive report which compose the plan, are on file in the office of the City Engineer in the Municipal Building and are available for public inspection during all regular office hours of the City Engineer.

(1979 Code, § 150.06) (Ord. 1684, passed 1-21-1958)

§ 150.07 CITY ENGINEER REQUIRED TO KEEP 1 COPY OF PLAN FOR PUBLIC INSPECTION.

The City Engineer shall keep on file for public inspection during all of his or her regular office hours 1 copy of the plan, including maps, charts and a descriptive report.

(1979 Code, § 150.07) (Ord. 1684, passed 1-21-1958)

§ 150.08 MANNER OF AMENDMENT.

All amendments to the plan shall be adopted according to the procedure set forth in I.C. 36-7-4-511, except that, if the Council desires an amendment, it may direct the city's Plan Commission to prepare an amendment and submit it to public hearing within 60 days after formal written request by the Council.

(1979 Code, § 150.08) (Ord. 1684, passed 1-21-1958)

Statutory reference:

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GENERAL PROVISIONS

§ 151.001 TITLE.

This chapter shall be known and may be cited and referred to as the 'Zoning Ordinance of the City of Elkhart, Indiana.'
(1979 Code, § 151.001) (Ord. 4370, passed 7-20-1998)

§ 151.002 PURPOSE.

(A) This chapter is intended to encourage the growth and development of the city in accordance with a comprehensive plan so that the city may realize its potential as a place to live and work.

(B) Specific purposes of this chapter are to:

- (1) Promote the public health, safety, comfort, morals, convenience and general public welfare;
- (2) Promote the orderly and beneficial development of the city;
- (3) Provide adequate light, air, privacy and convenience of access to property;
- (4) Regulate the density and distribution of population and the use and intensity of use of land;
- (5) Regulate the location, height, bulk, area and use of buildings, structures and land;
- (6) Lessen or avoid congestion in the public streets;

(7) Provide for the gradual elimination of non-conformities which may adversely affect the character and value of desirable development in each district; and

(8) Define the powers and duties of the administrative officers and bodies as provided herein.

(1979 Code, § 151.002) (Ord. 4370, passed 7-20-1998)

§ 151.003 RULES.

In construing this chapter, the rules and definitions contained in this section shall be observed and applied, unless context clearly indicates otherwise.

(A) Wherever appropriate in the context of the chapter, the singular number shall be deemed to include the plural and the plural the singular, the masculine gender shall be deemed to include the feminine and the neuter.

(B) The word "shall" is mandatory and not discretionary.

(C) The word "may" is permissive.

(D) The phrase "use for" shall include the phrases "arranged for," "designed for," "intended for," "maintained for" and "occupied for."

(E) The captions used in this chapter are for reference and convenience purposes only and are not intended to enlarge, restrict or modify in any manner the content of the various sections hereof.

(1979 Code, § 151.003) (Ord. 4370, passed 7-20-1998)

§ 151.004 INTERPRETATIONS.

(A) In their interpretations and application, the provisions of this chapter are intended to be minimum requirements.

(B) When the conditions imposed by any provisions of this chapter vary from the conditions imposed by any other law, ordinance, resolution, rule, easement or regulation of any kind and the provisions of this chapter do not specify which conditions are to be applicable, then the regulations which are more restrictive shall govern.

(1979 Code, § 151.004) (Ord. 4370, passed 7-20-1998)

§ 151.005 SCOPE OF THE REGULATIONS.

(A) No structure or land shall hereafter be used or occupied and no structure or part thereof shall hereafter be erected, constructed, moved or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located, except as specified in § 151.010, "Regulations for Non-Conformities."

(B) No application for a zoning clearance permit, building permit, license or certificate of occupancy which would authorize the use or change in use of any land or structure contrary to the provisions of this chapter shall be approved by any public agency.

(C) No land shall be occupied or used, no excavation or construction shall be started and no structure hereafter erected, moved, added to or structurally altered shall be occupied or used, in whole or in part, for any purpose without a zoning clearance permit issued by the planning and zoning staff.

(1979 Code, § 151.005) (Ord. 4370, passed 7-20-1998; Am. Ord. 4683, passed 7-1-2002)

§ 151.006 SEVERABILITY.

(A) If any court of competent jurisdiction adjudges any provision of this chapter or amendments hereto to be invalid, the

judgement shall not affect any other provisions of this chapter or amendments hereto not specifically included in the judgement.

(B) If any court of competent jurisdiction adjudges any provision of this chapter or amendments hereto to be invalid as applied to a particular property, building or other structure, the judgement shall not affect the application of the provision to any other property, building or structure not specifically included in the judgement.

(1979 Code, § 151.006) (Ord. 4370, passed 7-20-1998)

§ 151.007 REPEAL OF PRIOR ORDINANCES.

Except as otherwise provided in §151.008 below, Ord. 3146, and all ordinances amendatory thereof are repealed as of the effective date of this chapter.

(1979 Code, § 151.007) (Ord. 4370, passed 7-20-1998)

§ 151.008 PUBLICATION AND EFFECTIVE DATE.

(A) The Planning and Zoning Office is authorized and directed to publish this chapter in book or pamphlet form and to give notice of the publication by a notice published in a newspaper of general circulation in the city.

(B) This chapter shall be effective 60 days following adoption and publication as required by law; provided, however, that, if any provision of this chapter perpetuates a provision that was in force immediately prior to the effective date of this chapter, then the effective date of the provision shall be deemed to be in the earliest date upon which the provision was in force under prior ordinance(s), it being and having been the intention of the City Council in enacting this and prior zoning ordinances that the zoning regulation of the city is a continuous process, regardless of the compilation, codification, re-enactment or other City Council action with regard thereto from time to time.

(1979 Code, § 151.008) (Ord. 4370, passed 7-20-1998)

§ 151.009 LOT AREAS, BUILDING REGULATIONS AND GENERAL PERMITTED USES.

(A) *Lot area and yards.*

(1) When 2 parcels of land, either of which lacks adequate area or dimension to qualify for a permitted use under the requirements of the use district in which they are located, are contiguous and are held in 1 ownership, they shall be considered 1 zoning lot.

(2) No yard or lot existing at the effective date of this chapter shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this chapter shall meet at least the minimum requirements established by this chapter.

(3) No part of a yard or other open space or off-street parking or loading space required in connection with any structure shall be included as part of a yard, open space or off-street parking or loading space similarly required for any other structure.

(B) *Building on a zoning lot.*

(1) Every structure hereafter erected or altered to provide dwelling units shall be located on a zoning lot, and there shall not be more than 1 such principal structure on any zoning lot in an R-1, R-2, R-3 or R-5 residential district, except in planned unit developments.

(2) Except as otherwise provided in this chapter, every structure shall be constructed or erected upon a lot or parcel of land which abuts on a public street. Permits for structures proposed on permanent easements of access to a public street may be obtained, provided:

(a) The easement and the location of a structure on any lot facing such easement have been approved by the Plan Commission;

(b) The lot shall meet the requirements set forth in this chapter; provided that, the access easement shall not be included in the zoning lot area;

(c) If city sewers are not provided, the lot shall meet the requirements of the local and state health departments.

(3) All residential detached principal buildings shall have a minimum width of 24 feet and a minimum of 950 square feet of habitable space.

(4) The space between the floor joists of the building and grade level shall be completely enclosed with a permanent perimeter enclosure, except for required openings, and can be secured to it by any manner approved by the Building Commissioner.

(5) The Board of Works may approve or disapprove applications for permits to construct a driveway entrance and approach to all public streets and alleys. The Board of Works may refer to the Plan Commission for a driveway entrance and approach to primary streets. The Plan Commission shall report their recommendations to the Board of Works within 3 days

after the next regularly scheduled meeting of the Plan Commission.

(C) *Utility exemptions.*

(1) The following structures and uses are exempted by this chapter and permitted in any district: poles, cables, conduits, laterals, pipes, mains, valves or any similar distributing equipment for electric power, telephone, gas, water and sewer lines of a public utility or municipality.

(2) The installation shall conform where applicable with the rules and regulations of other public authorities having jurisdiction.

(D) *Subdivision as permitted use.* A subdivision, as defined and regulated in the Subdivision Regulations of the City of Elkhart, shall be a permitted use in all zoning districts of the city provided that the uses intended in the proposed subdivision meet the requirements of this chapter.

(1979 Code, § 151.009) (Ord. 4370, passed 7-20-1998)

§ 151.010 REGULATIONS FOR NON-CONFORMITIES.

(A) *Intent.*

(1) Within the districts and overlay districts established by this chapter, there exist lots, structures, and uses of land and structures which were lawful prior to the passage of this chapter, but which are now prohibited, regulated, or restricted under the terms of this chapter. It is the intent of this chapter to permit these non-conformities to continue until they are removed, but not to encourage their continuance. The uses are declared by this chapter to be incompatible with the permitted uses in the districts involved.

(2) To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building for which a permit was lawfully granted prior to the effective date of adoption or amendment of this chapter and upon which actual building construction has been started within 6 months after the date of permit and completed within 18 months.

(3) Any use which is permitted as a special exception or conditional use in a district under the terms of this chapter shall not be deemed a nonconforming use in such district, but shall be considered a conforming use.

(B) *Types of non-conformities.*

(1) *Single nonconforming lots of record.* Where, on the effective date of adoption or amendment of this chapter, a lot of record exists which fails to meet the requirements applicable in its zoning district for lot area or width, or both, a principal structure and permitted accessory structures may be erected on the lot only with the prior approval of the Board of Zoning Appeals; provided that, required yard dimensions and all other requirements applicable in the district are met. A lot which shares continuous frontage with other lots held under the same ownership on the effective date of adoption or amendment of this chapter does not qualify for Board of Zoning Appeals approval under this division.

(2) *Nonconforming lots of record in combination.* If 2 or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the effective date of adoption or amendment of this chapter, and if all or part of the lots do not meet the requirements for lot width and area, the lands involved shall be deemed an undivided parcel for the purposes of this chapter. No portion of such a parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this chapter, nor shall any division of any parcel be made which creates a lot width or area less than the requirements of this chapter.

(3) *Nonconforming structures.* Where a lawful structure exists on the effective date of adoption or amendment of this chapter which could not be built under the requirements of this chapter by reason of restrictions in area, lot coverage, height, yards, its location on the lot, bulk or other requirements concerning the structure, the structure may continue so long as it remains otherwise lawful, subject to the following provisions:

(a) No nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof with the exception of nonconforming signs, may be altered to decrease its nonconformity. Any structural alteration to a nonconforming sign shall conform to the regulations of the zoning district in which it is located. Structural alterations include alterations to the foundation base pole and cabinet. Structural alterations shall not include general maintenance or the replacement of lettering or panels.

(b) Should a nonconforming structure be moved for any reason for any distance whatever, it must thereafter conform to the regulations for the district in which it is located after it is moved;

(c) Should a nonconforming structure or portion of a structure be destroyed by any means, it shall not be rebuilt, restored or reconstructed, or occupied for any use unless the structure will then conform to all regulations of this chapter. To be destroyed means to suffer damage to the extent of more than 50% of the replacement cost of the structure, exclusive of foundation.

(d) When a nonconforming structure is damaged to the extent of 50% or less of the replacement cost of the structure, exclusive of foundation, the structure may be rebuilt in the same location, using the same building footprint, provided that rebuilding begins within 1 year of the event which caused the damage. Rebuilding shall be diligently pursued to completion or the right to restore the structure as a nonconforming structure shall be forfeited. Restoration of a nonconforming structure

pursuant to this division shall not increase the degree of nonconformance or noncompliance existing prior to such damage.

(e) On any nonconforming structure or portion of a structure, work may be done on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing; provided that, a building permit is obtained where necessary. Repairs shall not be permitted if the structure or any portion thereof is declared to be unsafe by any official charged with protecting the public safety.

(4) *Nonconforming uses of land.* Where on the effective date of the adoption or amendment of this chapter, lawful uses of land exist which would not be permitted by the regulations imposed by this chapter, the uses may be continued so long as they remain otherwise lawful, provided:

(a) No nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this chapter;

(b) No nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by the use at the effective date of adoption or amendment of this chapter;

(c) No existing structure devoted to a nonconforming use shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located; (No additional structure shall be erected in connection with a nonconforming use of land.)

(d) A nonconforming use may be extended throughout any parts of the structure it occupies which were manifestly arranged or designed for the use at the time of adoption or amendment of this chapter but no such use shall be extended to occupy any land outside the structure;

(e) When a nonconforming use is replaced by a conforming use, the nonconforming use status shall be lost and no nonconforming use shall thereafter be resumed; and (A nonconforming use may be replaced only by a use which complies with the provisions of this chapter.)

(f) If any nonconforming use of land is discontinued or abandoned for more than 1 year, any subsequent use of the land shall conform to the regulations specified by this chapter for the district in which the land is located.

(5) *Nonconforming uses of structures or of structures and land in combination.* Where, on the effective date of adoption or amendment of this chapter, a lawful use of land exists which would not be permitted under the terms of this chapter and such use occupies a lot or structure which does not meet applicable requirements for lots or structures under this chapter, continuation of the legal nonconforming status of the use, lot, or structure shall be determined by the provisions applicable to each type of nonconformity.

(1979 Code, § 151.010) (Ord. 4370, passed 7-20-1998; Am. Ord. 4431, passed 7-12-1999; Am. Ord. 4456, passed 11-3-1999) Penalty, see § 151.999

§ 151.011 DEFINITIONS.

(A) *Introduction to terms.* For the purposes of this chapter, the terms listed in division (B) shall be interpreted as they are defined in that section. All other terms not herein defined shall have the meaning customarily assigned to them in such context.

(B) *Definitions.*

A ZONE. Portions of the special flood hazard areas (SFHA) in which the principal source of flooding is runoff from rainfall, snowmelt, or a combination of both. In A zones, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. These areas are labeled as Zone A, Zone AE, Zones A1-A30, Zone AO, Zone AH, Zone AR and Zone A99 on a Flood Insurance Rate Map (FIRM), or Flood Hazard Boundary Map (FHBM). The definitions are presented below:

ZONE A. Areas subject to inundation by the 1% annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown. Mandatory flood insurance purchase requirements apply.

ZONE AE AND A1-A30. Areas subject to inundation by the 1% annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. Mandatory flood insurance purchase requirements apply. (Zone AE is on new and revised maps in place of Zones A1-A30.)

ZONE AO. Areas subject to inundation by 1% annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between 1 and 3 feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone. Mandatory flood insurance purchase requirements apply.

ZONE AH. Areas subject to inundation by 1% annual chance shallow flooding (usually areas of ponding) where average depths are between 1 and 3 feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone. Mandatory flood insurance purchase requirements apply.

ZONE AR. Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection. Mandatory flood insurance purchase requirements apply.

ZONE A99. Areas subject to inundation by the 1% annual chance flood event, but which will ultimately be protected

upon completion of an under-construction federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No base flood elevations or depths are shown. Mandatory flood insurance purchase requirements apply.

ACCESSORY EQUIPMENT BUILDING. A structure used to house equipment for the operation, maintenance or repair of a wireless telecommunications tower including electronic receiving and relay equipment.

ACCESSORY STRUCTURE (APPURTENANT STRUCTURE). A structure which is subordinate to the principal structure and is located on the same zoning lot. The use of the accessory structure is incidental and accessory to that of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential.

ACTIVE CONSTRUCTION. On-site erection, fabrication, installation, alteration, demolition, or removal of any structure, facility, or addition thereto, including all related activities, but not restricted to, clearing of land, earth moving, and landscaping.

ADDITION (TO AN EXISTING STRUCTURE). Any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

ADULT ENTERTAINMENT ESTABLISHMENTS.

(a) **ADULT BOOKSTORE.** An establishment having as a significant portion of its stock in trade books, films, magazines and other periodicals which are distinguished or characterized by an emphasis on matter depicting or describing "sex act(s)" or "specified anatomical areas."

(b) **ADULT MOTEL.** A motel wherein material is presented which is distinguished or characterized by an emphasis on depicting or describing "sex act(s)" or "specified anatomical areas."

(c) **ADULT MOTION PICTURE ARCADE.** Any place to which the public is permitted or invited wherein coin or token-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to 5 or fewer persons per machine at any 1 time, and where images so displayed are distinguished or characterized by an emphasis on matter depicting or describing "sex act(s)" or "specified anatomical areas."

(d) **ADULT MOTION PICTURE THEATER.** An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting or describing "sex act(s)" or "specified anatomical areas" for observation by patrons therein.

(e) **ADULT LOUNGE or NIGHT CLUB.** Any establishment that features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers.

(f) For purposes of the above, the terms **SEX ACT(S)** and **SPECIFIED ANATOMICAL AREAS** shall mean the following:

1. **SEX ACT(S).** Means and includes the following:

- a. Human genitals in a state of sexual stimulation or arousal;
- b. Acts of human masturbation, sexual intercourse or sodomy; and
- c. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

2. **SPECIFIED ANATOMICAL AREAS.** Means and includes the following:

- a. Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

AIRPORT. The Elkhart Municipal Airport.

AIRPORT ELEVATION. The established elevation of the highest point on the usable landing area of the airport.

ALLEY. A public way, not more than 16-1/2 feet wide, which affords only a secondary means of access to abutting property, other than a right-of-way or easement for public utility purposes.

AMUSEMENT ARCADE. See **AMUSEMENT PARLOR (ROOM).**

AMUSEMENT MACHINE.

(a) Any machine or device designed or modified to be operated by a coin, coins or token, or for which change is made for the operation thereof.

(b) Such a machine or device used exclusively for the vending of merchandise of a tangible nature shall not be deemed an amusement machine.

AMUSEMENT PARLOR (ROOM). Any public area or room containing 1 or more amusement machines.

ANCHOR STORE. A store(s) within a mall or shopping center of at least 75,000 square feet that serves as a primary traffic generator for the complex.

ANIMATED MESSAGE BOARD. Any sign that changes light intensity or that gives the visual impression of movement or rotation.

APARTMENT. See **DWELLING UNIT**.

APARTMENT HOUSE. See **DWELLING, MULTIPLE-FAMILY**.

APPEAL. A request for a review of the Floodplain Administrator's interpretation of any provision of the flood hazard area regulations, §§ 151.120 *et seq.*, or a request for a variance.

AREA OF SHALLOW FLOODING. A designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

ASSISTED LIVING FACILITY. A building containing 2 or more dwelling units with common dining and activity facilities in which a professional staff provides limited care and community activities for the residents with the primary goal of enabling the residents to live as independently as possible.

AUTOMOBILE. See **MOTOR VEHICLE**.

AWNING. A roof-like cover attached to a building generally of a material different from that of the building and which projects from the wall of the building.

BALCONY. A raised railed platform projecting from the wall of a structure.

BASE FLOOD ELEVATION (BFE). The elevation of the 1% annual chance flood.

BASEMENT. That portion of a structure having its floor sub-grade (below ground level) on all sides.

BAY WINDOW. A window or series of windows forming a bay or recess in a room and projecting outward from the wall in a rectangular, polygonal or curved form.

BED AND BREAKFAST HOME. A structure, primarily residential in character, that provides lodging for paying guests.

BILLBOARD. See **SIGN, OFF-PREMISE**.

BILLIARD ROOM. Any public area or room containing 1 or more pool or billiard tables.

BILLIARD TABLE. Any table used for any form of the games commonly referred to as pool or billiards and includes any table of any size, the top of which is surrounded by an elastic ledge and consists of impelling balls by means of sticks and cues.

BOARD OF ZONING APPEALS. The Board of Zoning Appeals of the City of Elkhart, Indiana.

BOARDING HOUSE. A structure, other than a hotel, motel or lodging house, where lodging and meals are provided for compensation primarily on a long term basis.

BUILDING. Any structure with walls and roof securely affixed to the land and entirely separated on all sides from any other structure by space or by walls in which there are no communicating doors, windows or openings, and which is designed or intended for shelter; enclosure or protection of persons, animals or property; provided that, any structure with interior areas not normally accessible for human use, such as oil tanks, water tanks, grain elevators, coal bunkers, oil cracking towers and other similar structures are not considered as buildings.

BUILDING, ACCESSORY. A subordinate structure detached from but located on the same lot as the principal structure, the use of which is incidental and accessory to that of the principal structure.

BUILDING, ATTACHED. A building which has any part of its exterior or bearing wall in common with another building or which is connected to another building or roof.

BUILDING, DETACHED. A building having no structural connection with another building.

BUILDING HEIGHT. The vertical distance measured from the grade level to the highest point of the main structure of the building.

BUILDING, PRINCIPAL. A building in which is conducted the main or principal use of the zoning lot on which the building is situated. Where a part of an accessory structure is attached to the principal building in any manner, as by a roof, such accessory building shall be considered to be part of the principal building.

BULK STORAGE TANKS. Outside storage tanks, where the total volume of the container(s) exceed 2,000 gallons used for dispensing of liquids or gases into smaller containers or for use in manufacturing processes. This definition shall not apply to underground storage tanks.

BUSINESS. The purchase, sale, barter or exchange of goods, wares, merchandise or services or the maintenance or operation of offices or recreational and amusement enterprises.

BUSINESS SCHOOL. A privately owned school, not conducted by or under the sponsorship of a charitable organization, which teaches secretarial, bookkeeping, accounting or other similar office or clerical skills.

CAMPGROUND. An area or tract of land used for occupancy by 2 or more temporary tents, dwellings, rooms, sleeping quarters or recreational vehicles of any kind.

CANOPY. See **AWNING**.

CARPORT. A roofed structure designed and intended to shelter motor vehicles with at least 2 of the 4 sides open to the weather.

CENTRAL BUSINESS DISTRICT. The Central Business District in the City of Elkhart encompasses the area as shown on the Official Zoning Map of the City of Elkhart, Indiana.

CHARITABLE ORGANIZATION. An organization organized and operated exclusively for public charitable purposes as defined in the Internal Revenue Code of 1986, as amended.

CITY. The City of Elkhart, Indiana.

CITY COUNCIL. The Council of the City of Elkhart, Indiana.

CLINIC, MEDICAL, DENTAL. A structure where 3 or more licensed physicians, or dentists, actively engage in the practice of medicine, or dentistry, on an out-patient basis.

CO-LOCATION. The use of a wireless telecommunications facility by more than 1 wireless telecommunications provider.

COMMITMENT. A written stipulation regarding the use or development of a parcel which is subject of a petition or proposal before the Board of Zoning Appeals, Plan Commission or City Council, made by the owner of the parcel.
COMMITMENTS shall be recorded in the office of the County Recorder and shall become effective upon grant of the petition.

COMMUNITY. A political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

COMMUNITY CENTER. A place, structure, area or other facility used for and providing religious, fraternal, social and/or recreational programs generally open to the public and designed to accommodate and serve significant segments of the community.

COMMUNITY RATING SYSTEM (CRS). A program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

COMPREHENSIVE PLAN. The Comprehensive Plan of the City of Elkhart, Indiana.

CONDITIONAL USE. A use that, owing to some special characteristics attendant to its operation or installation (for example, potential danger, smoke, noise or excessive traffic generation), is permitted in a district subject to approval by the Board of Zoning Appeals, and subject to special requirements, different from those usual requirements for the district in which the conditional use may be located.

CONSTRUCTION. The placing of construction materials in permanent position and fastened in a permanent manner. Where excavation, demolition or removal of an existing structure has been substantially begun preparatory to rebuilding the excavation, demolition or removal shall be deemed construction.

CRITICAL FACILITY. A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire, and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

CUL-DE-SAC. A street having one end connected to the surrounding roadway system and the other end being permanently terminated by a vehicle turn around.

CURB CUT. The area at which a private drive connects to a public street or alley to allow motorized vehicular ingress and egress between the street or alley and the property.

DIAMETER AT BREAST HEIGHT (d.b.h.). In measuring the size of trees, the diameter of a tree as measured at breast height.

DAY CARE CENTER. A structure in which at least 6 children at any time receive child care from a provider:

- (a) While unattended by a parent, legal guardian or custodian;
- (b) For regular compensation;
- (c) For more than 4 hours, but less than 24 hours in each 10 consecutive days per year, excluding intervening Saturdays, Sundays and holidays; and

(d) Which is not the primary residence of the child care provider or is not a residential structure.

DAY CARE HOME. A residential structure in which at least 6 children (not including the children for whom the provider is a parent, stepparent, guardian, custodian or other relative) at any time receive child care from a provider:

(a) While unattended by a parent, legal guardian or custodian;

(b) For regular compensation;

(c) For more than 4 hours, but less than 24 hours in each 10 consecutive days per year, excluding intervening Saturdays, Sundays and holidays; and

(d) Which is the primary residence of the child care provider.

DECIBEL. A unit of measurement of the intensity (loudness) of sound.

DEVELOPMENT.

(a) Any man-made change to improved or unimproved real estate including, but not limited to:

1. Construction, reconstruction or placement of a structure or any addition to a structure;
2. Installing a manufactured home on a site, preparing a site for a manufactured home, or installing a recreational vehicle on a site for more than 180 days;
3. Installing utilities, erection of walls and fences, construction of roads or similar projects;
4. Construction of flood control structures such as levees, dikes, channel improvements, etc.;
5. Mining, dredging, filling, grading, excavation or drilling operations;
6. Construction and/or reconstruction of bridges or culverts;
7. Storage of materials; or
8. Any other activity that might change the direction, height or velocity of flood or surface waters.

(b) **DEVELOPMENT** does not include activities such as the maintenance of existing structures and facilities such as painting, re-roofing; resurfacing roads; or gardening, plowing and similar agricultural practices that do not involve filling, grading, excavation or the construction of permanent buildings.

DEVELOPMENT PLAN. All materials submitted for approval in accordance with §§ 151.175 *et seq.*, identifying principal and accessory structures, streets, pedestrian access systems, utilities, landscaping, exterior lighting, signage and other elements of a proposed development including the site plan and supporting drawings and documentation.

DISTRICT. A zoning district as created and defined in this chapter.

DOMESTIC ANIMAL. Any nonferal animal which is not prohibited by the City of Elkhart's Animal Control Ordinance. Horses require a minimum of 1 acre of fenced grazing land per animal.

DRIP LINE. A vertical line extending from the outermost branches of a tree to the ground.

DRIVEWAY. An area used for movement of vehicles from street to garage or established parking area.

DRIVE-IN FACILITY. Drive-in movie theaters, restaurants characterized by primary food service to the public for consumption on the premises by order from and service to vehicular passengers outside the structure, and other businesses catering to patrons parked in vehicles on the site.

DWELLING, MULTIPLE FAMILY. A structure containing 3 or more dwelling units.

DWELLING, 1 FAMILY. A structure containing 1 dwelling unit.

DWELLING, 2 FAMILY. A structure containing 2 dwelling units.

DWELLING UNIT. One or more connected rooms in a structure intended for residential occupancy by 1 family, including complete kitchen and bathroom facilities, permanently installed exclusive of garages, porches, stoops, decks, basements and similar areas not considered to be part of the interior living space of the dwelling. Calculation of dwelling space shall be done by determining the sum of dwelling unit space as defined above.

DWELLING UNIT, EFFICIENCY. A dwelling unit consisting of 1 room exclusive of bathroom, kitchen or dining alcove adjacent to the principal room; provided, the dining alcove does not exceed 100 square feet in area.

EASEMENT. The right of a person, government agency, public utility company or other entity to use public or private land owned by another for a specific purpose.

ELEVATED STRUCTURE. A non-basement structure built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, filled stem wall foundations (also called chain walls), pilings, or columns (posts and piers).

ELEVATION CERTIFICATE. A certified statement that verifies a structure's elevation information.

EMERGENCY PROGRAM. The first phase under which a community participates in the National Flood Insurance Program. It is intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial Flood Insurance Rate Map (FIRM).

ENCROACHMENT. The advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

ENTRY/DEVELOPMENT CORRIDOR. The right of way of the following highways are designated entry/development corridors: Benham Avenue; Bristol Street; Cassopolis Street; County Road 6; County Road 17; Franklin Street; Hively Avenue; Jackson Boulevard; John Weaver Parkway; Johnson Street; Lexington Avenue; Lusher Avenue; Main Street; Middlebury Street; Nappanee Street; Prairie Street.

ESTABLISHED BUILDING SETBACK. The average setback distance of all structures on the side of a street between 2 intersecting streets. The setback shall be re-determined as each successive vacant lot is proposed to be improved with a structure. Where a yard is adjacent to a river or creek, the established setback shall be determined by the average setback of 5 houses in each direction upstream and downstream of the yard in question.

ESTABLISHED FRONTAGE. The average frontage distance for all lots on the side of a street between 2 intersecting streets. The frontage distance shall be re-determined as each successive vacant lot is proposed to be improved with a structure.

ESTABLISHED LOT SIZE. The average lot area (square footage) for all lots on the side of a street between 2 intersecting streets. The lot area shall be re-determined as each successive vacant lot is proposed to be improved with a structure.

EXISTING CONSTRUCTION. Any structure for which the start of construction commenced before the effective date of the community's first floodplain ordinance.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the community's first floodplain ordinance.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

F.A.R. See **FLOOR AREA RATIO**.

FACADE. An exterior wall of a building.

FACILITY COMPOUND. The area of a parcel on which wireless telecommunications facilities such as towers and accessory equipment buildings are located.

FAMILY.

- (a) An individual;
- (b) Two or more persons related by genetics, marriage, legal adoption or other relationship established by law; or
- (c) Five or fewer persons who constitute a relatively permanent functioning group living as a single housekeeping unit.

FEMA. Federal Emergency Management Agency.

FENCE. A structure partially or completely surrounding a part of or the whole of a zoning lot which is intended to prevent intrusion from without and straying from within the area controlled, but not including a hedge or other natural growth.

FIVE-HUNDRED YEAR FLOOD (500-YEAR FLOOD). The flood that has a 0.2% chance of being equaled or exceeded in any year.

FLOOD. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM). An official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

FLOOD HAZARD BOUNDARY MAP (FHBM). An official map of a community, issued by Federal Emergency Management Agency (FEMA), where the boundaries of the areas of special flood hazard have been identified as Zone A.

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community, on which Federal Emergency Management Agency (FEMA) has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS). The official hydraulic and hydrologic report provided by the Federal Emergency Management Agency (FEMA) The report contains flood profiles, as well as the Flood Insurance Rate Map (FIRM), Flood

Boundary and Floodway Map (FBFM) (where applicable), and the water surface elevation of the base flood.

FLOOD PRONE AREA. Any land area acknowledged by a community as being susceptible to inundation by water from any source. (See **FLOOD**)

FLOOD PROTECTION GRADE (FPG). The elevation of the regulatory flood plus 2 feet at any given location in the special flood hazard areas (SFHA). (See **FREEBOARD**)

FLOODPLAIN. The channel proper and the areas adjoining any wetland, lake, or watercourse which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the fringe districts.

FLOODPLAIN MANAGEMENT. The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

FLOODPLAIN MANAGEMENT REGULATIONS. Any portion of the City of Elkhart zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood prone areas. This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage. **FLOODPLAIN MANAGEMENT REGULATIONS** are also referred to as floodplain regulations, floodplain ordinance, flood damage prevention ordinance, and floodplain management requirements.

FLOODPROOFING (DRY FLOODPROOFING). A method of protecting a structure that ensures that the structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation with walls that are substantially impermeable to the passage of water. All structural components of these walls are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.

FLOODPROOFING CERTIFICATE. A form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG. This certification must be by a registered professional engineer or architect.

FLOODWAY. The channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream.

FLOOR AREA.

(a) For determining the floor area ratio: the sum of the gross horizontal areas of the floors of the structure measured from the exterior faces of the exterior wall or from the center line of walls separating 2 structures. The floor area shall include all typically occupied areas including basements when more than ½ of the basement height is above grade level; elevator shafts and stairwells at each floor; floor space used for mechanical equipment; penthouses; attic space with head room of 7-1/2 feet or more; interior balconies and mezzanines; enclosed porches; and garages and carports.

(b) The floor area of structures devoted to bulk storage of materials, including, but not limited to grain elevators and petroleum storage tanks, shall be determined on the basis of height in feet; i.e. 10 feet in height shall equal 1 floor.

FLOOR AREA. For determining off-street parking and loading requirements: the sum of the gross horizontal areas of the floors of a structure used for office, retail, wholesale or manufacturing operations. Interior areas utilized for off-street parking or loading facilities and basements not devoted to office, retail and manufacturing uses shall not be included in the floor area calculation.

FLOOR AREA RATIO (F.A.R.). The floor area of the structure or structures on a zoning lot divided by the area of such zoning lot or, in the case of planned unit developments, by the net site area. The floor area ratio requirements set forth in each zoning district shall determine the maximum floor area allowable for the structure or structures.

FREEBOARD. A factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

FRINGE. Portions of the floodplain lying outside the floodway.

FRONTAGE. The length of the front lot line of a property.

FUNCTIONALLY DEPENDENT FACILITY. A facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

GARAGE, COMMERCIAL VEHICLE. A structure which is used or intended to be used for the storage of commercial motor vehicles.

GARAGE, PRIVATE. A detached accessory structure or portion of the principal structure designed, arranged, used or intended to be used for the storage of passenger motor vehicles of occupants of the premises.

GARAGE, PUBLIC. A structure, other than a private garage, where motor vehicles are parked or stored within a structure, but, not including such a structure intended to house commercial motor vehicles.

GARAGE SALES. See **SALES, RUMMAGE - PRIVATE AND PUBLIC.**

GRADE LEVEL. The elevation of the ground, as established by the City Engineer, at a structure or site.

GUEST HOUSE.

(a) Living quarters within a detached accessory building, located on the same zoning lot with the principal building, for use by temporary guests of the occupants of the premises.

(b) The quarters shall not be rented in any manner or otherwise used as a separate dwelling unit.

HARDSHIP (As related to variances for flood hazard areas, §§ 151.120 et seq). The exceptional hardship that would result from a failure to grant the requested variance. The City of Elkhart Common Council requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

HAZARDOUS WASTE. Waste that is included in a list of specific hazardous waste (waste streams, waste sources, and certain generic waste) as specified in Title 40 C.F.R. part 261, and all subsequent revisions; or waste that is ignitable, corrosive, reactive as determined by the specific extraction procedure (E.P.) as specified in 40 C.F.R. part 261 and all subsequent revisions, or waste that is declared hazardous by the generator on the basis of the materials or process used in producing the waste.

HAZARDOUS WASTE FACILITY. All contiguous land, structures, other appurtenances and improvements on the land used for treating, storing or disposing of hazardous waste.

HAZARDOUS WASTE DISPOSAL FACILITY. A facility or part of a facility at which hazardous waste is intentionally placed into, or on, any land or water, and at which waste will remain after closure.

HAZARDOUS WASTE GENERATOR. Any person or site whose act or process produces hazardous waste identified, defined or listed in E.P.A. regulations.

HAZARDOUS WASTE MOTOR FREIGHT TERMINAL. A motor freight terminal engaged in the off-site transportation of hazardous wastes.

HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

HISTORIC DISTRICT. Any federally-, state, or locally-recognized historic area administered under the Historic and Cultural Preservation Commission.

HISTORIC DISTRICT, SINGLE SITE. Any federally-, state- or locally-recognized historic structure or land administered under the Historic and Cultural Preservation Commission.

HISTORIC STRUCTURE. Any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

HOME OCCUPATION.

(a) A gainful occupation or hobby customarily carried on by an occupant of a dwelling unit. The **HOME OCCUPATION** shall be carried on by an occupant of a dwelling unit as a use which is clearly incidental to the use of the dwelling unit for residential purposes. The **HOME OCCUPATION** shall be carried on wholly within the principal structure or within a structure accessory thereto and only by individuals who reside on the premises and are members of the family occupying the premises.

(b) No article shall be sold or offered for sale on the premises except such as is produced by the occupation on the premises, and no mechanical or electrical equipment shall be installed or maintained other than such as is customarily incidental to domestic use.

(c) There shall be no exterior display, no exterior sign except as allowed by the sign regulations for the district in which the home occupation is located, no exterior storage of materials, no other exterior indication of the home occupation or variation from the residential character of the principal structure, and no offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced.

(d) Clinics; medical, dental and other health care facilities; hospitals; auto repair shops; barber shops and beauty parlors; millinery shops; tea rooms and restaurants; tourist homes; animal hospitals and kennels; and uses requiring an M-1 or M-2 zoning classification shall not be deemed to be a home occupation.

HOSPITAL. An institution providing primary health services and medical or surgical care to persons, primarily in-patients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities, training facilities, medical offices and staff residences.

HOTEL. A building containing separate sleeping units, each of which may have bathroom facilities, designed for or used primarily on a temporary basis for transients.

HOUSE TRAILER. See **MOBILE HOME**.

H.U.D. CODE MANUFACTURED DWELLING. A dwelling unit designed and built in a factory, which bears a seal certifying that it was built in compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401.

IMPERVIOUS MATERIAL. Any pavement or other material, including, but not limited to concrete, asphalt and concrete and brick pavers, which reduces or prevents the penetration of storm water into the ground relative to undeveloped land such as grass or other permeable groundcover.

INCREASED COST OF COMPLIANCE (ICC). The cost to repair a substantially damaged structure that exceeds the minimal repair cost and that is required to bring a substantially damaged structure into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are elevation, relocation, demolition, or any combination thereof. All renewal and new business flood insurance policies with effective dates on or after June 1, 1997, will include increased cost of compliance (ICC) coverage.

INSTRUMENT RUNWAY. A runway equipped with electronic and visual air navigation aids adequate to permit the landing of aircraft under restricted visibility conditions.

JUNK YARD. An open area (excepting scrap processing yards) where waste, scrap metal, paper, rags or similar materials are bought, sold, exchanged, stored, disassembled or handled, including building wrecking yards, but excluding similar uses taking place entirely within an enclosed structure.

KENNEL. Any zoning lot on which more than 4 animals over 4 months of age are kept.

LABORATORY. A structure devoted to experimental study such as testing and analyzing.

LANDING AREA. The area of the airport used for landing, takeoff or taxiing of an aircraft.

LETTER OF MAP AMENDMENT (LOMA). An amendment to the currently effective Federal Emergency Management Agency (FEMA) map that establishes that a property is not located in a special flood hazard area (SFHA). A Letter of Map Amendment is only issued by FEMA.

LETTER OF MAP REVISION (LOMR). An official revision to the currently effective Federal Emergency Management Agency (FEMA) map. It is issued by FEMA and changes flood zones, delineations, and elevations.

LETTER OF MAP REVISION BASED ON FILL (LOMR-F). An official revision by letter to an effective National Flood Insurance Program (NFIP) map. A Letter of Map Revision Based on Fill (LOMR-F) provides the Federal Emergency Management Agency's (FEMAs) determination concerning whether a structure or parcel has been elevated on fill above the base flood elevation (BFE) and excluded from the special flood hazard area (SFHA).

LIVE/WORK UNIT. A building or space within a building containing an integrated living and working space with shared access that is intended to function predominately as a commercial business with incidental residential use for the business operator. The unit typically has the workspace, public display area, or showroom on the ground floor of the unit and the majority of the residence located either on an upper floor or at the back of the unit.

LOADING AND UNLOADING AREA, OFF STREET. An open area, other than a public way, surfaced with an all-weather, dustless, impervious, hard-surfaced pavement, the principal use of which is the standing, loading and unloading of commercial motor vehicles, to avoid undue interference with the public use of streets and alleys.

LODGING HOUSE. A structure, other than a hotel, motel or boarding house, where lodging without meals is provided for compensation primarily on a long-term basis.

LOGO. A letter, character, symbol or other distinguishing mark which identifies a use.

LOT. See **ZONING LOT**.

LOT AREA. The area of a horizontal plane bounded by the front, side and rear lot lines.

LOT, CORNER. A lot at the junction of, and fronting on 2 or more intersecting public streets.

LOT COVERAGE. The portion of a lot that is occupied by buildings, including accessory buildings or structures with a roof, expressed as a percentage of the total lot area. This does not include parking areas, driveways, and sidewalks.

LOT, DEPTH. The shortest distance between the front lot line and the rear of the lot, measured in the mean direction of the side lot lines.

LOT, INTERIOR. A lot abutting lots on both sides, whether across an alley or not.

LOT OF RECORD. An area of land designated as a lot on a subdivision plot recorded with the Recorder of Elkhart County, Indiana.

LOT, REVERSED CORNER. A corner lot, the rear of which abuts upon the side of another lot, whether across an alley or not.

LOT, THROUGH. A lot having frontage on 2 parallel or approximately parallel streets.

LOT, ZONING. See **ZONING LOT**.

LOT LINE. A boundary line of a zoning lot between the zoning lot and adjacent zoning lots or public ways.

LOT LINE, FRONT. On an interior lot, the lot line adjacent to the street on which an address for the property has been assigned by the City of Elkhart; on a corner lot, the lot line separating the narrowest street frontage of a lot from the street; on a through lot, the lot line so declared by the Planning and Zoning Staff or which is faced by the front of the principal structure.

LOT LINE, REAR. A lot line or connected lines between the ends of the side lot lines and which is or are parallel to or approximately parallel to the front lot line.

LOT LINE, SIDE. A lot line or connected lot lines commencing at an end of a front lot line and terminating either at an intersection with an end of the rear lot line or at an intersection with the opposite sidelot line, no portion of which is parallel to or approximately parallel to the front lot line.

LOWEST ADJACENT GRADE. The lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

LOWEST FLOOR. The lowest of the following:

- (a) The top of the lowest level of the structure;
- (b) The top of the basement floor;
- (c) The top of the garage floor, if the garage is the lowest level of the building;
- (d) The top of the first floor of a structure elevated on pilings or pillars; or
- (e) The top of the floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of flood waters unless:
 - 1. The walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters, through providing a minimum of 2 openings (in addition to doorways and windows) in a minimum of two exterior walls having a total net area of 1 square inch for every 1 square foot of enclosed area. The bottom of all such openings shall be no higher than 1 foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher; and
 - 2. Such enclosed space shall be usable solely for non-residential purposes and building access.

MANUFACTURED HOME. A structure transportable in 1 or more sections, which is built on a permanent chassis and is designed for the use with or without a permanent foundation when attached to the required utilities, including a H.U.D. Code Manufactured dwelling constructed after January 1, 1981 and installed on a permanent, under-floor supported system and perimeter foundation in conformity with the regulations of the Indiana One- and Two-Family Dwelling Code (as adopted by the State of Indiana and as amended), the manufacturer's installation specifications and the following requirements:

- (a) All wheels, axles, and hitch mechanisms shall be removed;
- (b) Manufactured homes shall be sided with materials customarily used on site-constructed dwellings;
- (c) The space between the floor joists of the home and the excavated under-floor grade shall be completely enclosed with a permanent perimeter enclosure, except for required openings.

MANUFACTURED HOME does not include a recreational vehicle.

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into 2 or more manufactured home lots for rent or sale.

MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS CODE. The National Manufactured Housing Construction and Safety Act, 42 U.S.C. §§ 5401 *et seq.*, as amended (previously known as the Federal Mobile Home and Construction Act) and rules and regulations adopted thereunder, which includes U.S. Department of Housing and Urban Development (H.U.D.) approved information supplied by the home manufacturer, and regulations and interpretations of said code by the Indiana Fire Prevention and Building Safety Commission.

MAP AMENDMENT. A change to an effective National Flood Insurance Program (NFIP) map which results in the exclusion from the special flood hazard area (SFHA) of an individual structure or a legally described parcel of land that has been inadvertently included in the SFHA (i.e., no alterations of topography have occurred since the date of the first NFIP map that showed the structure or parcel to be within the SFHA).

MAP PANEL NUMBER. The 4-digit number followed by a letter suffix assigned by the Federal Emergency Management Agency (FEMA) on a flood map. The first 4 digits represent the map panel, and the letter suffix represents the number of times the map panel has been revised. (The letter "A" is not used by FEMA, the letter "B" is the first revision.)

MARKET VALUE. The building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (actual cash value), or adjusted assessed values.

MARQUEE. A rooflike structure projecting over an entrance to a building.

MASSAGE. A manual soft tissue manipulation, which includes holding, causing movement, and/or applying pressure to the body.

MASSAGE ESTABLISHMENT. Any building, room, place or establishment, other than a massage therapy school certified by the state or a regularly licensed hospital or dispensary wherein each person who administers a massage is a qualified massage therapist as defined herein, where massages, nonmedical, and nonsurgical manipulative exercises are practiced upon the human body.

MASSAGE THERAPIST. A person who practices, administers or teaches all or any of the subjects or methods of treatment defined herein as massage therapy and meets the following criteria: Has been awarded the National Certification for Therapeutic Massage and Body Work and can produce the certification, or has graduated from an educational institute of professional massage therapy instruction accredited by the state in which it is located, and can produce a diploma, or is a licensed LPN, RN, physician, chiropractor, osteopath, cosmetologist, esthetician, physical therapist, or assistant physical therapist, or is a student enrolled in an educational institute of professional massage therapy instruction accredited by the state, performing massage therapy as a part of his or her training requirements.

MASSAGE THERAPY. A profession in which the practitioner applies manual techniques, and may apply adjunctive therapies, with the intention of positively affecting the health and well-being of the client.

MASSEUSE, MASSEUR. A person who practices massage and is a certified massage therapist.

MEETING HALL/BANQUET FACILITY. A building or part of a building, operated as a for-profit facility rented or leased for the purpose of large meetings, banquets, receptions or other gatherings.

MITIGATION. Sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is two-fold: to protect people and structures, and to minimize the cost of disaster response and recovery.

MOBILE HOME. A vehicle, including the equipment sold as a part of a vehicle which may be used as a conveyance upon streets by either self propelled or non self propelled means which is designed, constructed or structurally altered in such a manner as will permit occupancy as a dwelling and which is used and occupied as a dwelling unit, but which has no foundation other than wheels, jacks, skirting or other temporary supports.

MOBILE HOME PARK. Any area of land in single ownership upon which 1 or more mobile homes are placed for purposes of occupancy in accordance with § 151.050.

MOBILE HOME TIE-DOWN. Device used to secure a mobile home to the ground with sufficient anchorage to resist floatation, collapse or lateral movement of the mobile home.

MODULAR HOME. A dwelling which meets all requirements of the Indiana One- and Two-Family Dwelling Code, sections of which are built in a factory and joined on a permanent foundation.

MONOPOLES. A support structure constructed of a single, self supporting hollow metal tube securely anchored to a foundation.

MOTEL. A structure or group of structures, other than an hotel, boarding or lodging house, containing sleeping units, each with a bathroom facility, used primarily on a temporary basis, with parking space conveniently located to each unit.

MOTOR FREIGHT TERMINAL. A structure in which freight, brought to the structure by motor truck, is sorted for further shipment by motor truck.

MOTOR VEHICLE. A device in, upon or by which any person or property may be transported or drawn upon a public way, except devices moved by human or other animal power or used exclusively upon stationary rails or tracks.

MOTOR VEHICLE, COMMERCIAL. A motor vehicle used or designed for use in pulling, towing, hauling, transporting or as a temporary or permanent base, platform or support for equipment, machinery, materials and/or other goods, the rated capacity of which is more than 1-1/2 tons of such equipment, machinery, materials and/or goods, including, but not necessarily limited to stake body trucks, dump trucks, trucks and/or tractors, having dual rear wheels and/or more than 2 axles, semi-trailer tractors, semi-trailers and trailers having dual rear wheels and/or more than 1 axle and/or having an overall length of more than 12 feet, regardless of rated capacity and all construction vehicles.

MOTOR VEHICLE IMPOUNDMENT YARD. Any place where 2 or more motor vehicles, regardless of operating condition, are kept outdoors solely for the purpose of impoundment under proper authority.

MOTOR VEHICLE REPAIR, MAJOR. Engine rebuilding, transmission rebuilding, rebuilding the drive train, or major reconditioning of motor vehicles including frame, or fender straightening or repair, and painting of vehicles when done wholly within a building, but not including "vehicle conversion."

MOTOR VEHICLE REPAIR, MINOR. Replacement of parts and other service to motor vehicle such as tune-ups, brake replacement and adjustment, tire repair and replacement, lubrication and oil change, muffler repair and replacement, but not including "Major Motor Vehicle Repair."

MOTOR VEHICLE SALES LOT. Any premises where 2 or more vehicles are offered for sale or sold during any calendar year.

MOTOR VEHICLE SERVICE STATION. A place where gasoline stored only in underground tanks, kerosene, lubricating

oil or grease and other similar products used in the servicing and/or operation of motor vehicles are offered for sale directly to the public on the premises, including minor accessories and services for motor vehicles but not including major motor vehicle repairs; and including washing of motor vehicles where no chain conveyor, blower or steam-cleaning device is employed.

MOTOR VEHICLE STORAGE YARD. Any place where 2 or more vehicles, regardless of operating condition, are kept outdoors for the purpose of storage.

MOTOR VEHICLE WASH. A structure or portion thereof where motor vehicles are washed but not including such areas within motor vehicle service station.

MOTOR VEHICLE WRECKING YARD. Any place where 1 or more vehicles not in running condition or otherwise legally operable on a public way, or parts thereof, are stored in the open or any land or structure used for wrecking or storing of such motor vehicles in the open and not for restoration of vehicles to operating condition.

NATIONAL FLOOD INSURANCE PROGRAM (NFIP). The federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the federal government and the private insurance industry.

NATIONAL GEODETIC VERTICAL DATUM (NGVD) OF 1929. As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

NEW CONSTRUCTION. Any structure for which the start of construction commenced after the effective date of the community's first floodplain ordinance.

NEW MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the community's first floodplain ordinance.

NEW SITE AREA. Total area of a parcel of land, excluding rights-of-way.

NFPA. National Fire Protection Association.

NONCONFORMING LOT. A lot of record which does not conform to the lot area or lot width regulations of this chapter.

NONCONFORMING STRUCTURE. A structure or portion thereof which does not comply with all of the regulations of the district in which such structure is located.

NONCONFORMING USE. The use of land, structures or structures and land which does not conform to the regulations of the district in which the use is located.

NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88). As adopted in 1993, a vertical control datum used as a reference for establishing varying elevations within the floodplain.

NOXIOUS MATTER. Fumes, dust and other matter that is offensive to the human senses, especially sight and smell.

NURSERY SCHOOL. A public or private school for pre-kindergarten children.

NURSING HOME. A private home for the care of children or the aged or infirmed, or a place of rest and/or therapy for those suffering bodily disorders, but not including facilities for the treatment of injuries or for surgical care.

OBSTRUCTION. Includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

OFF-STREET PARKING AREA. An area which is designated for the parking of vehicles and which is not a public way.

ONE AND TWO FAMILY DWELLING CODE, INDIANA. The mandatory statewide building code adopted by the Indiana Administrative Building Council for 1- and 2-family residential dwellings.

ONE-HUNDRED YEAR FLOOD (100-YEAR FLOOD). The flood that has a 1% chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the 1% annual chance flood. (See **REGULATORY FLOOD**)

ONE-PERCENT ANNUAL CHANCE FLOOD. The flood that has a 1% chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the 1% annual chance flood. (See **REGULATORY FLOOD**)

OPAQUE. Material that is not reflecting, transparent or translucent, and does not emit light.

OUTDOOR SALES. The sale, with or without on-site consumption, outside an enclosed building in accordance with the standards of the zoning district in which it is located. Includes sale of food or merchandise, however, all merchandise must be fully displayed and not stored in boxes or other containers.

OUTLOT. A parcel located within a larger lot developed independently of, but in conjunction with, the primary lot utilizing common access drives and development standards.

OUTSIDE STORAGE (BUSINESS OR MANUFACTURING). Outdoor storage, display or placement of manufacturing raw and finished materials, manufactured goods or business-related items in any yard.

OUTSIDE STORAGE (RESIDENTIAL). Outdoor storage, display or placement of household items, appliances or furniture not originally designed or manufactured for outdoor use in any yard.

PARTICIPATING COMMUNITY. Any community that voluntarily elects to participate in the National Flood Insurance Program (NFIP) by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.

PERFORMANCE STANDARD. A criterion established to regulate noise, order, smoke, toxic or noxious matter, vibration, fire and explosive hazards and the glare or heat generated by or inherent in the use of land or structure.

PERSON. An individual, firm, partnership, corporation, company, association, joint stock association, business trust, joint venture or body politic, including a trustee, receiver, assignee, administrator, executor, guardian or other representative.

PHYSICAL MAP REVISION (PMR). An official republication of a community's Federal Emergency Management Agency (FEMA) map to effect changes to base (1% annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or special flood hazard area (SFHAs).

PLACE OF WORSHIP. A church, synagogue, temple, mosque or other facility that is used for prayer and religious services by persons of similar beliefs; or a special purpose building that is architecturally designed and particularly adapted for the primary use of conducting on a regular basis formal religious services by a religious congregation.

PLAN COMMISSION. The Elkhart City Plan Commission.

PLANNED UNIT DEVELOPMENT. A tract of contiguous land which is to be planned and developed as a single entity under single ownership or control.

PLANNING AND ZONING OFFICE. The staff of the Plan Commission and the Board of Zoning Appeals.

PLOT PLAN. See **SITE PLAN**.

POOL ROOM. See **BILLIARD ROOM**.

POOL TABLE. See **BILLIARD TABLE**.

PORCH. A roofed-over structure projecting out from the wall of a principal structure and commonly open to the weather.

POST-FIRM CONSTRUCTION. Construction or substantial improvement that started on or after the effective date of the initial Flood Insurance Rate Map (FIRM) of the community or after December 31, 1974, whichever is later.

PRE-FIRM CONSTRUCTION. Construction or substantial improvement, which started on or before December 31, 1974, or before the effective date of the initial Flood Insurance Rate Map (FIRM) of the community, whichever is later.

PRIMARY FACADE. Any facade on a building which includes the main pedestrian entrance. This definition shall not apply to the Type II Development Plan Design Standards in § 151.183(A) of this chapter.

PRIVATE RECREATION FACILITY. A site, building, and/or structure for active physical activities by members and/or customers and which is not free to the public, including but not limited to the following: billiard rooms, skating rinks, arcades, swimming pools, tennis courts, and bowling alleys. Space for spectators may also be included.

PROBATION. Means of formally notifying participating communities of violations and deficiencies in the administration and enforcement of the local floodplain management regulations.

PUBLIC LAW 360, ACTS OF 1971 AS AMENDED. Enabling legislation requiring the Indiana Administrative Building Council to adopt rules and regulations for the construction, repair and maintenance of factory constructed 1- and 2-family residential dwellings.

PUBLIC PARK AND RECREATION FACILITY. A natural or landscaped area, buildings, and/or structures, provided by a unit of government, to meet the active or passive recreational needs of people.

PUBLIC SAFETY AND NUISANCE. Anything which is injurious to the safety or health of an entire community, neighborhood or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

PUBLIC UTILITY. Any person or private company duly authorized to furnish to the public under regulation by the Indiana Utility Regulatory Commission (I.U.R.C.) electricity, gas, steam, telephone, telegraph, transportation, water, cable television and other similar services or a municipal department authorized to furnish such services.

RECREATIONAL BUILDING. Building containing facilities for active physical activities by individuals or groups of

individuals including but not limited to the following: billiard rooms, skating rinks, arcades, swimming pools and bowling alleys. Space for spectators may also be included.

RECREATIONAL VEHICLE. A vehicle which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projections;
- (c) Designed to be self propelled or permanently towable by a light duty truck;
- (d) Designed specifically for temporary use as quarters for recreational camping, travel or seasonal use, and not for use as a permanent dwelling. Examples include, but are not limited to boats, motor homes, and travel trailers.

RECYCLING CENTER. A facility that is not a junkyard and in which recoverable resources, such as newspapers, glassware and metal cans, are collected, stored, flattened, crushed or bundled within a completely enclosed building.

REGULATORY FLOOD. The flood having a 1% chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in § 151.121(B). The **REGULATORY FLOOD** is also known by the terms **BASE FLOOD**, **ONE-PERCENT ANNUAL CHANCE FLOOD**, and **100-YEAR FLOOD**.

RELIGIOUS ASSEMBLY. A building or group of buildings used or proposed to be used for people to gather together for public worship, religious training, other religious activities or accessory uses associated with the use.

REPETITIVE LOSS. Flood-related damages sustained by a structure on 2 separate occasions during a 10-year period ending on the date of the event for which the second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event.

REST HOMES. See **NURSING HOMES**.

RESTAURANTS. A structure or part of a structure where meals are prepared and sold to the public for consumption inside the structure.

RESTAURANT, CARRY-OUT. A restaurant where meals are sold to the public for consumption other than inside the structure.

RESTAURANT, DRIVE-IN. A restaurant that delivers food and beverages for consumption by persons in their parked cars, whether or not meals are provided for consumption inside the structure.

RESTAURANT, DRIVE-THRU. A restaurant that delivers food and beverages, not for consumption on the premises, to persons in their vehicles from a window, door or other opening in the principal structure.

RETAIL SALES. Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of the goods.

RETAIL SERVICE. Establishments providing services or entertainment, as opposed to products, to the general public for personal or household use, including eating and drinking places, hotels and motels, finance, real estate and insurance, personal service, motion pictures, amusement and recreation services, health, educational and social services, museums and galleries.

RE-UPHOLSTERY SHOP. A business engaged in the repair or replacement of materials such as springs, padding, cushions and fabric for chairs, sofas and similar furniture.

RIGHT-OF-WAY. Land which is subject to use by the general public for general transportation purposes or conveyance of utilities including but not limited to streets, alleys, boulevards, highways, roads and other easements, whether or not in fact improved or actually used for such purposes.

ROOMING HOUSE. See **LODGING HOUSE**.

SALES, RUMMAGE - PRIVATE. A sale of used clothing and/or household items conducted only by the immediate members of 1 or 2 families in a residence, private garage, porch or rear yard.

SALES, RUMMAGE - PUBLIC. A temporary sale, conducted by a non-profit organization such as a church or club, where members of the group bring articles or items to a central structure to be sold to raise money for use by the organization.

SARA. Superfund Amendment and Reauthorization Act.

SCHOOLS. Public, charitable or non-profit institutions offering a general academic curriculum, including but not necessarily limited to primary and secondary schools, junior colleges, colleges and universities and military academies, which may also include living quarters, dining room, restaurants, heating plants and incidental facilities, but excluding trade and business schools.

SCRAP PROCESSING YARD. An establishment where scrap metals are processed.

SCREENING. A hedge, natural planting mass, fence, wall, earthen berm or any combination thereof, used to reduce

visual and auditory effects on adjoining uses.

SECTION 1316. The section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that intended to discourage or otherwise restrict land development or occupancy in flood prone areas.

SELF-SUPPORTING LATTICE TOWERS. A support structure, securely anchored to a concrete foundation, constructed of vertical metal struts and cross braces forming a triangular or square structure often tapering from the foundation to its apex.

SHELTERED LIVING HOME. A supervised home for physically or mentally disabled or emotionally distressed persons needing a temporary or permanent sheltered living situation in the community. The term **EMOTIONALLY DISTRESSED PERSONS** includes, but is not necessarily limited to expectant mothers and physically or mentally abused or battered persons.

SIGN. Any name, identification, description, display or illumination which is affixed to, painted or represented directly or indirectly upon a structure (including a window area), or land which is in view of the general public and which directs attention to a person, place, commodity, activity, institution, organization or business. A single sign structure may be single or double faced (2-sided).

SIGN, BANNER. Any temporary sign attached to a principal building or structure by means of a rope, string, wire or similar material, or placed as a freestanding sign.

SIGN, BILLBOARD. See **SIGN, OFF-PREMISE**.

SIGN, CONSTRUCTION. Any sign announcing the names of architects, engineers, contractors or other individuals or firms involved in the construction, alteration or repair of a building.

SIGN, FLAG. Flags bearing the official designation of a nation, state, municipality or organization.

SIGN, FLASHING. Any directly or indirectly illuminated sign that exhibits changing natural or artificial light or color effects by any means whatsoever.

SIGN, FREE-STANDING. A sign which is completely or principally self-supported by post or other supports independent of any building or other structure including monument and pole signs.

SIGN, HOLIDAY. Signs or displays which contain or depict a message pertaining to a national or state holiday and no other information.

SIGN, INSTITUTIONAL. Any sign or bulletin board setting forth or denoting the name of, or simple announcement for, any non-profit organization when located on the premises of the organization including, but not limited to, churches, schools, government buildings and facilities, non-profit agencies, museums, art galleries and parks.

SIGN, INTEGRAL. Names of buildings, dates of construction, commemorative tablets, and the like, when carved into stone, concrete or similar material or made of bronze, aluminum or other permanent type of construction and made a integral part of the building or structure.

SIGN, MARQUEE, CANOPY or AWNING. A sign displayed, maintained or supported on an over-hanging marquee, canopy, awning or other similar cover or shelter projecting from a building or structure.

SIGN, MONUMENT. Any sign attached directly to the ground by a solid base and foundation constructed of masonry, brick, stone, decorative metal, wood or other durable material.

SIGN, MULTI-FAMILY DWELLING, SUBDIVISION OR MOBILE HOME PARK. Signs located at the drive or entrance to multiple dwelling complexes, subdivisions or mobile home developments identifying the name or the address of the development and containing no other information.

SIGN, NAMEPLATE. Signs which identify the owner, resident or address of the premises where the sign is located and contain no other information.

SIGN, OFFICE. Signs that identify professional or business offices.

SIGN, OFF-PREMISE. A sign or billboard that identifies or communicates a commercial or non-commercial message related to an activity conducted, a service rendered or a commodity sold at a location other than the zoning lot where the sign is affixed.

SIGN, ON-PREMISE. A sign which directs attention to a business, commodity, service, or entertainment conducted, sold or offered upon the premises where the sign is located or to which it is affixed.

SIGN, PERMANENT. Any sign permanently attached to the ground or a structure as defined by and in accordance with the city's Building Code.

SIGN, POLE. Any sign supported by 1 or more upright poles, columns or braces placed in or on the ground and not attached to any building or structure.

SIGN, POLITICAL. Temporary signs announcing candidates seeking public political office, issues to be voted upon

including referenda and other data pertinent thereto.

SIGN, PORTABLE DISPLAY. A moveable electrical or non-electrical sign not permanently attached to the ground and/or which does not comply with the city's Building Code for permanent signs. It may be characterized by being either on a trailer or self-supporting framework made of durable construction such as metal, wood or plastic.

SIGN, PROJECTING. A sign, other than a wall-mounted sign, which projects perpendicularly, or nearly so, from and is supported or attached to a wall of a building or structure.

SIGN, PUBLIC EVENT. Temporary signs announcing any public, charitable, educational or religious event or function when located entirely within the premises of an institution.

SIGN, PUBLIC INFORMATION. Signs indicating scenic or historical points of interest, memorial plaques and the like. **PUBLIC SIGNS** shall contain no advertising, trademarks, business name or the business address.

SIGNS, PUBLIC SAFETY. Signs including safety signs, trespassing signs, traffic signs, entrance signs and exit signs, and all signs erected by or on order of a public officer in the performance of a public duty. **PUBLIC SAFETY SIGNS** shall contain no advertising, trademarks, business name or business address. One logo no larger than 6 inches by 6 inches may be permitted for property identification purposes.

SIGN, REAL ESTATE. Any temporary on-premise sign announcing the name of the owner, manager, realtor or other person directly involved in the sale or rental of the property, or announcing the purpose or conditions for which it is being offered.

SIGN, ROOF MOUNTED. A sign erected, constructed or maintained upon the roof of a structure.

SIGN, RUMMAGE. Temporary sign clearly incidental to the primary use of the premises on which they are located advertising a private or public rummage sale.

SIGN, SIGNABLE AREA. A 2-dimensional area defining the square, rectangle or parallelogram on the facade of a building free of architectural details on which a wall sign would be located. The signable area shall not exceed 25% of the total area of the facade of the building.

SIGN, SURFACE AREA. The entire area within a single continuous perimeter enclosing the extreme limits of a sign. The perimeter shall not include any structural or framing elements lying outside the limits of the sign and not forming an integral part of the display. The surface area of a double-faced sign shall be the area of the largest single face. For multi-faced signs in which the faces are not back-to-back, the sign surface area shall be the total area of each sign face.

SIGN, TEMPORARY. A display, banner, portable display sign or sign with or without a structural frame which is erected, placed or located temporarily to announce a special event, sale, opening or other activity.

SIGN, WALL OR WALL MOUNTED. A sign drawn on or attached to the exterior wall of a building or structure which does not project more than 18 inches. Individual letters, in addition to the "box type" sign, may also be installed as a wall or wall-mounted sign.

SITE CONSTRUCTED DWELLING. A dwelling constructed on the premises in accordance with the Indiana One- and Two-Family Dwelling Code (as adopted by the State of Indiana and as amended).

SITE PLAN. A diagram showing dimensions and locations of existing and proposed structures and yards.

SLEEPING UNIT/ROOM. Sleeping and living quarters, without cooking facilities, and with or without an individual bathroom.

SOCIAL REHABILITATION CENTER. An institution established for the purpose of treating, on a temporary resident or nonresident basis, persons with anti-social behavioral problems not considered serious enough for the person(s) to be confined to an institution.

SPECIAL EXCEPTION. A use that is not listed as a permitted use in the particular district under this chapter, but which may be compatible with such uses and may promote the realization of the purposes of this chapter if such special exception uses are restricted as to number and location in the district and to such other conditions as may be required by the Board of Zoning Appeals.

SPECIAL FLOOD HAZARD AREA (SFHA). Those lands within the jurisdictions of the City of Elkhart subject to inundation by the regulatory flood. The special flood hazard areas (SFHAs) of the City of Elkhart are generally identified as such on the Elkhart County and Incorporated Areas Flood Insurance Rate Map prepared by the Federal Emergency Management Agency, dated August 2, 2011. The SFHAs of those parts of unincorporated Elkhart County that are within the extraterritorial jurisdiction of the city or that may be annexed into the city are generally identified as such on the Elkhart County and Incorporated Areas Flood Insurance Rate Map prepared by the Federal Emergency Management Agency and dated August 2, 2011. (These areas are shown on a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) as Zone A, AE, A1-A30, AH, AR, A99, or AO).

START OF CONSTRUCTION. Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement or permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footing, installation of piles, construction of columns, or any work beyond the stage of

excavation for placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building. This definition ONLY applies to the flood hazard area regulations, §§ 151.120 *et seq.* of this Zoning Code.

STOREFRONT. A portion of the building facade which encloses the space occupied by the store, on which is located the primary entrance to the store.

STORY. That portion of a structure included between the surface of any floor and the surface of the floor above or, if there is no floor above, the space between the floor and the ceiling next above. A basement shall be counted as a story when more than ½ of the basement height is above grade level.

STORY, HALF. A half story is that portion of a structure under a gable, hip or mansard roof, the wall plates of which, on at least 2 opposite exterior walls, are not more than 4-1/2 feet above the finished floor of the story.

STREAM BED. The stream bed of a water way as indicated on Indiana Department of Natural Resources (I.D.N.R.), Division of Water, Map 1967, as amended or any replacement therefor prepared or adopted by I.D.N.R.

STREET. A public way other than an alley or a right-of-way or easement for public utility purposes upon which motor vehicles travel.

STREET, ARTERIAL. A street that serves major centers of activity and high traffic volume corridors; carries a major portion of traffic entering, leaving and moving through the city; and for which access to adjoining land is subordinate to the movement of traffic. **ARTERIAL STREETS** within the City of Elkhart are those so defined by the City of Elkhart Public Works and Utilities Department.

STREET, COLLECTOR. A street that provides both property access and traffic circulation within residential, commercial or industrial areas and distributes traffic between local and arterial streets. Collector streets within the City of Elkhart are those so defined by the City of Elkhart Public Works and Utilities Department.

STRUCTURAL MODIFICATION. Any alteration, repair, enlargement or extension of an existing structure. The structural modification is considered to occur when the first alteration of any wall, ceiling, floor or other structural element of the structure commences. This term does not, however, include either:

- (a) Any project for improvement of a structure to comply with existing health, sanitary or safety code specifications; or
- (b) Any alteration of a structure listed on the National Register of Historic Places or the Indiana State Survey of Historic, Architectural, Archeological and Cultural Sites, Structures, Districts and Objects.

STRUCTURE.

(a) Anything constructed or erected, the use of which requires it to be located above or on the ground or be attached to an object that is located on the ground. This shall include all buildings (principal and accessory) as defined in this Zoning Code, signs, towers, antennas, storage tanks, tennis courts and other similar things, but excluding public utility lines and poles.

(b) For purpose of flood hazard area regulations, §§ 151.120 *et seq.*, **STRUCTURE** means a structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles to be installed on a site for more than 180 days.

STRUCTURE, TEMPORARY. A structure which is placed at a site for less than 6 months. Temporary offices associated with on-site construction are permitted by right in all zoning districts for the duration of construction on that site.

SUBDIVISION. The division of land into 2 or more lots, whether or not the land was previously divided, in accordance with the City of Elkhart Subdivision Ordinance.

SUBSTANCE ABUSE. The habitual or compulsive consumption of alcohol or use of illegal drugs or misuse of prescription drugs by an individual. **SUBSTANCE ABUSE CLINICS OR INSTITUTIONS** are set up to assist individuals with substance abuse problems into recovery from these addictions.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure (excluding the value of the land) before damage occurred.

SUBSTANTIAL IMPROVEMENT. Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred repetitive loss or substantial damage regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary or safety code requirements or any alteration of an historic structure provided that the alteration will not preclude the structure's continued designation as an historic structure.

SUSPENSION. The removal of a participating community from the NFIP because the community has not enacted and/or

enforced the proper floodplain management regulations required for participation in the National Flood Insurance Program (NFIP).

SWIMMING POOL. An artificial or semi-artificial basin or tank, including all appurtenant equipment, structures and facilities, for the purpose of impounding water to a depth of more than 2-1/2 feet for the immersion of human beings.

TANK. Any vessel containing more than 50 gallons.

TATTOO PARLOR. Any room or space where tattooing is performed or the business of tattooing is conducted.

TATTOOING means the placement in human tissue of:

(a) Any indelible design, letter, scroll, figure, symbol or other mark placed with the aid of needles or other instruments; or

(b) Any design, letter, scroll, figure or symbol done by scarring upon or under the skin.

TOURIST HOME. See **LODGING HOUSE**.

TOWNHOUSE. A residential building containing multiple dwelling units, each of which has primary ground floor access to the outside and which are attached to each other by party walls without openings.

TOXIC SUBSTANCE. Those pollutants or combinations of pollutants, including disease-causing agents, which, after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through the food chains, will on the basis of information available to the Planning and Zoning Staff, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring.

TRADE SCHOOL. A privately owned school, not conducted by or under the sponsorship of a charitable organization, which teaches industrial arts.

TRAILER, TRAVEL. See **RECRE- ATIONAL VEHICLE**.

UNDERGROUND. Located below the natural grade of the site.

USE, ACCESSORY. A use incidental to, and on the same lot as, a principal use.

USE, PRINCIPAL. The main use of land or structures as distinguished from subordinate or accessory use.

VAN CONVERSION. See **VEHICLE CONVERSION**.

VARIANCE. Grant of relief from the requirements of the flood hazard area regulations, §§151.120 *et seq.*, which permits construction in a manner otherwise prohibited by the flood hazard area regulations, §§ 151.120 *et seq.*, where specific enforcement would result in unnecessary hardship.

VEHICLE. A device which is used to move people, items, or its own structure including, but not limited to motor vehicles, trailerable vehicles, travel trailers, mobile homes and recreational vehicles.

VEHICLE CONVERSION. The process of modifying motor vehicles, commercial motor vehicles, or recreational vehicles to cause substantial change to the vehicle's interior or exterior for the purpose of sale. Modification, includes, but is not limited to upholstery work, customized painting or the installation of custom windows.

VEHICLE DISPLAY AREA. Any property which is used for the placement of vehicles for the purposes of sale, rental, lease or financial remuneration.

VEHICLE HOLDING AREA. Any property which is used for the placement of vehicles pending either repair, determination of repair or total loss, or awaiting fabrication or shipment from vehicle assembly or conversion manufacturer as an accessory use to any business involved in major or minor motor vehicle repair, body shop, vehicle manufacturing or vehicle conversion.

VIOLATION. The failure of a structure or other development to be fully compliant with the flood hazard area regulations, §§ 151.120 *et seq.* A structure or other development without the elevation, other certification, or other evidence of compliance required in the flood hazard area regulations, §§ 151.120 *et seq.*, is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION. The height, in relation to the North American Vertical Datum of 1988 (NAVD 88) or National Geodetic Vertical Datum of 1929 (NGVD) (other datum where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

WATERCOURSE. A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

WHEEL STOPS. A concrete, metal or wooden barrier not less than four inches in height used in parking areas at each parking space sufficient to prohibit vehicular movement through the parking space, properly anchored and maintained as per city specifications.

X ZONE. The area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent Flood Insurance Rate Maps (FIRMs) (B zones on older FIRMs) designate areas subject to inundation by the flood with a 0.2%

chance of being equaled or exceeded (the 500-year flood). Unshaded X zones (C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2%.

YARD. A portion of a zoning lot lying either in front of, at the side of or at the rear of the principal structure on the lot, unoccupied except for a driveway and/or those fences and/or other obstructions permitted therein under §§ 151.225 *et seq.* and extending from a lot line a minimum distance into the lot perpendicular to the lot line, as required in the zoning district in which the lot is located.

YARD, CORNER SIDE. The side yard abutting a street in which the required setback is the same as that for the front yard. There shall be no structures, no open storage of materials or equipment, no parking of vehicles (except at 1- and 2-family dwelling units), and no paved parking spaces, aisles or drives.

YARD, FRONT. A yard extending the full width of the zoning lot and situated between the front lot line and a line parallel thereto and passing through the nearest point of the structure. There shall be no structures, no open storage of materials or equipment, no parking of vehicles (except at 1- and 2-family dwelling units), and no paved parking spaces, aisles or drives.

YARD, REAR.

(a) A yard extending the full width of the zoning lot lying between the rear line of the lot and the nearest point of the principal structure.

(b) In a through lot, the **REAR YARD** shall not include any area which would constitute either a front yard, or a side yard if the lot were not a through lot.

YARD, SALE. See **SALES, RUMMAGE.**

YARD, SIDE. A yard lying between the nearest point of the principal building and a side lot line extending from the required front yard to the rear yard, or to the opposite front yard in the case of a through lot.

ZONE. A geographical area shown on a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) that reflects the severity or type of flooding in the area.

ZONE A. See **A ZONE.**

ZONE B, C, AND X. Areas identified in the community as areas of moderate or minimal hazard from the principal source of flood in the area. However, buildings in these zones could be flooded by severe, concentrated rainfall coupled with inadequate local drainage systems. Flood insurance is available in participating communities but is not required by regulation in these zones. (Zone X is used on new and revised maps in place of Zones B and C.)

ZONING LOT. A piece, parcel, plot or tract of land designated by its owner or developer to be used, developed or built upon as a unit under one ownership or control.

ZONING MAPS. The maps or maps incorporated into this chapter.

(1979 Code, § 151.011) (Ord. 4370, passed 7-20-1998; Am. Ord. 4431, passed 7-12-1999; Am. Ord. 4454, passed 10-19-1999, Am. Ord. 4457, passed 12-6-1999; Am. Ord. 4542, passed 12-4-2000; Am. Ord. 4592, passed 6-4-2001; Am. Ord. 4683, passed 7-1-2002; Am. Ord. 4762, passed 8-1-2003; Am. Ord. 5044, passed 7-9-2007; Am. Ord. 5263, passed 8-1-2011; Am. Ord. 5618, passed 9-11-2017)

DISTRICTS AND BOUNDARIES

§ 151.025 OFFICIAL ZONING MAP.

(A) The locations and boundaries of the districts established herein are shown upon the official zoning map which is part of this chapter. The official zoning map, together with all notations, references and other information shown thereon and all amendments thereto, shall be part of this chapter and shall have the same force and effect as if fully set forth herein. The map shall be located in the Elkhart City Planning and Zoning Office and a certified copy thereof shall be on file with the Elkhart City Clerk and shall be open to public reference at all times during normal business hours.

(1) The official zoning map shall be identified by the signature of the Mayor, attested by the City Clerk, and bear the seal of the city and the effective date of this chapter.

(2) If changes are made in district boundaries or other matters portrayed on the official zoning map by amendment, the changes shall be made by the Zoning Administrator when the amending ordinance authorizing such changes becomes effective.

(3) Regardless of the existence of purported copies of the official zoning map which may from time to time be made or published, the official zoning map located in the Planning and Zoning Office shall be the final authority as to the current zoning status.

(4) No changes of any nature shall be made in the official zoning map or any matter shown thereof except in conformity with the procedures and requirements of this chapter. It shall be unlawful for any person to make any unauthorized change in the official zoning map.

(5) If the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number

of changes, the City Council may, by resolution, adopt a new official zoning map or portion thereof which shall supersede the prior map or portion.

(B) If changes are made in district boundaries or other matters portrayed on the official zoning map by amendment, the changes shall be made by the Planning and Zoning Staff when the amending ordinance authorizing such changes becomes effective.

(1979 Code, § 151.020) (Ord. 4370, passed 7-20-1998; Am. Ord. 4683, passed 7-1-2002)

§ 151.026 INTERPRETATION OF DISTRICT BOUNDARIES.

Where uncertainty exists as to the boundaries of districts as shown on the official zoning map, the following rules shall apply:

(A) Boundaries indicated as approximately following the center lines of rights-of-way shall be construed to follow such center lines.

(B) Boundaries indicated as approximately following platted lot lines shall be construed as following the lot lines.

(C) Boundaries indicated as approximately following city limits shall be construed as following the city limits.

(D) Boundaries indicated as following railroad lines shall be construed to follow the center line of the right-of-way.

(E) Boundaries indicated as following shore lines or bodies of water shall be construed to follow the shore lines. Boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow the center lines. In the event of change in the shore line or center line, the line shall be construed as moving with the actual shore line or center line.

(F) Boundaries indicated as parallel to or extensions of features indicated in divisions (A) through (E) above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.

(G) Where physical features existing on the ground are at variance with those shown on the official zoning map or in other circumstances not covered by divisions (A) through (E) above, the Planning and Zoning Staff shall interpret the district boundaries.

(H) Where a district boundary line divides a zoning lot which was in existence as such lot at the effective date of this chapter, the Planning and Zoning Staff shall make a determination as to the appropriate zoning category for the zoning lot and adjust the boundary line accordingly.

(1979 Code, § 151.021) (Ord. 4370, passed 7-20-1998; Am. Ord. 4683, passed 7-1-2002)

§ 151.027 LAND HEREAFTER ANNEXED TO THE CITY.

(A) All land annexed to the city after the effective date of this chapter shall, at the time of annexation, retain the use district classification name and planned unit development district provided in the Elkhart County Zoning Ordinance, as amended, except that all agricultural use districts in the county's Zoning Ordinance shall automatically be classified under this chapter in the R-1 One-Family Dwelling district until the classification is changed by the City Council. Where discrepancies occur between the district regulations of the Elkhart County and Elkhart City Zoning Ordinances, the Elkhart City Zoning Ordinance shall apply after the effective date of annexation.

(B) All special exceptions and any other special district rights granted by the Elkhart County Board of Zoning Appeals shall be retained upon annexation.

(C) Any use or activity conducted in compliance with regulations of the Elkhart County Zoning Ordinance but which, at the effective date of annexation to the city, would not be in compliance with the regulations of this chapter may be continued and regulated in the same manner as other nonconformities of this chapter.

(D) Any use or activity which, at the effective date of annexation to the city, is contrary to the provisions both of this chapter and the Elkhart County Zoning Ordinance shall constitute a violation of the applicable provisions of this chapter.

(1979 Code, § 151.022) (Ord. 4370, passed 7-20-1998)

§ 151.028 ESTABLISHMENT OF DISTRICTS.

The city is divided into the following districts:

(A) *Use districts.*

(1) Residential districts:

(a) R-1, One-Family Dwelling District;

(b) R-2, One-Family Dwelling District;

(c) R-3, Two-Family Dwelling District;

- (d) R-4, Multiple-Family Dwelling District;
 - (e) R-5, Urban Residential District; and
 - (f) MHP, Mobile Home Park District.
- (2) Business districts:
- (a) O, Office District;
 - (b) B-1, Neighborhood Business District;
 - (c) B-2, Community Business District;
 - (d) B-3, Service Business District;
 - (e) B-4, Regional Business District;
 - (f) CBD, Central Business District;
 - (g) OP, Office Park District; and
 - (h) BP, Business Park District.
- (3) Manufacturing districts:
- (a) M-1, Limited Manufacturing District; and
 - (b) M-2, General Manufacturing District.
- (4) PUD Planned Unit Development District

(B) *Overlay districts.*

- (1) DP, Development Plan Overlay District;
- (2) FP, Special Flood Hazard Area Overlay District;
- (3) WC, Wetlands Conservation Overlay District; and
- (4) AC, Air Space Control Area Overlay District.

(C) *Image.* Pursuant to Ord. 4762, passed 8-1-2003 the following figure is hereby incorporated by reference as if fully set out herein: Figure 3A.

(1979 Code, § 151.023) (Ord. 4370, passed 7-20-1998; Am. Ord. 4762, passed 8-1-2003)

RESIDENTIAL DISTRICTS

§ 151.045 R-1, ONE-FAMILY DWELLING DISTRICT.

(A) *Purpose.* The R-1 District is designed to provide for the lowest density single-family residential development requiring larger lot width and area. The intent is to protect and conserve existing and future residential development, particularly in more recently developed areas.

(B) *Permitted uses.*

(1) One-family detached dwellings with a minimum width of 24 feet and a minimum of 1,250 square feet of dwelling unit space, in which case the ground floor shall consist of no less than 850 square feet of the dwelling unit space. The primary facade of the structure shall face a public street.

- (a) Site-constructed dwellings;
 - (b) Modular homes, placed on a permanent foundation; and
 - (c) Manufactured homes, placed on a permanent foundation.
- (2) Home occupations;
- (3) Temporary structures, used for construction site purposes for a period not to exceed 6 months;
- (4) Accessory structures and uses;
- (5) Not more than 4 domestic animals over 16 weeks of age;
- (6) Sales, rummage - private or public (see division (E));
- (7) Police and fire stations, located along a primary or thoroughfare street;
- (8) Sheltered living homes licensed by the State of Indiana; and

- (9) Radio towers owned by federally licensed amateur radio operators.

(C) *Special exception uses.*

- (1) Cemeteries;
- (2) Places of worship;
- (3) Golf courses and country clubs, including associated buildings;
- (4) Fraternal or religious institutions;
- (5) Public libraries, located on a collector or arterial street;
- (6) Day care home;
- (7) Day care center, located on a collector or arterial street;
- (8) Nursing homes/assisted living centers;
- (9) Community centers;
- (10) Public utilities and public service uses, including but not limited to: public utility facilities, railroad facilities, sewage treatment plant, telephone exchange, water filtration plants, water pumping stations and water reservoirs;
- (11) Police and fire stations, if on a lot not abutting a primary or thoroughfare street;
- (12) School, elementary and secondary, public or private, including auxiliary playgrounds and athletic fields;
- (13) Sheltered living homes not licensed by the State of Indiana;
- (14) Bed and breakfast home;
- (15) Parks and playgrounds;
- (16) Off- or on-site parking lots and driveways (including street access) used in connection with business, office, manufacturing or special exception uses;
- (17) Private clubs or lodges not run as businesses; and
- (18) Funeral homes, crematories and similar services.

(D) *Yard requirements.*

(1) The yard requirements for the R-1, One-Family Dwelling District are as follows: (All standards are minimums except as noted.)

- (a) Lot size: 9,500 square feet.
- (b) Frontage: 75 feet.
- (c) Setbacks:
 - 1. Front yard: Established setbacks; or 25 feet if no established setback.
 - 2. Side yard: 20 feet total, minimum of 7 feet on any side or 17 feet between dwelling units.
 - 3. Rear yard: 30 feet or established setbacks if adjacent to a river or creek.
 - 4. Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.

(d) Maximum structure height: 40 foot maximum with 25 foot total side yard, a minimum of 10 feet on any side, and 20 feet between dwelling units.

(e) Maximum lot coverage for structures: 40% total for all structures.

(2) The planning staff may approve an increase in height of up to 70 feet for a radio tower that is:

- (a) Structurally attached to primary structures;
- (b) Owned by federally licensed amateur ham radio operators; and
- (c) When it has been demonstrated by study that the additional height is necessary for effective operation of the radio tower.

(E) *Development standards: rummage sales.*

(1) *Private.*

- (a) No such sale shall be conducted for longer than 3 consecutive days, nor more than 15 days in any calendar year

by any of the same persons or on the same property.

(b) No articles or items purchased for resale shall be offered for sale.

(c) Motor vehicles, boats, trailers and industrial or commercial equipment shall not be offered for sale on the premises in conducting this sale.

(d) No articles or items for sale shall be displayed within 10 feet of a public right-of-way nor within 6 feet of a side yard lot line.

(e) At the close of each day and not later than 8:00 p.m. on such day all articles not sold shall be removed from the front and side yards.

(2) *Public.* No such sale shall continue for more than 14 consecutive days or more than 40 days in any calendar year.

(F) *Supplemental regulations.*

(1) Special flood hazard area regulations: §§ 151.120 *et seq.*

(2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*

(3) Air Space Control Area regulations: §§ 151.210 *et seq.*

(4) Accessory structures and swimming pool requirements: § 151.225.

(5) Permitted obstructions in required yards: § 151.227.

(6) Fence requirements: § 151.228.

(7) Intersection visibility area requirements: § 151.229.

(8) Primary street setback requirements: § 151.229.

(9) Off-street parking and loading requirements: § 151.231.

(10) Sign regulations: § 151.234.

(1979 Code, § 151.035) (Ord. 4370, passed 7-20-1998; Am. Ord. 4431, passed 7-12-1999; Am. Ord. 4457, passed 12-6-1999; Am. Ord. 4542, passed 12-4-2000; Am. Ord. 4762, passed 8-1-2003 ; Am. Ord. 4985, passed 9-11-2006; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

§ 151.046 R-2, ONE-FAMILY DWELLING DISTRICT.

(A) *Purpose.* The R-2 District is designed to provide for low density single-family residential development on narrower lots in urbanized or urbanizing areas.

(B) *Permitted uses.*

(1) Any use permitted in the R-1, One-Family Dwelling District.

(2) Single family detached residences located on a permanent foundation with a minimum width of 24 feet and a minimum of 950 square feet of dwelling unit space, in which case the ground floor shall consist of no less than 600 square feet of such dwelling unit space. The primary facade of the structure shall face a public street.

(C) *Special exception uses.* Special exceptions listed in the R-1, One-Family Dwelling District.

(D) *Yard requirements.* The yard requirements for the R-2, One-Family Dwelling District are as follows: (All standards are minimums except as noted.)

(1) Lot size: Established lot size; or 7,200 square feet if no established lot size. Established lot size shall never be less than 5,800 square feet.

(2) Frontage: Established frontage; or 60 feet if no established frontage. Established frontage shall never be less than 45 feet.

(3) Setbacks:

(a) Front yard: Established setbacks; or 20 feet if no established setback.

(b) Side yards: 7 feet.

(c) Rear yard: 30 feet or established setbacks if adjacent to a river or creek.

(d) Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.

(4) Maximum structure height: 35 feet.

(5) Maximum lot coverage for structures: 40% total for all structures.

(E) *Supplemental regulations.*

- (1) Special flood hazard area regulations: §§ 151.120 *et seq.*
- (2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*
- (3) Air Space Control Area regulations: §§ 151.210 *et seq.*
- (4) Accessory structures and swimming pool requirements: § 151.225.
- (5) Permitted obstructions in required yards: § 151.227.
- (6) Fence requirements: § 151.228.
- (7) Intersection visibility area requirements: § 151.229.
- (8) Primary street setback requirements: § 151.229.
- (9) Off-street parking and loading requirements: § 151.231.
- (10) Sign regulations: § 151.234.

(1979 Code, § 151.036) (Ord. 4370, passed 7-20-1998; Am. Ord. 4542, passed 12-4-2000; Am. Ord. 4762, passed 8-1-2003 ; Am. Ord. 4985, passed 9-11-2006; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

§ 151.047 R-3, TWO-FAMILY DWELLING DISTRICT.

(A) *Purpose.* The R-3 District is designed to provide for low to medium density single and 2- family residential development in urbanized areas.

(B) *Permitted uses.*

- (1) Any use permitted in the R-2 One-Family Dwelling District.
- (2) Two-family dwellings, with a minimum width of 24 feet and a minimum of 750 square feet of dwelling unit space per dwelling unit. The primary facade of the structure shall face a public street.

(C) *Special exception uses.*

- (1) Special exceptions listed in the R-2, One-Family Dwelling District;
- (2) Licensed home or facility for substance abuse rehabilitation; and
- (3) Offices of charitable organizations.

(D) *Yard requirements.* The yard requirements for the R-3, Two-Family Dwelling District are as follows: (All standards are minimums except as noted.)

(1) One-family:

- (a) Lot size: 6,000 square feet.
- (b) Frontage: 50 feet.
- (c) Setbacks:
 1. Front yard: Established setbacks; or 20 feet if no established setback.
 2. Side yard: 15 feet total, 5 feet minimum and 10 feet between dwelling units.
 3. Rear yard: 30 feet or established setbacks if adjacent to a river or creek.

4. Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.

- (d) Maximum structure height: 30 feet.
- (e) Maximum lot coverage for structures: 40% total for all structures.

(2) Two-family:

- (a) Lot size: 7,200 square feet.
- (b) Frontage: 60 feet.
- (c) Setbacks:
 1. Front yard: Established setbacks; or 20 feet if no established setback.
 2. Side yards: 15 feet total, 5 feet minimum and 10 feet between dwelling units.

3. Rear yard: 30 feet.

(d) Maximum structure height: 30 feet.

(e) Maximum lot coverage for structures: 40% total for all structures.

(E) *Supplemental regulations.*

(1) Special flood hazard area regulations: §§ 151.120 *et seq.*

(2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*

(3) Air Space Control Area regulations: §§ 151.210 *et seq.*

(4) Accessory structures and swimming pool requirements: § 151.225.

(5) Permitted obstructions in required yards: § 151.227.

(6) Fence requirements: § 151.228.

(7) Intersection visibility area requirements: § 151.229.

(8) Primary street setback requirements: § 151.229.

(9) Off-street parking and loading requirements: § 151.231.

(10) Sign regulations: § 151.234.

(1979 Code, § 151.037) (Ord. 4370, passed 7-20-1998; Am. Ord. 4542, passed 12-4-2000; Am. Ord. 4762, passed 8-1-2003 ; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

§ 151.048 R-4, MULTIPLE-FAMILY DWELLING DISTRICT.

(A) *Purpose.* The R-4 District is designed to provide for new multiple-family residential development.

(B) *Permitted uses.*

(1) Any use permitted in the R-3, Two-Family Dwelling District, except 1- and 2-family dwellings;

(2) Multiple-family dwellings;

(3) Dormitories, sorority and fraternity houses; and

(4) Radio towers owned by federally licensed amateur ham radio operators.

(C) *Special exception uses.*

(1) Special exceptions listed in the R-3, Two-Family Dwelling District; and

(2) Hospitals and clinics.

(D) *Yard requirements.*

(1) The yard requirements for the R-4, Multiple-Family Dwelling District are as follows: (All standards are minimums except as noted.)

(a) Lot size: A minimum of 10,000 square feet including at least 1,500 square feet for each efficiency unit or sleeping room; and at least 2,500 square feet for each other dwelling unit.

(b) Frontage: 100 feet.

(c) Setbacks:

1. Front yard: 25 feet.

2. Side yards: 10 feet for each side yard. 1 additional foot for every 2 feet in height above 35 feet.

3. Rear yards: and 30 feet or established setbacks if adjacent to a river or creek.

4. Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.

(d) Maximum structure height: 65 feet.

(e) Maximum lot coverage for structures: 40% total for all structures.

(f) Floor area ratio: 3.0.

(2) The planning staff may approve an increase in height of up to 70 feet for a radio tower that is:

- (a) Structurally attached to primary structures;
- (b) Owned by federally licensed amateur ham radio operators; and
- (c) When it has been demonstrated by study that the additional height is necessary for effective operation of the radio tower.

(E) *Development conditions.* Landscape requirements. In addition to the requirements specified in §§ 151.225 through 151.234, the following landscape requirements shall apply:

(1) (a) In the event a property to be developed in this district is adjacent to a residentially zoned or used property along a common side or rear lot, whether separated by an alley or not, the following landscape area shall be provided:

<i>Parcel Size</i>	<i>Width of Required Landscape Area</i>
< 1 acre	8 feet
1 to 3 acres	12 feet
> 3 acres	15 feet

(b) The landscaped area shall consist of a combination of ornamental or shade trees, shrubs and ground cover. At least 50% of the common lot line landscape area shall contain shrubs and/or trees. A minimum of 1 tree per every 30 feet of common lot line shall be provided.

(2) All dumpsters located in a side or rear yard abutting a residentially zoned or used property shall be screened by a solid 6-foot high fence, wall or dense evergreen hedge. Fences and walls shall be consistent with the architecture of the development or principal building.

(F) *Supplemental regulations.*

- (1) Special flood hazard area regulations: §§ 151.120 *et seq.*
- (2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*
- (3) Air Space Control Area regulations: §§ 151.210 *et seq.*
- (4) Accessory structures and swimming pool requirements: § 151.225.
- (5) Landscape and screening requirements: § 151.226.
- (6) Permitted obstructions in required yards: § 151.227.
- (7) Fence requirements: § 151.228.
- (8) Intersection visibility area requirements: § 151.229.
- (9) Primary street setback requirements: § 151.229.
- (10) Off-street parking and loading requirements: § 151.231.
- (11) Sign regulations: § 151.234.

(1979 Code, § 151.038) (Ord. 4370, passed 7-20-1998; Am. Ord. 4457, passed 12-6-1999; Am. Ord. 4762, passed 8-1-2003 ; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

§ 151.049 R-5, URBAN RESIDENTIAL DISTRICT.

(A) *Purpose.* The R-5 District is designed to control development and redevelopment in existing older residential neighborhoods originally created primarily for single-family residences. Over the years many of these neighborhoods have experienced an increase in the intensity of use due to the conversion of older single-family residences to 2 or more residential unit structures. The goal of this district is to ensure this development does not create a detriment to the neighborhood due to inadequate parking and infrastructure, undersized lots and general incompatibility with the surrounding neighborhood. Limitations on permitted uses and specific criteria for increasing use intensities are incorporated to protect the integrity and viability of these older established neighborhoods.

(B) *Permitted uses.*

- (1) One-family dwellings located on a permanent foundation with a minimum width of 24 feet and a minimum of 950 square feet of habitable space. The primary facade of the structure shall face a public street.
- (2) Home occupations;
- (3) Temporary structures, used for construction site purposes for a period not to exceed 6 months;
- (4) Accessory structures and uses;
- (5) Not more than 4 domestic animals over 16 weeks of age;

- (6) Sheltered living homes licensed by the State of Indiana;
- (7) Radio towers owned by federally licensed amateur radio operators;
- (8) Two-family dwellings; and
- (9) Multiple-family dwellings up to and including 6 units.

(C) *Special exception uses.*

- (1) Cemeteries;
- (2) Places of worship;
- (3) Schools, colleges and libraries;
- (4) Day care home;
- (5) Day care center, located on a collector or arterial street;
- (6) Nursing homes and assisted living facilities;
- (7) Private clubs or lodges;
- (8) Public utilities and service uses;
- (9) Sheltered living homes not licensed by the State of Indiana;
- (10) Bed and breakfast homes;
- (11) Hospitals; and
- (12) Parks, playgrounds, and community centers.

(D) *Conditional uses.*

(1) *Approval needed.* The following uses shall require approval by the Board of Zoning Appeals as conditional uses within the R-5 district:

- (a) Professional and governmental offices and offices of charitable organizations;
- (b) Boarding and lodging homes;
- (c) Dormitories; and
- (d) Fraternity and sorority houses.

(2) *Supplementary information.* In addition to the information required in §151.288, an application for a conditional use shall include the following supplementary information:

(a) Documentation from the city's Public Works and Utilities Department that sufficient capacity exists within the public infrastructure system (sanitary sewer and water) and on site (surface drainage retention) to support the proposed development;

(b) Number, size and location of paved on-site parking spaces as required by the city's Zoning Ordinance, including screening;

(c) Percent of lot remaining as open space excluding all structures, drives and parking areas; and

(d) Use of all structures within 200 feet of the petitioned property.

(3) *Board of Zoning Appeals review.* In order to grant approval of a conditional use in the R-5 District, the Board of Zoning Appeals must find that the following standards, together with the standards applicable to conditional uses specified in § 151.287, have been met:

(a) The proposed conditional use is consistent with existing neighborhood density;

(b) The proposed conditional use is compatible with existing neighborhood uses and character;

(c) The proposed development (including all structures, drives and parking areas) will not occupy more than 60% of the total lot area;

(d) Sufficient capacity exists both within the public infrastructure system (sanitary sewer and water) and on site (surface drainage retention) to support the proposed development; and

(e) The proposed conditional use will not adversely affect the stability and viability of the existing residential neighborhood.

(E) *Yard regulations.*

- (1) The yard requirements for the R-5, Urban Residential District are as follows: (All standards are minimums except as

noted.)

(a) One-family:

1. Lot size: 6,000 square feet.
2. Frontage: 50 feet
3. Setbacks:
 - a. Front yard: Conform to established building setbacks.
 - b. Side yards: 7 feet for each side yard.
 - c. Rear yard: 30 feet or established setbacks if adjacent to a river or creek.

d. Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.

4. Maximum structure height: Conform to average height of existing structures on the block.
5. Maximum lot coverage for structures: 40% total for all structures, except as specified for conditional uses.

(b) Two-family:

1. Lot size: 7,200 square feet.
2. Frontage: 60 feet.
3. Setbacks:
 - a. Front yard: Conform to established building setbacks.
 - b. Side yards: 7 feet for each side yard.
 - c. Rear yard: 30 feet or established setbacks if adjacent to a river or creek.
4. Maximum structure height: Conform to average height of existing structures on the block.
5. Maximum lot coverage for structures: 40% total for all structures, except as specified for conditional uses.

(c) Multi-family:

1. Lot size: A minimum of 7,500 square feet including at least 1,500 square feet for each efficiency unit or sleeping room; and at least 2,500 square feet for each other dwelling unit.

2. Side yard setback: 10 feet for each side yard.

(d) All other uses:

1. Lot size: 10,000 square feet.
2. Side yard setback: 10 feet for each side yard.

(2) The planning staff may approve an increase in height of up to 70 feet for a radio tower that is:

- (a) Structurally attached to primary structures;
- (b) Owned by federally licensed amateur ham radio operators; and
- (c) When it has been demonstrated by study that the additional height is necessary for effective operation of the radio tower.

(F) *Supplemental regulations.*

- (1) Special flood hazard area regulations: §§ 151.120 *et seq.*
- (2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*
- (3) Air Space Control Area regulations: §§ 151.210 *et seq.*
- (4) Accessory structures and swimming pool requirements: § 151.225.
- (5) Permitted obstructions in required yards: § 151.227.
- (6) Fence requirements: § 151.228.
- (7) Intersection visibility area requirements: § 151.229.
- (8) Primary street setback requirements: § 151.229.
- (9) Off-street parking and loading requirements: § 151.231.

(10) Sign regulations: § 151.234.

(1979 Code, § 151.039) (Ord. 4370, passed 7-20-1998; Am. Ord. 4431, passed 7-12-1999; Am. Ord. 4457, passed 12-6-1999; Am. Ord. 4542, passed 12-4-2000; Am. Ord. 4762, passed 8-1-2003 ; Am. Ord. 4960, passed 4-3-2006; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

§ 151.050 MHP MOBILE HOME PARK DISTRICT.

(A) *Purpose.* The Mobile Home Park District is designed to provide for the placement of single and double wide mobile homes, not placed on a permanent foundation, within a large scale unified development under single ownership. Specific standards are included to promote developments that are single- family residential in character and which minimize incompatibilities with surrounding land uses.

(B) *Permitted uses.*

- (1) Mobile homes, qualifying as H.U.D. Code Manufactured Dwellings;
- (2) Community buildings serving the development including child day care centers, dry cleaning and laundry, neighborhood commercial uses and indoor recreation facilities;
- (3) Mobile home sales and management offices, when located in the interior of the park and limited to 3% of the total park area;
- (4) Home occupations;
- (5) Parks and playgrounds;
- (6) Accessory structures and uses;
- (7) Temporary structures, used for construction site purposes for a period not to exceed 6 months;
- (8) Daycare home or center serving only residents of the park; and
- (9) Public utilities and service uses.

(C) *Yard requirements.* The yard requirements for the MHP, Mobile Home Park District are as follows: (All standards are minimums except as noted.)

- (1) Lot size: 5,000 square feet.
- (2) Lot width: 50 feet.
- (3) Setbacks:
 - (a) Front yard: 20 feet.
 - (b) Side yards: 7 feet with 2 side yards or 14 feet with a zero lot line.
 - (c) Rear yard: 10 feet.
- (4) Maximum structure height: 30 feet or established setbacks if adjacent to a river or creek.
- (5) Maximum lot coverage for structures: 30% by mobile home; 40% by all structures.
- (6) Unit spacing: A 14-foot spacing shall be maintained between all units.

(D) *Development conditions.*

(1) *General requirements.*

(a) It shall be unlawful for any person to park, place or locate or permit the parking, placing or locating of any occupied mobile home within the city except in a mobile home park.

(b) It shall be unlawful for any person to park, place or locate or permit the parking, placing or locating of any unoccupied mobile home within the city except on a mobile home sales lot.

(c) It shall be unlawful for a person to establish, construct, alter or enlarge a mobile home park on land located in the city unless the land is zoned MHP. Prior to construction or issuance of permit, a final site plan shall be submitted to the Plan Commission for review and approval at a public hearing.

(d) All mobile home parks shall comply, where applicable, with the Flood Plain District regulations, §§151.120 *et seq.*

(2) *Site conditions.*

(a) No mobile home shall be used for any purpose other than that of a single-family dwelling or office for the developer. Further, no commercial enterprise shall be carried on within the confines of the mobile home park other than specifically enumerated under the conditions of the MHP zoning district and the final site plan.

(b) Minimum area of a mobile home park shall be 15 acres with the first phase not less than 5 acres. The maximum

density shall be 5 mobile homes per acre.

(c) Individual mobile home sites within a mobile home park shall not be sold or transferred, however, the entire park may be sold or transferred to a new owner.

(3) *Standards for mobile home parks.*

(a) *Landscaping.*

1. The outer boundaries of a mobile home park shall contain a buffer zone. This buffer zone shall consist of a greenbelt strip, not less than 30 feet in width, located along all park boundaries. The greenbelt shall be composed of coniferous and deciduous (minimum of 60% coniferous) trees which shall have an ultimate height of at least 15 feet and shrubs that shall have a minimum height of 3 feet or more after 1 full growing season and will eventually grow to a height of not less than 8 feet. The exact number of trees and shrubs shall be as specified on the approved site plan. Existing plant material may serve in whole or in part as the required buffer upon approval of the final site plan.

2. Ground cover shall be provided where needed to prevent erosion.

3. Each mobile home lot shall include 2 trees at least 2 inches diameter at breast height (d.b.h.).

(b) *Mobile home spaces.*

1. The mobile home park shall be divided into lots with permanent markers indicating the corners of each lot.

2. Setback lines, yard requirements and lot coverage.

a. All mobile homes shall be set back at least 50 feet from any public right-of-way outside the development and at least 20 feet from any private drive or public street within the development.

b. No mobile home or structure shall be located closer than 40 feet to the boundaries of the development.

c. Accessory structures shall not be within 3 feet of any side or rear lot line.

(c) *Recreation.*

1. In all parks, there shall be 1 or more recreation areas which shall be easily accessible to all residents. The size of such recreation areas shall not be less than 8% of the gross site area.

2. Recreation facilities, such as playgrounds, swimming pools and community buildings, should be provided to the extent necessary to meet the anticipated needs of the residents of the park. The facilities shall meet all applicable city regulations.

3. Recreation areas shall be centrally located and away from traffic hazards.

(d) *Street and drive requirements.*

1. Entrances to a mobile home park shall abut a public street and shall be designed to allow free movement of traffic onto the public street. Streets within the park shall be laid out to discourage through traffic. Entrance ways shall have radii adequate for safe and convenient ingress and egress.

2. All streets and drives within any mobile home park shall have an approved cross section with a paved surface of 25 feet measured from back of curb to back of curb.

3. All cul-de-sacs shall have a minimum radius of 60 feet to the outer edge of the pavement.

4. All streets and drives shall be provided with a smooth, graded, drained, sealed and paved durable surface commencing from the public street to and throughout the park.

5. All streets and drives shall be maintained by the mobile home park owner and shall be free of holes and other hazards.

6. Concrete curb and gutter shall be provided along the outside edge of all streets, drives and parking area pavements.

7. All streets and drives shall be constructed to city specifications.

8. Names shall be assigned to all streets and drives appearing on the final plan and shall be approved by the Fire Department. All mobile home stands shall be systematically identified as they appear on the final plan.

9. Driveway requirements:

a. Driveways shall be provided on the site where necessary for convenient access to service entrances of buildings.

b. Driveways shall be a minimum of 10 feet wide.

(e) *Parking requirements.*

1. At least 2 off-street parking spaces 9 feet by 18 feet each shall be provided on each mobile home site.

2. No parking shall be permitted on any street or drive.

3. The developer shall provide a minimum of 1 visitor parking space for every 5 home lots. Visitor spaces may be located in 1 centrally located site or may be equally distributed throughout the park.

(f) *Mobile home stands.*

1. Each mobile home stand shall be either:

a. A reinforced concrete pad of suitable thickness to support the home and appurtenances or the runners with rebar rods, but shall not be less than 4 inches thick; or

b. A foundation on suitable concrete footings at least 36 inches below grade with suitable cross-bracing provided and all remaining open spaces filled with sand or gravel or other suitable material.

2. Adequate drainage grading away from mobile home shall be provided.

(g) *Permanent structures.*

1. Buildings shall comply with applicable zoning and building regulations and be approved by the Plan Commission.

2. A separate area shall be provided, which is fenced, screened or otherwise enclosed, for the storage of residents' camping trailers, boats, snowmobiles and other similar items. These items shall not be stored in any other area of the mobile home park.

(h) *Dependent mobile homes and occupied travel trailers prohibited.*

1. A mobile home without bath and kitchen facilities is prohibited in all mobile home parks.

2. Occupied travel trailers are prohibited in mobile home parks, except as noted in division (D)(3)(g)1. above.

(i) *Pedestrian ways.*

1. A common concrete walk system shall be provided and maintained on both sides of all streets within the park. The common walk shall have a minimum width of 4 feet.

2. All mobile homes shall be connected by concrete or paved individual walks with a minimum width of 3 feet to common walks or parking areas.

(j) *Mobile home installation.*

1. The mobile home shall be anchored and tied down in compliance with industry standards, and in a manner sufficient to resist flotation, collapse or lateral movement of the home.

2. Mobile homes located in flood hazard areas shall be anchored in accordance with industry standards or standards established by FEMA, whichever are more restrictive.

3. All mobile homes shall have skirting.

4. All hitches shall be removed from all mobile homes after placement has been completed on the mobile home site.

(k) *Storage.* Each lot shall have a minimum of 50 square feet of storage area, whether it be in a central building or in an enclosed accessory structure on the lot.

(l) *Utilities.* All utilities shall be underground except control instrumentation and substations, which must be screened by plantings or ornamental walls.

(m) *Lighting.* All lots shall contain 1 yard light. Street lights shall be provided at all intersections and a minimum 500 foot spacing as needed between intersections.

(n) *Other requirements.* Every mobile home park shall also comply with all applicable laws and regulations of the State of Indiana and its administrative agencies.

(E) *Procedure for zoning and site plan approval.*

(1) *Preliminary filing.* Any developer proposing a mobile home park in the city shall submit to the Planning and Zoning Office a legal description of the property and a preliminary site plan of the proposed park. The preliminary filing is to permit staff the opportunity to review and comment on the proposed plans prior to filing.

(2) *Final site plan filing.* A final site plan shall be filed with the rezoning application.

(3) *Final site plan.* Fifteen copies shall be submitted to the Plan Commission. An additional 17 copies, including any required revisions, shall be submitted following Plan Commission action for City Council review. The plan shall include the following items:

(a) Name and address of applicant, name and address of owner of property, name and address of person preparing the plan;

(b) Location map and legal description of development;

(c) Site plan of proposed area containing the following information:

1. Proposed name of the development;
2. Date, scale and north arrow;
3. Contour information at vertical intervals of not less than 2 feet with reference to U.S. Geodetic Survey (U.S.G.S.) datum;
4. Indication of gross land area of the park and a computation of the density of the park;
5. Drawing indicating how surface water drainage will be handled;
6. Drawing indicating location of available sanitary sewer and water and how park will be served;
7. Location of all proposed fire hydrants;
8. Statement of restrictions contemplated, if any, such as:
 - a. Placement of oil tanks, storage sheds, fences and patios;
 - b. Skirting;
 - c. Pets;
 - d. Parking;
 - e. Boats and outside storage; and
 - f. Children.
9. Elevation of water table, percolation data and description of soil type;
10. Layout and width of all streets;
11. Service building and maintenance building;
12. Playgrounds;
13. Mobile home space and mobile home stands;
14. Parking spaces, driveways and sidewalks;
15. Boundaries, fencing and screen planting, including types of plant materials;
16. Street lighting;
17. Landscaping;
18. Typical lot detail;
19. Tentative letter from state's Board of Health and state's Pollution Board as to sanitary sewer and water distribution system;
20. Statement of review and tentative approval by city's Traffic Engineer of all accesses onto public streets; and
21. Any other information deemed necessary by the Plan Commission.

(4) *Submission to Plan Commission and City Council.*

(a) The site plan shall be reviewed and approved by the Plan Commission and City Council as part of the zoning application. As a condition of approval either the Plan Commission or the City Council may require modifications to the site plan to insure compliance with the standards of this chapter and to promote the purpose of this district.

(b) Following zoning approval by the City Council, construction of the mobile home park shall be in accordance with the approved site plan.

(5) *Amendments to approved site plan.*

(a) The planning staff may review and approve proposed minor amendments provided that the changes:

1. Maintain the purpose and intent of the approved plan; and
2. Do not result in the addition, deletion or relocation of approved curb cuts onto public streets or cross access drives onto adjoining properties; increase the density or size of the mobile home park; reduce or alter the perimeter treatment of the site; additions to the approved uses of the park; reduce approved setbacks for buildings, homes, structures and other site elements; or create a significant impact on surrounding properties. The review shall be completed with 10 working days of submittal.

(b) All other amendments shall be deemed major and must be reviewed and approved by the Plan Commission following a public hearing.

(F) *Supplemental regulations.*

- (1) Special flood hazard area regulations: §§ 151.120 *et seq.*
- (2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*
- (3) Air Space Control Area regulations: §§ 151.210 *et seq.*
- (4) Accessory structures and swimming pool requirements: § 151.225.
- (5) Permitted obstructions in required yards: § 151.227.
- (6) Fence requirements: § 151.228.
- (7) Intersection visibility area requirements: § 151.229.
- (8) Primary street setback requirements: § 151.229.
- (9) Off-street parking and loading requirements: § 151.231.
- (10) Sign regulations: § 151.234.

(1979 Code, § 151.040) (Ord. 4370, passed 7-20-1998; Am. Ord. 4762, passed 8-1-2003) Penalty, see § 151.999

BUSINESS DISTRICTS

§ 151.060 O, OFFICE DISTRICT.

(A) *Purpose.* The O District is designed to allow for the development of small scale professional office uses near areas zoned or utilized for residential purposes. The intent is to permit efficient land usage while protecting and maintaining the character of neighboring residential areas. The O District can serve as a transitional area between residential and businesses uses.

(B) *Permitted uses.*

- (1) Professional and business offices including, but not limited to dentists, doctors, medical practitioners, designers, engineers, accountants, lawyers, real estate brokers and appraisers, utility business offices, business offices related to local services, loan and mortgage offices and insurance representative offices;
- (2) Beauty salons and barber shops;
- (3) Libraries;
- (4) Government offices; and
- (5) Police and fire stations located on primary or thoroughfare streets; and
- (6) Therapeutic massage and/or massage therapy when conducted in a massage establishment by a professional masseuse/masseur, who has completed training at a state certified school of massage and who has earned certification as a "massage therapist" or similar designation.

(C) *Special exception uses.* Police and fire stations not located on primary or thoroughfare streets.

(D) *Conditional uses.* One-family dwellings when associated with an office use.

(E) *Yard requirements.* Yard requirements for the O, Office District are as follows: (All standards are minimums except as noted.)

- (1) Lot size: 10,000 square feet.
 - (2) Frontage: 75 feet.
 - (3) Setbacks:
 - (a) Front yard: The established building setback or 25 feet if no established setback.
 - (b) Side yards: 10 feet.
 - (c) Rear yard: 20 feet.
 - (d) Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.
 - (4) Maximum structure height: 35 feet.
 - (5) Maximum lot coverage for structures: 40% total for structures; 60% total for structures, drives and parking areas.
- (F) *Development conditions.*

(1) The office establishment in this district shall be conducted principally in daylight hours and shall not create a nuisance in neighboring residential districts from noise, smoke, odor or traffic.

(2) Uses within this district shall front onto a collector or arterial street.

(3) Landscape requirements. In addition to the requirements specified in §§ 151.225 *et seq.*, the following landscape requirements shall apply:

(a) In the event a property to be developed in this district is adjacent to a residentially zoned or used property along a common side or rear lot line, whether separated by an alley or not, a ten foot landscaped area shall be provided consisting of a combination of ornamental or shade trees, shrubs and ground cover. At least 50% of the common lot line landscape area shall contain shrubs and/or trees. A minimum of 1 tree per every 40 feet of common lot line shall be provided.

(b) All business and office service areas (loading docks/doors, dumpsters, mechanical equipment and the like) located in a side or rear yard abutting a residentially zoned or used property shall be screened by a solid 6 foot high fence, wall or dense evergreen hedge. Fences and walls shall be consistent with the architecture of the development or principal building. Any vegetative or architectural screening located along a side property line shall not extend beyond the front facade of the residential structure located on the adjacent lot.

(G) *Supplemental regulations.*

(1) Special flood hazard area regulations: §§ 151.120 *et seq.*

(2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*

(3) Air Space Control Area regulations: §§ 151.210 *et seq.*

(4) Accessory structures and swimming pool requirements: § 151.225.

(5) Landscape and screening requirements: § 151.226.

(6) Permitted obstructions in required yards: § 151.227.

(7) Fence requirements: § 151.228.

(8) Intersection visibility area requirements: § 151.229.

(9) Primary street setback requirements: § 151.229.

(10) Off-street parking and loading requirements: § 151.231.

(11) Sign regulations: § 151.234.

(1979 Code, § 151.050) (Ord. 4370, passed 7-20-1998; Am. Ord. 4462, passed 1-13-2000 ; Am. Ord. 5044, passed 7-9-2007; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

§ 151.061 B-1 NEIGHBORHOOD BUSINESS DISTRICT.

(A) *Purpose.* The B-1 District is designed to accommodate convenient and accessible business and service establishments with less than 7,500 square feet of floor area. The intent is to serve the daily convenience needs of surrounding residential neighborhoods.

(B) *Permitted uses.*

(1) Bakery shop, to include only the baking and processing of food products for retail sale only on the premises;

(2) Barber and beauty shops;

(3) Book store;

(4) Candy/ice cream shop;

(5) Delicatessen;

(6) Drug store;

(7) Dry cleaning, pick up or delivery;

(8) Florist;

(9) Food store, retail;

(10) Laundromat;

(11) Medical and dental offices and clinics;

(12) Offices, business and professional;

(13) Restaurant or café, excluding drive-in restaurant, serving non-alcoholic beverages only, and including outdoor dining up to 50% of the interior seating;

- (14) Police and fire stations, located on a primary or thoroughfare street;
- (15) Post office branch;
- (16) Other retail sales and service business serving the immediate neighborhood; and

(17) Therapeutic massage and/or massage therapy when conducted in a massage establishment by a professional masseuse/masseur, who has completed training at a state certified school of massage and who has earned certification as a "massage therapist" or similar designation..

(C) *Special exception uses.*

- (1) Churches;
- (2) Convents, monasteries, rectories, parish houses;
- (3) Parks, playgrounds and community centers;
- (4) Public utilities and public service uses including, but not limited to:
 - (a) Fire station, located on streets other than primary or thoroughfare;
 - (b) Police station, located on streets other than primary or thoroughfare; and
 - (c) Public utility facilities.
- (5) Recreational buildings, public or non-profit;
- (6) Public schools, elementary and secondary;
- (7) Sheltered living home;
- (8) Funeral homes, crematories and similar services; and
- (9) Meeting hall/banquet facility.

(D) *Yard requirements.* Yard requirements for the B-1, Neighborhood Business District are as follows: (All standards are minimums except as noted.)

- (1) Lot size: No minimum.
- (2) Frontage: No minimum.
- (3) Setbacks:
 - (a) Front yard: Established building setback or 15 feet if no established setback.
 - (b) Side yards: 10 feet for building; 6 feet for drives.
 - (c) Rear yard: 20 feet for building; 5 feet for drives.

(d) Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.

- (4) Maximum structure height: 35 feet.
- (5) Maximum lot coverage for structures: 50%.
- (6) Floor area ratio: 1.

(E) *Development conditions.*

- (1) The business activity must be conducted wholly within a completely enclosed building.
- (2) The business establishment shall not offer goods, service, food, beverages or make sales directly to customers in motor vehicles.
- (3) All businesses shall be of a retail or service character, selling to or performing services directly for the ultimate customer.
- (4) No business establishment in this district shall create a nuisance from noise, smoke, or odor.
- (5) Landscape requirements: In addition to the requirements specified in §§ 151.225 *et seq.*, the following landscape requirements shall apply:

(a) In the event a property to be developed in this district is adjacent to a residentially zoned or used property along a common side or rear lot line, whether separated by an alley or not, a ten foot landscaped area shall be provided consisting of a combination of ornamental or shade trees, shrubs and ground cover. At least 50% of the common lot line landscape area shall contain shrubs and/or trees. A minimum of 1 tree per every 40 feet of common lot line shall be provided.

(b) All business and office service areas (loading docks/doors, dumpsters, mechanical equipment and the like) located in a side or rear yard abutting a residentially zoned or used property shall be screened by a solid 6 foot high fence, wall or dense evergreen hedge. Fences and walls shall be consistent with the architecture of the development or principal building. Any vegetative or architectural screening located along a side property line shall not extend beyond the front facade of the residential structure located on the adjacent lot.

(F) *Supplemental regulations.*

- (1) Special flood hazard area regulations: §§ 151.120 *et seq.*
- (2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*
- (3) Air Space Control Area regulations: §§ 151.210 *et seq.*
- (4) Accessory structures and swimming pool requirements: § 151.225.
- (5) Landscape and screening requirements: § 151.226.
- (6) Permitted obstructions in required yards: § 151.227.
- (7) Fence requirements: § 151.228.
- (8) Intersection visibility area requirements: § 151.229.
- (9) Primary street setback requirements: § 151.229.
- (10) Off-street parking and loading requirements: § 151.231.
- (11) Sign regulations: § 151.234.

(1979 Code, § 151.051) (Ord. 4370, passed 7-20-1998; Am. Ord. 4431, passed 7-12-1999; Am. Ord. 4683, passed 7-1-2002 ; Am. Ord. 5044, passed 7-9-2007; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

§ 151.062 B-2, COMMUNITY BUSINESS DISTRICT.

(A) *Purpose.* The B-2 District is designed to provide for business or service establishments located along major street corridors. These establishments are intended to serve the needs of consumers beyond the immediate neighborhood, but are not regional in focus.

(B) *Permitted uses.*

- (1) All permitted uses under the B-1 Neighborhood Business District without size restriction;
- (2) Amusement parlors;
- (3) Appliance stores;
- (4) Auction rooms;
- (5) Convenience stores;
- (6) Department stores;
- (7) Dry cleaning and laundromats;
- (8) Financial institutions;
- (9) Grocery and food stores;
- (10) Hotels and motels;
- (11) Indoor recreation;
- (12) Liquor stores;
- (13) Medical supply stores;
- (14) Motor vehicle service stations, including oil change facilities and minor motor vehicle repair;
- (15) Motor vehicle wash, self and full service;
- (16) Movie and stage theaters, including dinner theaters;
- (17) Outdoor sales, if accessory to primary use and is less than 15% of interior sales area;
- (18) Pet stores;
- (19) Photography studios;
- (20) Professional and business offices;

(21) Restaurants and catering, including those with drive-thru service, alcoholic beverage service or outdoor dining up to 50% of the interior seating;

(22) Retail businesses (sales and/or service);

(23) Shopping centers, not greater than 120,000 square feet in area;

(24) Taverns;

(25) Video rental;

(26) Wireless communication facilities as defined in § 151.251 of this chapter; and

(27) Therapeutic massage and/or massage therapy when conducted in a massage establishment by a professional masseuse/masseur, who has completed training at a state certified school of massage and who has earned certification as a "massage therapist" or similar designation.

(C) *Special exception uses.*

(1) All special exception uses under B-1 Neighborhood Business District;

(2) Airports or aircraft landing fields and heliports;

(3) Charitable organizations;

(4) Cultural and sports facilities including but not limited to auditoriums, stadiums, arenas, museums and planetariums;

(5) Homeless or temporary shelter providing housing and/or meals;

(6) Tattoo parlors; and

(7) Trade schools.

(D) *Yard requirements.* Yard requirements for the B-2, Community Business District are as follows: (All standards are minimums except as noted.)

(1) Lot size: No minimum.

(2) Frontage: 75 feet.

(3) Setbacks:

(a) Front yard: 30 feet for building.

(b) Side yards: 10 feet for building and 6 feet for drives, unless abutting a residential district, then division (E)(6)(a) shall also apply.

(c) Rear yard: 20 feet for building and 6 feet for drives, unless abutting a residential district, then division (E)(6)(a) shall also apply.

(d) Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.

(4) Height: 35 feet.

(5) Maximum lot coverage for structures: 50% total.

(6) F.A.R.: 1.

(E) *Development conditions.*

(1) The business activity shall be conducted wholly within a completely enclosed building, except for motor vehicle service station, or as permitted in this section.

(2) Where the business offers goods, services, food, beverages or makes sales to customers in cars, adequate driveway space on the premise for 10 waiting vehicles for a single lane and for 5 waiting vehicles per lane for multiple lanes, shall be provided.

(3) Exterior lighting shall be shielded to avoid casting direct light or glare upon any property located in a residentially zoned district or upon any public street.

(4) No business establishment in this district shall create a nuisance from noise, smoke, or odor.

(5) Uses within this district shall front onto a collector or arterial street.

(6) Landscape requirements. In addition to the requirements specified in §§ 151.225 *et seq.*, the following landscape requirements shall apply:

(a) 1. In the event a property to be developed in this district is adjacent to a residentially zoned or used property along a common side or rear lot, whether separated by an alley or not, the following landscaped area shall be provided:

Parcel Size	Width of Required Landscape Area
< 1 acre	10 feet
1 to 3 acres	15 feet
> 3 acres	20 feet

2. The landscaped area shall consist of a combination of ornamental or shade trees, shrubs and ground cover. At least 50% of the common lot line landscape area shall contain shrubs and/or trees. A minimum of 1 tree per every 40 feet of common lot line shall be provided, except in 30 foot wide landscape areas, in which case the requirement shall be a minimum of 1 tree per every 30 feet of common lot line.

(b) All business and office service areas (loading docks/doors, dumpsters, mechanical equipment and the like) located in a side or rear yard abutting a residentially zoned or used property shall be screened by a solid 6 foot high fence, wall or dense evergreen hedge. Fences and walls shall be consistent with the architecture of the development or principal building. Any vegetative or architectural screening located along a side property line shall not extend beyond the front facade of the residential structure located on the adjacent lot.

(F) *Supplemental regulations.*

- (1) Special flood hazard area regulations: §§ 151.120 *et seq.*
- (2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*
- (3) Air Space Control Area regulations: §§ 151.210 *et seq.*
- (4) Accessory structures and swimming pool requirements: § 151.225.
- (5) Landscape and screening requirements: § 151.226.
- (6) Permitted obstructions in required yards: § 151.227.
- (7) Fence requirements: § 151.228.
- (8) Intersection visibility area requirements: § 151.229.
- (9) Primary street setback requirements: § 151.229.
- (10) Off-street parking and loading requirements: § 151.231.
- (11) Sign regulations: § 151.234.

(1979 Code, § 151.052) (Ord. 4370, passed 7-20-1998; Am. Ord. 4457, passed 12-6-1999 ; Am. Ord. 5044, passed 7-9-2007; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

§ 151.063 B-3, SERVICE BUSINESS DISTRICT.

(A) *Purpose.* The B-3 District is designed for large scale commercial, retail, wholesale, service and auto-related uses. This district should be located with access to major thoroughfares that are designed to accommodate truck traffic and heavy traffic generating developments.

(B) *Permitted uses.*

- (1) All uses permitted in the B-2, Community Business District;
- (2) Appliance repair and service;
- (3) Auto, truck, recreational vehicle and agricultural implement sales;
- (4) Broadcasting studios;
- (5) Building material and supply;
- (6) Contractors' offices and shops; no on-site fabrication or outside storage;
- (7) Equipment rental facilities;
- (8) Greenhouses and wholesale growers;
- (9) Gun shop;
- (10) Kennels and animal hospitals, when conducted wholly within a building;
- (11) Laboratories;
- (12) Manufactured home sales;
- (13) Motor vehicle repair, major;

- (14) Outdoor sales, located on paved sites;
- (15) Pawn shops;
- (16) Printing, binding and publishing of newspapers, periodicals, books, stationery and other reading material;
- (17) Self storage facility on a parcel of land not less than 2 acres and not more than 5 acres;
- (18) Shopping centers and shopping malls;
- (19) Wholesale businesses, where all storage of materials is within a building;
- (20) Outside storage of liquids or gases on one or more tanks, where total volume of the tank(s) does not exceed 2,000 gallons; and
- (21) Therapeutic massage and/or massage therapy when conducted in a massage establishment by a professional masseuse/masseur, who has completed training at a state certified school of massage and who has earned certification as a "massage therapist" or similar designation.

(C) *Special exception uses.*

- (1) All special exception uses allowed in the B-2, Community Business District;
- (2) Airports or aircraft landing field and heliports;
- (3) Communications, television and radio towers not included in §§ 151.250 through 151.255;
- (4) Drive-in movie theaters;
- (5) Indoor shooting ranges;
- (6) Outdoor recreation facilities excluding archery and rifle ranges;
- (7) Public utilities and public service uses, including, but not limited to:
 - (a) Bus garage, lot, terminal or turnarounds (off street);
 - (b) Public utility facilities;
 - (c) Railroad facilities; and
 - (d) Sewage treatment facilities.
- (8) Trade and technical schools; and
- (9) Bulk storage tanks including materials that do not require filing a Tier 1 or 2 SARA report or those that do not exceed an NFPA classification of 2.

(D) *Yard requirements.* Yard requirements for the B-3, Service Business District are as follows: (All standards are minimums except as noted.)

- (1) Lot size: No minimum.
- (2) Frontage: 75 feet.
- (3) Setbacks:
 - (a) Front yard: 30 feet for structure.
 - (b) Side yards: 10 feet for structures and 6 feet for drives, unless abutting a residential district, then division (E)(4)(a) shall also apply.
 - (c) Rear yard: 20 feet for structures and 6 feet for drives, unless abutting a residential district, then division (E)(4)(a) shall also apply.
 - (d) Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.
- (4) Height: 35 feet.
- (5) Maximum lot coverage for structures: 50% total.
- (6) F.A.R.: 1.

(E) *Development conditions.*

- (1) No business establishment in this district shall create a nuisance from noise, smoke or odor.
- (2) This district should have access to a major arterial roadway that can accommodate truck traffic.
- (3) Vehicle wash and drive-thru facilities must have adequate vehicle stacking space located out of the public right-of-

way for 10 vehicles for a single lane and for 5 vehicles per lane for multiple lanes.

(4) Landscape requirements: In addition to the requirements specified in §§ 151.225 through 151.234, the following landscape requirements shall apply:

(a) 1. In the event a property to be developed in this district is adjacent to a residentially zoned or used property along a common side or rear lot, whether separated by an alley or not, the following landscaped area shall be provided:

<i>Parcel Size</i>	<i>Width of Required Landscape Area</i>
< 1 acre	10 feet
1 to 3 acres	15 feet
> 3 acres	20 feet

2. The landscaped area shall consist of a combination of ornamental or shade trees, shrubs and ground cover. At least 50% of the common lot line landscape area shall contain shrubs and/or trees. A minimum of 1 tree per every 40 feet of common lot line shall be provided, except in 30 foot wide landscape areas, in which case the requirement shall be a minimum of 1 tree per every 30 feet of common lot line.

(b) All business and office service areas (loading docks/doors, dumpsters, mechanical equipment and the like) located in a side or rear yard abutting a residentially zoned or used property shall be screened by a solid 6 foot high fence, wall or dense evergreen hedge. Fences and walls shall be consistent with the architecture of the development or principal building. Any vegetative or architectural screening located along a side property line shall not extend beyond the front facade of the residential structure located on the adjacent lot.

(F) *Supplemental regulations.*

- (1) Special flood hazard area regulations: §§ 151.120 *et seq.*
- (2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*
- (3) Air Space Control Area regulations: §§ 151.210 *et seq.*
- (4) Accessory structures and swimming pool requirements: § 151.225.
- (5) Landscape and screening requirements: § 151.226.
- (6) Permitted obstructions in required yards: § 151.227.
- (7) Fence requirements: § 151.228.
- (8) Intersection visibility area requirements: § 151.229.
- (9) Primary street setback requirements: § 151.229.
- (10) Off-street parking and loading requirements: § 151.231.
- (11) Sign regulations: § 151.234.

(1979 Code, § 151.053) (Ord. 4370, passed 7-20-1998; Am. Ord. 4683, passed 7-1-2002 ; Am. Ord. 5044, passed 7-9-2007; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

§ 151.064 B-4, REGIONAL BUSINESS DISTRICT.

(A) *Purpose.* The B-4 Regional Business District is designed to accommodate large integrated commercial developments serving a regional market. This district is generally located along or at the intersection of major transportation routes with the primary access from adjacent major arterial and collector streets. Development within the district is planned on an integrated basis to ensure aesthetic and functional compatibility of the varied elements of the development including, but not limited to uses, landscaping, signage, architecture, pedestrian and vehicular transportation networks (both on- and off-site).

(B) *Permitted uses.*

- (1) Auto, truck and recreational vehicle sales when located in an integrally designed motor mall;
- (2) Accessory structures and uses;
- (3) Convenience stores;
- (4) Dinner theaters;
- (5) Hotels and motels;
- (6) Motor vehicle service stations;
- (7) Motor vehicle wash;

- (8) Movie and stage theaters;
- (9) Police and fire stations located on primary or thoroughfare street;
- (10) Restaurants, including those with drive-thru windows or outdoor seating, those serving alcohol and taverns;
- (11) Retail businesses (sales and/or service);
- (12) Shopping malls or shopping centers; and
- (13) Wireless communication facilities, as defined in § 151.251 of this chapter.

(C) *Special exception uses.*

- (1) Cultural and sports facilities;
- (2) Highway service plazas;
- (3) Park and ride facilities;
- (4) Public transportation stations;
- (5) Public utility facilities; and
- (6) Meeting hall/banquet facility.

(D) *Yard requirements.* Yard requirements for the B-4, Regional Business District are as follows: (All standards are minimums except as noted.)

- (1) Lot size: 1 acre.
- (2) Frontage: 150 feet.
- (3) Setbacks:

(a) Front yard: 75 feet for structure.

(b) Side yards: 30 feet for building and 8 feet for drives, unless abutting a residential district, then division (E)(6)(a) shall also apply.

(c) Rear yard: 30 feet for building and 8 feet for drives, unless abutting a residential district, then division (E)(6)(a) shall also apply.

(d) Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.

- (4) Height: 45 feet.
- (5) Maximum lot coverage for structures: 40% total.
- (6) F.A.R.: 1.
- (7) District size: 10 acres.

(E) *Development conditions.*

(1) A development plan shall be submitted to the Planning and Zoning Office for review and approval in accordance with §§ 151.175 through 151.189. All development shall comply with Type I and Type II Design Standards as specified in §§ 151.175 through 151.188.

(2) The development shall be a unified and organized arrangement of structures, parking areas, walks, lighting and appurtenant facilities.

(3) Vending machines shall be either located within a primary structure or located on the exterior of a primary structure abutting its exterior wall.

(4) Vehicle wash and drive-thru facilities must have adequate vehicle stacking space located out of the public right-of-way for 10 vehicles for a single lane and for 5 vehicles per lane for multiple lanes.

(5) This district shall be located along freeways or major thoroughfares or at limited access major arterials only.

(6) Landscape requirements: In addition to the requirements specified in §§ 151.225 through 151.234, the following landscape requirements shall apply:

(a) In the event a property to be developed in this district is adjacent to a residentially zoned or used property along a common side or rear lot line, whether separated by an alley or not, a 40 foot landscaped area shall be provided consisting of a combination of ornamental or shade trees, shrubs, and ground cover. At least 50% of the common lot line landscape area shall contain shrubs and/or trees. A minimum of 1 tree per every 40 feet of common lot line shall be provided.

(b) All business and office service areas (loading docks/doors, dumpsters, mechanical equipment and the like)

located in a side or rear yard abutting a residentially zoned or used property shall be screened by a solid 6 foot high fence, wall or dense evergreen hedge. Fences and walls shall be consistent with the architecture of the development or principal building. Any vegetative or architectural screening located along a side property line shall not extend beyond the front facade of the residential structure located on the adjacent lot.

(F) *Supplemental regulations.*

- (1) Special flood hazard area regulations: §§ 151.120 *et seq.*
- (2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*
- (3) Air Space Control Area regulations: §§ 151.210 *et seq.*
- (4) Accessory structures and swimming pool requirements: § 151.225.
- (5) Landscape and screening requirements: § 151.226.
- (6) Permitted obstructions in required yards: § 151.227.
- (7) Fence requirements: § 151.228.
- (8) Intersection visibility area requirements: § 151.229.
- (9) Primary street setback requirements: § 151.229.
- (10) Off-street parking and loading requirements: § 151.231.
- (11) Sign regulations: § 151.234.

(1979 Code, § 151.054) (Ord. 4370, passed 7-20-1998; Am. Ord. 4457, passed 12-6-1999; Am. Ord. 4683, passed 7-1-2002 ; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

§ 151.065 CBD, CENTRAL BUSINESS DISTRICT.

(A) *Purpose.* The purpose of the Central Business District is to encourage a diversity of uses which together contribute to the vitality of the downtown core. The district recognizes the unique character of downtown and its function as a center of business, government, finance, residential and social activity in the community. Land uses and building design are integral to the image and theme of the Central Business District.

(B) *Permitted uses.*

- (1) Accessory structures;
- (2) Religious assembly, except that religious assembly uses shall not be permitted adjacent to Main Street, Jackson Boulevard, or Elkhart Avenue;
- (3) Department stores;
- (4) Drive thru facilities, except those facilities shall not be permitted adjacent to Main Street, Jackson Boulevard, or Elkhart Avenue;
- (5) Drug stores;
- (6) Financial institutions;
- (7) Fitness centers, dance studios, self-defense schools, etc.
- (8) Government offices;
- (9) Hotels and motels, with or without conference centers;
- (10) Laundromats;
- (11) Libraries;
- (12) Live/work units;
- (13) Mass transit centers;
- (14) Medical and dental offices and clinics;
- (15) Movie, stage, and dinner theaters;
- (16) Museums;
- (17) Multi-family residential dwellings, including condominiums, townhouses, and residences located above commercial uses;
- (18) Offices, business and professional;

(19) Parking structures;

(20) Printing and publishing of newspapers, magazines, periodicals, etc.;

(21) Public park and recreation facilities;

(22) Public utilities and service users;

(23) Restaurants, cafes, and catering, including those with alcoholic beverage service and with interior and/or exterior seating, other than drive-in. Drive-thru windows are permitted in conjunction with a restaurant with a minimum seating capacity of 50 persons, except those facilities shall not be permitted adjacent to Main Street, Jackson Boulevard, or Elkhart Avenue;

(24) Retail sales and service, excluding adult entertainment, pawn shops, and tattoo parlors;

(25) Temporary structures, related to active construction on a site;

(26) Funeral homes, crematories and similar services (as amended per Ordinance No. 4431 on July 23, 1999);

(27) Taverns (as amended per Ordinance No. 4462 on January 13, 2000);

(28) Therapeutic massage and/or massage therapy when conducted in a massage establishment by a professional masseuse/masseur, who has completed training at a state certified school of massage and who has earned certification as a "massage therapist" or similar designation, (as amended per Ordinance No. 5044 on July 11, 2007);

(29) Rooftop entertainment areas, including decks, patios, porches, glass enclosed spaces and similar uses for the purpose of utilizing the rooftop areas of buildings.

(C) *Special exception uses.*

(1) Bed and breakfast home;

(2) Charitable organizations;

(3) Community centers, convention halls, arenas, auditoriums, stadiums;

(4) Private recreation facilities;

(5) Meeting hall/banquet facility (as amended per Ordinance No. 4683 July 10, 2002).

(D) *Yard requirements.* Yard requirements for the CBD, Central Business District are as follows: (All standards are minimums except as noted.) (As amended per Ordinance No. 4431 on July 23, 1999.)

<i>Lots and parcels fronting on Main Street, Jackson Boulevard, and Elkhart Avenue:</i>						
<i>Lot Size</i>	<i>Frontage</i>	<i>Setbacks</i>		<i>Structure Height</i>	<i>Maximum Lot Coverage for Structures</i>	<i>Maximum F.A.R.</i>
		<i>Front Yard</i>	<i>Side and Rear Yards</i>			
No Minimum	No Minimum	Minimum setback: 0 feet, Maximum setback: 10 feet. Up to an additional 10 feet of setback may be provided along no more than 50% of the length of the front facade to accommodate additional outdoor seating and/or amenities.	Minimum setback: 0 feet, except when abutting a residential district, then minimum setback is 10 feet.	Minimum: 20 feet * Maximum: 65 feet	75% total	10
* Structures should include architectural elements and/or roof details to give the impression of an active second floor if one is not to be provided.						

<i>Lots and parcels fronting on all other streets:</i>						
<i>Lot Size</i>	<i>Frontage</i>	<i>Setbacks</i>			<i>Structure Height</i>	<i>Maximum Lot Coverage for Structures</i>
		<i>Front Yard</i>	<i>Side Yards</i>	<i>Rear Yard</i>		

No Minimum	No Minimum	Established building setback. If there is no established setback, the minimum setback is 0 feet and the maximum setback is 10 feet. Up to an additional 10 feet of setback may be provided along no more than 50% of the length of the front facade to accommodate additional outdoor seating and/or amenities.	Established building setback. If there is no established setback, the building may be built up to the side property line, except when abutting a residential use, then minimum setback is 10 feet.	Established building setback. If there is no established setback, the building may be built up to the side property line, except when abutting a residential use, then minimum setback is 10 feet.	Maximum 65 feet	75% total	10
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(E) *Development conditions.*

(1) A development plan shall be submitted to the Planning and Zoning Office for review and approval in accordance with §§ 151.175 through 151.189. All development shall comply with Type I and Type II Design Standards as specified in §§ 151.175 through 151.189.

(2) Business activity must be conducted wholly within a completely enclosed building, except for legally permitted outdoor eating areas and sidewalk sales.

(3) Where businesses in this district are adjacent to residentially zoned or used property, all service areas, including but not limited to, loading docks and doors, dumpsters, etc. shall be screened by a solid six foot high fence, wall or dense evergreen hedge. Fences and walls shall be consistent with the architecture of the development or principal building. Any vegetative or architectural screening located along a side property line shall not extend beyond the front facade of the residential structure located on the adjacent lot.

(4) In addition to the off-street parking and loading standards specified in §151.231, the following apply to properties fronting on Main Street from Pottawattomi Drive south to Prairie Street, Jackson Boulevard from Main Street east to Prairie Street/Johnson Street, and Elkhart Avenue from Johnson Street south to Waterfall Drive.

(a) Parking areas shall not be located in the front or side yard.

(b) The number of parking spaces required under §151.231 may be reduced by up to 50% for structures that include at least two floors of occupiable space.

(c) Contiguous on-street parking spaces may be counted toward the required number of spaces for adjacent parcels.

(d) Parking lots shall be designed to provide coordinated access to parking areas on adjoining lots or parcels within the CBD. A Site Circulation Plan shall be submitted as part of the development plan review process to reinforce a common alley/access road to the rear parking lots for parcels along Main Street, Jackson Boulevard, and Elkhart Avenue.

(e) If access to parking areas may be gained from another street, alley, or adjacent lot, a curb cut shall not be established on Main Street, Jackson Boulevard, or Elkhart Avenue.

(f) Rear accesses should be designed to connect and reinforce a grid development pattern.

(g) New curb cuts shall be a maximum of 24 feet in width.

(h) Closure of existing curb cuts on Main Street, Jackson Boulevard, or Elkhart Avenue is strongly encouraged. A signage bonus of an additional 20% of the sign area permitted under § 151.234 shall be awarded if all curb cuts onto Main Street or Jackson Boulevard for a parcel are closed.

(5) In addition to the Type II Design Standards specified in §§151.175 through 151.189, the following architectural design standards shall be required as part of the development plan approval process when new buildings are proposed or existing structures are altered in the CBD:

(a) Any site designated as a single site historic district or located within an established historic district shall obtain approval for all exterior development (building and site) from the Elkhart City Historic and Cultural Preservation Commission.

(b) All exterior wall building materials shall be high quality, and shall be any combination of the following:

1. Brick;
2. Stone;
3. Wood, excluding plywood (no more than 25% of the street facing facade);

4. Glass, excluding glass block;
5. Textured concrete masonry units;
6. Smooth concrete masonry units, however they may be no more than 25% of any single facade;
7. Architectural precast panels;
8. Architectural metal, with corrugated metal comprising no more than 25% of any single facade;
9. Exterior insulation and finish systems (EIFS), with no more than 25% of the street facing facade and must be located a minimum of 24 inches above the finished grade;
10. Fiber cement board;
11. Or other high quality material as approved by Plan Commission.

(c) Exterior bars on windows, "scissor" security gates, and roll up doors are prohibited on street facing facades along Main Street, Jackson Boulevard, and Elkhart Avenue.

(d) All structures along Main Street, Jackson Boulevard, and Elkhart Avenue must have at least one sidewalk facing, pedestrian entrance.

(e) For nonresidential, ground floor facades along Main Street, Jackson Boulevard, or Elkhart Avenue, at least 50% of the wall surface between three feet and eight feet must be glass or other transparent material and allow views from the sidewalk into the interior space. Upper floors, including those for residential use, must be at least 15% transparent in the space between floor and ceiling height.

(f) Facades on Main Street, Jackson Boulevard, or Elkhart Avenue shall include relief elements including but not limited to, windows and surrounds, storefronts, doors, and details such as special brick coursing, pilasters, or lintels.

(g) All roof mounted mechanical equipment shall be screened through the use of a parapet wall or other design detail, as approved by the Plan Commission or its staff.

(6) Stormwater best management practices are strongly encouraged in new development and redevelopment.

(a) Stormwater planters, rain gardens, bio-retention areas, and other green infrastructure practices may be substituted for parking lot landscaping, buffer yard landscaping, and other landscaping requirements, as approved by the City Engineer or designee.

(b) Maximum lot coverage may be increased to a total of 85% of the lot given the use of permeable pavers in parking areas, as approved by the City Engineer.

(7) Permanent, free-standing signs shall be prohibited in front yards along Main Street, Jackson Boulevard, and Elkhart Avenue.

(8) Bicycle and pedestrian facilities:

(a) Dedicated pedestrian paths shall be provided from parking areas to building entrances.

(b) Trails and multi-use paths identified in the city's Comprehensive Plan, River District Plan, or other adopted city plans shall be incorporated into site development plans on applicable parcels.

(c) The dedication of right-of-way for bicycle and pedestrian facilities along Main Street, Jackson Boulevard, or Elkhart Avenue may be required as a condition of development plan approval.

(d) Maximum lot coverage may be increased to a total of 85% of the lot given the provision of additional bicycle or pedestrian facilities, a kayak launch, or other recreation amenities, at the approval of Planning Staff.

(9) Placement of new utilities:

(a) The installation of new utility systems, including water, sewer, gas, telephone, cable television and electric, along with component parts, structures, appendages and materials, shall be installed underground in a manner approved by the applicable utility provider in accordance with all city standards. Aboveground utility systems will not be permitted, except where certain appurtenances and accessory equipment must be installed above ground for servicing. Examples of such accessory equipment include fire hydrants, gas and electrical meters, electric service cabinets, irrigation controllers, and similar features.

(b) Parcels adjacent to existing easements or public rights-of-way where overhead utility supply lines and service connections have previously been installed may be supplied with service from those overhead lines, but the service connections from the overhead lines shall be installed underground. Should a road widening or an extension of service, or other such condition occur as a result of the proposed development and necessitate the replacement or relocation of such utilities, such replacements or relocation shall be underground.

(c) Where undergrounding of utilities within a site is not feasible due to utility or infrastructure conflicts, topographic conditions, or site limitations, alternative placement shall be approved by the Plan Commission and landscape screening may be required as a condition of approval.

(d) Electric power transmission lines are exempt from these requirements.

(F) *Nonconforming uses, lots, structures, and signs.*

(1) Nonconforming uses, structures, or nonconforming uses and structures in combination:

(a) Are permitted to make site and/or building improvements if such improvement does not increase any nonconformity.

(b) May be expanded one time, up to 25% of the gross floor area, but must still be able to meet all other development standards (i.e. parking requirements, landscaping, screening, etc.).

(c) Expansion of a nonconforming use and/or structure may not expand onto another zoning lot.

(2) Nonconforming signs:

(a) May not be enlarged.

(b) The message on a nonconforming sign may be altered so long as no new nonconformities are created.

(c) If a nonconforming sign remains blank for a period of one year, the sign shall be deemed abandoned and must be removed within a period of two months after abandonment.

(d) Nonconforming signs advertising a business that has ceased operation on the site for a period of one year shall be deemed abandoned and must be removed within a period of two months after abandonment.

(G) *Supplemental regulations.*

(1) Special flood hazard area regulations: §§ 151.120 *et seq.*

(2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*

(3) Air Space Control Area regulations: §§ 151.210 *et seq.*

(4) Accessory structures and swimming pool requirements: § 151.225.

(5) Landscape and screening requirements: § 151.226.

(6) Permitted obstructions in required yards: § 151.227.

(7) Fence requirements: § 151.228.

(8) Intersection visibility area requirements: § 151.229.

(9) Primary street setback requirements: § 151.229.

(10) Off-street parking and loading requirements: § 151.231.

(11) Sign regulations: § 151.234.

(H) *Figure.* Pursuant to Ord. 4762, passed 8-1-2003 the following figure is hereby incorporated by reference as if fully set out herein: Figure 15A.

(1979 Code, § 151.055) (Ord. 4370, passed 7-20-1998; Am. Ord. 4431, passed 7-12-1999; Am. Ord. 4462, passed 1-13-2000; Am. Ord. 4683, passed 7-1-2002; Am. Ord. 4762, passed 8-1-2003; Am. Ord. 5044, passed 7-9-2007; Am. Ord. 5606, passed 8-7-2017) Penalty, see § 151.999

§ 151.066 OP, OFFICE PARK DISTRICT.

(A) *Purpose.* The OP Office Park District is intended for professional and administrative offices and research laboratories, developed on a large acreage under unified control. To maintain a park-like setting, the area is comprised of large lots with deep yards and ample off-street parking areas connected by private roads or driveways. This district has direct access to major thoroughfares or freeways. The business of the district generally occurs during daylight hours and involves no display or selling of merchandise.

(B) *Permitted uses.*

(1) Professional and business offices;

(2) Research, development and technical training offices;

(3) Laboratories;

(4) Financial institutions;

(5) Charitable organization offices;

(6) Restaurants, except drive-ins and those with drive-thru windows, whose sum total of land area does not exceed 10% of the developable land within the office park;

(7) Restaurants, including fast food without drive-thru windows, when located entirely within a larger office building and comprising no more than 10% of the constructed square footage of the building;

(8) Hotels and Motels, whose sum total of land does not exceed 20% of the developable land within the office park development, with or without enclosed restaurants and meeting rooms;

(9) Day care centers, when located within a larger office building and serving only the needs of that office building; and

(10) Accessory structures and uses;

(C) *Special exception uses.*

(1) Stand-alone day care centers, to serve the needs of more than 1 office building;

(2) Heliports; and

(3) Public utilities and service uses.

(D) *Yard requirements.* Yard requirements for the OP, Office Park District are as follows: (All standards minimum except as noted.)

(1) Lot size: 0.5 acre.

(2) Frontage: 100 feet.

(3) Setbacks:

(a) Front yard: 60 feet.

(b) Side yard: 30 feet.

(c) Rear yard: 30 feet.

(d) Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.

(4) Maximum structure height: 65 feet.

(5) Maximum lot coverage for structures: 40% total.

(6) Minimum district size: 5 acres.

(E) *Development conditions.*

(1) A development plan shall be submitted to the Planning and Zoning Office for review and approval in accordance with §§ 151.175 through 151.189. All development shall comply with Type I Design Standards as specified in §§ 151.175 through 151.189.

(2) The development shall be a unified and organized arrangement of structures, parking areas, walks, lighting and appurtenant facilities.

(3) An OP district may only be established on a tract of land that is in single ownership or under other means of unified control.

(4) An OP district shall be located on property which has direct access to major arterials or freeways designed to carry the additional traffic generated by such a development. All individual properties shall be internally accessed.

(5) The proposed development shall be compatible with the properties immediately adjacent to the proposed development.

(6) Provision shall be made at points of ingress, egress and within the district to ensure a free and safe flow of vehicular and pedestrian traffic.

(7) All service areas for loading and unloading vehicles, and all areas for storage and collection of trash and garbage shall be properly screened using natural plantings and/or compatible building materials so as to conceal such activities from all street, parking and walkway views and from adjoining properties outside the office park.

(8) The development will not impose an undue burden on public services and facilities, such as fire and police protection.

(9) All on-premise signage, both for individual businesses within the park and for the park itself, shall be limited to monument signs only.

(a) Signs for individual buildings shall be limited to a maximum 6 feet in height and 50 square feet in area, except for signage facing limited access highways which may be a maximum 10 feet in height and 75 square feet in area.

(b) Signs identifying the park shall be limited to a maximum 10 feet in height and 75 square feet in area with a 25-foot setback from the public right-of-way.

(10) In addition to the standard landscape requirements of this chapter the following shall apply:

(a) A minimum of 20% of the building site shall be in open space. Open space shall be landscaped to include the following:

1. Ground cover, including grass.
2. Shrubs, vines and/or hedges.
3. Individual trees or grouped trees and/or natural vegetation in the form of wooded areas with a minimum of 1 tree per 5,000 square feet of open space.

(b) Non-living durable materials commonly used in landscaping may also be included, such as, but not limited to, rocks, pebbles, sand, berms, ponds, walkways, or fences. Landscaped areas within parking areas, such as control islands, shall not be included for purposes of calculating the 20% open space requirement.

(c) All surface drainage retention ponds shall be free form in shape (curvilinear rather than rectilinear) and be incorporated into the overall landscape design of the park or individual lot which it serves.

(d) Where an OP district abuts residentially zoned land or land shown as residential on the adopted land use plan for the city, there shall be a minimum 20 foot greenway consisting of a combination of trees, shrubs and ground cover. At least 50% of the greenway frontage abutting residential land shall contain shrubs and trees with a minimum of 1 tree for every 40 lineal feet of greenway. An earthen berm(s) or ornamental masonry wall or wood fence may be incorporated into the greenway, however, if a wall or fence is used, vegetative landscaping shall be placed between the wall or fence and the property line to provide visual relief.

(e) A combination of trees and/or natural plant groupings shall be planted in front yards along all principal interior roadways at intervals no greater than 75 feet.

(11) No principal building within the OP district shall be constructed within 50 feet of the district boundary.

(12) No free-standing restaurant, hotel or motel may be constructed within an approved office park until at least 50,000 square feet of office/laboratory structures have been constructed.

(13) Architectural requirements.

(a) All structures must present a decorative facade on all sides which face roadways, parking areas or can be viewed from the district boundary.

(b) The following exterior building materials shall be prohibited:

1. Smooth or standard concrete block, whether painted or unpainted;
2. Corrugated or vertical metal siding on any facade facing roadways or parking areas; (All other facades shall be limited to a maximum of 25% of the total facade surface.)
3. Sheet plywood, composite board or similar materials; and
4. Metal roofing, except raised seamless or other decorative roofing approved by the Planning and Zoning Office.

(c) The architecture of restaurants, motels and hotels (including chain and franchise operations) shall be consistent with the overall architectural treatment within the office park.

(F) *Supplemental regulations.*

- (1) Special flood hazard area regulations: §§ 151.120 *et seq.*
- (2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*
- (3) Air Space Control Area regulations: §§ 151.210 *et seq.*
- (4) Accessory structures and swimming pool requirements: § 151.225.
- (5) Landscape and screening requirements: § 151.226.
- (6) Permitted obstructions in required yards: § 151.227.
- (7) Fence requirements: § 151.228.
- (8) Intersection visibility area requirements: § 151.229.
- (9) Primary street setback requirements: § 151.229.
- (10) Off-street parking and loading requirements: § 151.231.
- (11) Sign regulations: § 151.234.

(G) Pursuant to Ord. 4762, passed 8-1-2003, the following figures are hereby incorporated by reference as if fully set out herein:

(1) Figure 16A; and

(2) Figure 16B.

(1979 Code, § 151.056) (Ord. 4370, passed 7-20-1998; Am. Ord. 4762, passed 8-1-2003 ; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

§ 151.067 BP, BUSINESS PARK DISTRICT.

(A) *Purpose.* The Business Park District is designed to accommodate large scale office, light fabrication, assembly, distribution and mixed-use facilities which are located adjacent to regional freeways or major arterials and have a high level of site and building facade design.

(B) *Permitted uses.*

(1) Single- or multi-tenant office buildings for professional, administrative, clerical or sales purposes;

(2) All uses permitted in the M-1 , Limited Manufacturing District, excepting outside storage, developed and operated in compliance with division (E) hereof;

(3) Facilities with mixed uses including offices, warehousing, sales, repair, fabrication and distribution or any combination thereof;

(4) Research laboratories for scientific research, investigation, testing or experimentation which may include prototype product development;

(5) Financial institutions, with or without drive-thru windows, whose sum total of land area does not exceed 10% of the developable land area of the business park;

(6) Express package delivery;

(7) Motion picture production;

(8) Restaurants, except drive-ins and those with drive-thru windows, whose sum total of land area does not exceed 10% of the developable land area within the business park;

(9) Hotels and motels, including dining and meeting rooms, whose sum total of land area does not exceed 20% of the developable land area of the business park;

(10) Accessory structures and uses; and

(11) Day care centers, when enclosed within a larger building and serving only the needs of that building.

(C) *Special exception uses.*

(1) Stand-alone day care centers;

(2) Heliports;

(3) Public utilities and service uses;

(4) Parking structures;

(5) Colleges and universities;

(6) Broadcast studios; and

(7) Communication towers not specified in §§ 151.250 through 151.255.

(D) *Yard requirements.* Yard requirements for the BP, Business Park District are as follows: (All standards are minimums except as noted.)

(1) Lot size: 1.0 acre.

(2) Frontage: 150 feet.

(3) Setbacks:

(a) Front yard: 50 feet.

(b) Side yards: 25 feet.

(c) Rear yard: 50 feet.

(d) Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.

(4) Maximum structure height: 65 feet.

(5) Maximum lot coverage for structures: 40% total.

(6) Minimum district size: 5 acres.

(E) *Development conditions.*

(1) A development plan shall be submitted to the Planning and Zoning Office for review and approval in accordance with §§ 151.175 through 151.189. All development shall comply with Type I Design Standards as specified in §§ 151.175 through 151.189.

(2) The development shall be a unified and organized arrangement of structures, parking areas, walks, lighting and appurtenant facilities.

(3) A BP district may only be established on a tract of land that is in single ownership or under other means of unified control.

(4) The proposed development shall be compatible with the properties and uses of properties immediately adjacent to the proposed development.

(5) The locations of a BP district shall be on property which has direct access to major arterials or freeways, designed to carry the additional automobile and truck traffic generated by such a development. All developments shall be internally accessed.

(6) All structures must present a decorative facade on all sides which face roadways, parking areas or can be viewed from the district boundary.

(7) Provision shall be made at points of ingress, egress and within the district to ensure a free and safe flow of vehicular traffic.

(8) All service areas for loading and unloading vehicles, and all areas for collection of trash and garbage shall be properly screened using a combination of natural plantings and fences or masonry walls which are architecturally consistent with the principal building(s) so as to conceal such activities from all public street and parking area views.

(9) The development will not impose an undue burden on public services and facilities, such as fire and police protection.

(10) The activity within the district shall create no noise perceptible on the district boundary lines and no smoke, heat or glare.

(11) All on-premise signage, both for individual businesses within the park and for the park itself, shall be limited to monument signs only.

(a) Signs for individual buildings shall be limited to a maximum 6 feet in height and 50 square feet in area, except for signage facing limited access highways which may be a maximum 10 feet in height and 75 square feet in area.

(b) Signs identifying the park shall be limited to a maximum 10 feet in height and 75 square feet in area with a 25-foot setback from the public right-of-way.

(12) In addition to the standard landscape requirements of this chapter the following shall apply:

(a) A minimum of 20% of the building site shall be in open space. Open space located in a front, corner side yard and the front 1/3 of a side yard of a property shall be landscaped to include the following:

1. Ground cover, including grass;

2. Shrubs, vines and/or hedges; and

3. Individual trees or grouped trees and/or natural vegetation in the form of wooded areas with a minimum of 1 tree per 5,000 square feet of open space.

(b) Non-living durable materials commonly used in landscaping may also be included, such as, but not limited to rocks, pebbles, sand, berms, ponds, walkways or fences. Landscaped areas within parking areas, such as control islands, shall not be included for purposes of calculating the 20% open space requirement.

(c) All surface drainage retention ponds shall be free form in shape (curvilinear rather than rectilinear) and be incorporated into the overall landscape design of the park or individual lot which it serves.

(d) Where a BP district abuts residentially zoned land or land shown as residential on the adopted land use plan for the city, there shall be a minimum 20 foot greenway consisting of a combination of trees, shrubs, and ground cover. At least 50% of the greenway frontage abutting residential land shall contain shrubs and trees with a minimum of 1 tree for every 40 lineal feet of greenway. An earthen berm(s) or ornamental masonry wall or wood fence may be incorporated into the greenway. However, if a wall or fence is used, vegetative landscaping shall be placed between the wall or fence and the property line to provide visual relief.

(e) A combination of trees and/or natural plan groupings shall be planted in front yards along all principal interior roadways at intervals no greater than 75 feet.

(13) No principal building shall be constructed within 50 feet of the BP district boundary.

(14) No materials, inventory, products, equipment or other personal property shall be stored outside.

(15) No free-standing restaurant, hotel, or motel may be constructed within an approved BP district until at least 50,000 square feet of office, laboratory, assembly, light fabrication, or warehousing structures have been constructed.

(F) *Supplemental regulations.*

- (1) Special flood hazard area regulations: §§ 151.120 *et seq.*
- (2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*
- (3) Air Space Control Area regulations: §§ 151.210 *et seq.*
- (4) Accessory structures and swimming pool requirements: § 151.225.
- (5) Landscape and screening requirements: § 151.226.
- (6) Permitted obstructions in required yards: § 151.227.
- (7) Fence requirements: § 151.228.
- (8) Intersection visibility area requirements: § 151.229.
- (9) Primary street setback requirements: § 151.229.
- (10) Off-street parking and loading requirements: § 151.231.
- (11) Sign regulations: § 151.234.

(1979 Code, § 151.057) (Ord. 4370, passed 7-20-1998; Am. Ord. 4462, passed 1-13-2000 ; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

MANUFACTURING DISTRICTS

§ 151.080 M-1, LIMITED MANUFACTURING DISTRICT.

(A) *Purpose.* The M-1 District is designed to accommodate limited manufacturing uses having a minimal impact on surrounding areas. The intent is to allow manufacturing development by reason of location and the availability of adequate transportation and infrastructure systems, while protecting the surrounding uses from negative external effects.

(B) *Permitted uses.*

- (1) Wholesale businesses;
- (2) Service businesses that provide support services to manufacturing uses;
- (3) Manufacturing, assembly, warehousing and distribution of previously prepared material;
- (4) Office uses related to the manufacturing activities;
- (5) Automobile and truck repair or vehicle conversion shops, including painting, upholstering, reconditioning, and body repair when performed entirely within a building;
- (6) Machine, tool, and die shops, including presses and similar equipment in compliance with division (G);
- (7) Public utilities substations and distribution centers;
- (8) Indoor and outdoor storage facilities, except when located in front yard;
- (9) Equipment rental facilities;
- (10) Printing and publishing establishments;
- (11) Building supply store, including lumber sales;
- (12) Recycling centers, excluding chemical processing and tire recycling;
- (13) Kennels and animal hospitals;
- (14) Laundries, commercial;
- (15) Paint shops;
- (16) Archery/rifle range, when located entirely within a building;
- (17) Motor freight terminal, excluding hazardous waste;
- (18) Truck, tractor, trailer or bus storage, parking lot or yard, or garage;
- (19) Warehousing;

- (20) Boat building and repair;
- (21) Bicycle manufacture;
- (22) Recreational vehicle manufacture;
- (23) Trailer and mobile home manufacture, and manufactured housing;
- (24) Auction barns;
- (25) Canning and preserving;
- (26) Clothing and textile manufacture, including dyeing and printing;
- (27) Contractors' offices, shops and storage facilities;
- (28) Drugs and pharmaceutical products manufacture;
- (29) Production and use of food grade chemicals, acids and enzymes;
- (30) Crematoriums;
- (31) Wireless communication facilities, as defined in §151.251 of this chapter;
- (32) Outside storage, provided that it is not located in the front yard area;
- (33) Professional offices;
- (34) Outside storage of liquids or gases on one or more tanks, where total volume of the tank(s) does not exceed 2,000 gallons; and
- (35) Laboratories.

(C) *Special exception uses.*

- (1) Television and radio towers not included in §§151.250 through 151.257;
- (2) Airports and heliport landing fields;
- (3) Railroad facilities;
- (4) Excavation areas/gravel pit;
- (5) Motor freight terminals, except hazardous waste;
- (6) Stadiums, auditoriums, arenas;
- (7) Automobile drive-in theaters;
- (8) Recycling centers involving used tires and/or any chemical processing of materials;
- (9) Tattoo parlors;
- (10) Public utilities and service uses;
- (11) Bulk storage tanks including liquids or gases that require filing a Tier 1 or 2 SARA report or those that exceed an NFPA classification of 2; and
- (12) Storage of any liquid or gas in excess of 10,000 gallons.

(D) *Conditional uses.* Adult entertainment establishments.

(E) *Existing "B" business uses.* Business uses permitted in the "B" zoning districts which are in existence on the effective date of this chapter may be expanded within the limits of the existing zoning lot upon which they are located so long as all other requirements of this zoning district are satisfied. Creation of new "B" uses on currently vacant zoning lots or the expansion of a zoning lot upon which an existing "B" use is located is prohibited within the M-1 District.

(F) *Yard requirements.* The yard requirements for the M-1, Limited Manufacturing District are as follows: (All standards are minimums except as noted.)

- (1) Lot size: No minimum.
- (2) Frontage: No minimum.
- (3) Setbacks:
 - (a) Front yard: 25 feet.
 - (b) Side yards: 15 feet each or 25 feet each when abutting a residential district.
 - (c) Rear yard: 10 feet or 30 feet when abutting a residential district.

(d) Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.

- (4) Height: 75 feet; maximum of 2 towers with a maximum height of 90 feet each.
- (5) Maximum lot coverage for structures: 60% total.
- (6) F.A.R.: 3.

(G) *Development conditions.*

- (1) The district shall have major transportation facilities readily available.
- (2) The transportation systems serving this district shall not be routed through a residential development, or a street serving a school.
- (3) All operations, servicing and processing shall be conducted within completely enclosed buildings or structures, except; airport/heliport, excavation activities, outdoor storage and large equipment rentals.
- (4) No emission of toxic or noxious matter, which is injurious to human health, comfort, or enjoyment of life and property or to animal or plant life shall be permitted. Where such emissions could be produced as a result of an accident or equipment malfunction, adequate safeguards considered suitable for safe operation in the industry involved shall be taken.
- (5) No person, firm or corporation shall cause vibrations which can be detected without the use of instruments at or beyond the property boundaries.
- (6) In addition to the standard landscape requirements of this chapter the following shall apply:
 - (a) In the event a property to be developed in this district is adjacent to a residentially zoned property along a common rear or side lot line, whether separated by an alley or not, a visual and physical screen, a minimum of 6 feet in height, shall be provided along the common lot line, which may consist of any of the following:
 - 1. An evergreen hedge used with a chain link fence;
 - 2. A solid fence of a non-deteriorating material;
 - 3. Masonry wall; and
 - 4. When a fence or masonry wall is used, plantings (trees, shrubs and the like) shall be installed so as to reduce its visual impact.
 - (b) In the event a property to be developed in this district is across a street from residentially zoned property a visual and physical screen, a minimum of 6 feet in height, shall be provided as necessary to screen any outside storage of materials or loading facilities.
- (7) No building or structure shall be used for residential purposes except that a watchman or custodian may reside on the premises.
- (8) In the event that a property to be developed in this district is adjacent to or across an alley from a residentially zoned property the following setbacks for on-site parking shall apply:

<i>Parcel Size</i>	<i>Setback from Property Line</i>
< 1 acre	15 feet
1 to 3 acres	20 feet
> 3 acres	30 feet

(H) *Supplemental regulations.*

- (1) Special flood hazard area regulations: §§ 151.120 *et seq.*
- (2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*
- (3) Air Space Control Area regulations: §§ 151.210 *et seq.*
- (4) Accessory structures and swimming pool requirements: § 151.225.
- (5) Landscape and screening requirements: § 151.226.
- (6) Permitted obstructions in required yards: § 151.227.
- (7) Fence requirements: § 151.228.
- (8) Intersection visibility area requirements: § 151.229.
- (9) Primary street setback requirements: § 151.229.

(10) Off-street parking and loading requirements: § 151.231.

(11) Sign regulations: § 151.234.

(Ord. 4370, passed 7-20-1998; Am. Ord. 4444, passed 8-16-1999; Am. Ord. 4431, passed 7-12-1999; Am. Ord. 4457, passed 12-6-1999; Am. Ord. 4462, passed 1-13-2000; Am. Ord. 4592, passed 6-4-2001; Am. Ord. 4683, passed 7-1-2002 ; Am. Ord. 4985, passed 9-11-2006; Am. Ord. 5044, passed 7-9-2007; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

§ 151.081 M-2, GENERAL MANUFACTURING DISTRICT.

(A) *Purpose.* The M-2 District is designed to accommodate a broad range of industrial activities, diverse in products, operational techniques and size, which have a greater impact on the surrounding environment than the M-1 District. The uses permitted in this district generally include those manufacturing and industrial activities which cannot be operated economically without creating some conditions which may be objectionable to the occupants of adjoining properties and which, for that reason, must be grouped in areas where similar industrial uses are now located or where the permitted uses will be best located in accordance with the comprehensive land use plan of the city, which is designed to protect the welfare of the community.

(B) *Permitted uses.*

- (1) All uses allowed within the M-1, Limited Manufacturing district;
- (2) Perfumes and cosmetics manufacture;
- (3) Steel mills;
- (4) Boiler shops;
- (5) Foundries and foundry products;
- (6) Sewage treatment plants;
- (7) Aircraft, automobile and truck manufacturing;
- (8) Alcoholic beverages manufacture;
- (9) Box and crate manufacture, requiring the processing of raw materials;
- (10) Building materials manufacture, including prefabricated houses, composition wallboards, partitions and panels;
- (11) Cement products manufacture, such as blocks or pipes;
- (12) Chalk or charcoal manufacture;
- (13) Corrugated metal product manufacture;
- (14) Wood or laminate product manufacture, including furniture, barrels, coffins;
- (15) Dye, ink pigments and other manufacture;
- (16) Feed milling, processing and storage;
- (17) Glass blowing and manufacture, industrial;
- (18) Graphite and graphite products manufacture;
- (19) Hemp products manufacture;
- (20) Lumber, preserving treatment, processing, sawmills and planing mills;
- (21) Machinery, heavy manufacturing and repair including electrical, construction, mining, and agricultural manufacture;
- (22) Stamping and extrusion of products, other than permitted in the M-1 district;
- (23) Millwork and molding;
- (24) Porcelain and similar products, such as bathroom and kitchen equipment manufacture;
- (25) Railroad equipment, such as railroad cars and locomotive manufacture;
- (26) Rubber products, including tires and tubes manufacture and tire recapping;
- (27) Scrap processing yards;
- (28) Wood pulp products, including paper manufacturing;
- (29) Engraving, industrial;
- (30) Metal polishing and plating;

(31) Musical instrument manufacture;

(32) Any other manufacturing establishment that can be operated in compliance with the requirements of this section without creating objectionable noise, odor, dust, smoke, gas fumes or vapor, and that is a use compatible with the uses listed above; and

(33) Laboratories.

(C) *Special exception uses.*

(1) All special exception uses listed under the M-1 Limited Manufacturing district;

(2) Animal slaughter houses and stockyards;

(3) Arsenal;

(4) Cement and lime manufacturing facilities;

(5) Hazardous waste disposal, generators, facilities and motor freight terminals;

(6) Salvage yards;

(7) Those uses that have been declared a nuisance; or may be unreasonably obnoxious, offensive, hazardous in the opinion of the Planning and Zoning Staff, by reason of the omission of odor, vapor, smoke, gas, noise or explosive nature;

(8) Land fill;

(9) Asphalt plant;

(10) Manufacture of gases, acids, chemicals and poisons, other than those permitted in the M-1 District;

(11) Rock crushing;

(12) Stone mills and quarries; and

(13) Any other use not qualifying as a permitted use in the M-2 District.

(D) *Conditional uses.* Adult entertainment.

(E) *Existing "B" business uses.* Business uses permitted in the "B" zoning districts which are in existence on the effective date of this chapter may be expanded within the limits of the existing zoning lot upon which they are located so long as all other requirements of this zoning district are satisfied. Creation of new "B" uses on currently vacant zoning lots or the expansion of a zoning lot upon which an existing "B" use is located is prohibited within the M-2 District.

(F) *Yard requirements.* The yard requirements for the M-2, General Manufacturing District are as follows: (All standards are minimums except as noted.)

(1) Lot size: No minimum.

(2) Frontage: No minimum.

(3) Setbacks:

(a) Front yard: 25 feet.

(b) Side yards: 15 feet each or 50 feet each when abutting a residential district.

(c) Rear yard: 10 feet or 50 feet when abutting a residential district.

(d) Corner side yard: The corner side yard setback is determined by measuring the average established setback of the structures within the same block between 2 intersecting streets. This calculation would equal the established front yard setback for the side street.

(4) Maximum structure height: 75 feet; maximum of 2 towers of 90 feet in height.

(5) Maximum lot coverage for structures: 60% total.

(6) F.A.R.: 3.

(G) *Development conditions.*

(1) This district shall have major transportation facilities readily available.

(2) The transportation systems serving this district shall not be routed through a residential development, or a street serving a school.

(3) Junk yard uses permitted in the M-2 zoning district shall be confined to tracts located at least 600 feet from property zoned for residential purposes.

(4) No emission of toxic or noxious matter, which is injurious to human health, comfort or enjoyment of life and property or to animal or plant life shall be permitted. Where such emissions could be produced as a result of an accident or

equipment malfunction, adequate safeguards considered suitable for safe operation in the industry involved shall be taken.

(5) No person, firm or corporation shall cause vibrations which can be detected without the use of instruments at or beyond the district boundaries.

(6) An operation that produces intense glare or heat shall be performed within a completely enclosed building or structure and exposed sources of light shall be screened so not to be detectable at the district boundary.

(7) No building or structure shall be used for residential purposes.

(8) In addition to the standard landscape and screening requirements of this chapter the following shall apply:

(a) In the event a property to be developed in this district is adjacent to a residentially zoned property along a common lot line, whether separated by an alley or not, a visual and physical screen, a minimum of 6 feet in height, shall be provided along the common lot line, which may consist of any of the following:

1. An evergreen hedge used with a chain link fence;

2. A solid fence of a non-deteriorating material;

3. Masonry wall; and

4. When a fence or masonry wall is used, plantings (trees, shrubs and the like) shall be installed so as to reduce its visual impact.

(b) In the event a property to be developed in this district is across a street from residentially zoned property a visual and physical screen, a minimum of 6 feet in height, shall be provided as necessary to screen any outside storage of materials or loading facilities.

(9) In the event that a property to be developed in this district is adjacent to or across an alley from a residentially zoned property, the following setbacks for on-site parking shall apply:

<i>Parcel Size</i>	<i>Setback from Property Line</i>
< 1 acre	15 feet
1 to 3 acres	20 feet
> 3 acres	30 feet

(H) *Supplemental regulations.*

(1) Special flood hazard area regulations: §§ 151.120 *et seq.*

(2) Wetlands Conservation District regulations: §§ 151.145 *et seq.*

(3) Air Space Control Area regulations: §§ 151.210 *et seq.*

(4) Accessory structures and swimming pool requirements: § 151.225.

(5) Landscape and screening requirements: § 151.226.

(6) Permitted obstructions in required yards: § 151.227.

(7) Fence requirements: § 151.228.

(8) Intersection visibility area requirements: § 151.229.

(9) Primary street setback requirements: § 151.229.

(10) Off-street parking and loading requirements: § 151.231.

(11) Sign regulations: § 151.234.

(Ord. 4370, passed 7-20-1998; Am. Ord. 4683, passed 7-1-2002; Am. Ord. 4985, passed 9-11-2006; Am. Ord. 5044, passed 7-9-2007; Am. Ord. 5175, passed 7-20-2009) Penalty, see § 151.999

PLANNED UNIT DEVELOPMENT

§ 151.095 PURPOSE.

(A) The Planned Unit Development (PUD) District is designed to encourage quality land development and site design without the use of typical zoning standards.

(B) The purpose of this section is to improve and protect the public health, safety and welfare by pursuing the following objectives.

- (1) To ensure that future development which occurs is in accordance with the Comprehensive Plan;
- (2) To encourage innovations in land development and redevelopment;
- (3) To foster the safe, efficient and economic use of the land, transportation, public facilities and services;
- (4) To facilitate the provision of adequate public services such as transportation, water, sewer, storm, drainage, electricity and public parks;
- (5) To avoid the inappropriate development of lands and provide for adequate drainage and reduction of flood damage;
- (6) To encourage patterns of land use which decrease trip length of automobile travel and encourage trip consolidation;
- (7) To minimize adverse environmental impacts of development;
- (8) To improve the design, quality and character of new development;
- (9) To foster a more rational pattern of relationship between residential, business and industrial uses; and
- (10) To protect existing neighborhoods from harmful encroachment by intrusive or disruptive development.

(1979 Code, § 151.080) (Ord. 4370, passed 7-20-1998)

§ 151.096 PERMITTED USES.

All permitted, special exception and conditional uses enumerated in this chapter are expressly permitted at the time the PUD is established.

(1979 Code, § 151.081) (Ord. 4370, passed 7-20-1998) Penalty, see § 151.999

§ 151.097 REQUIREMENTS.

(A) *Unified design.* The tract of land submitted for PUD development must be developed as a single design entity even though it may be developed in phases or contain a wide variety of uses and activities otherwise not necessarily compatible with one another.

(B) *Entire tract must be under single control.* All land in the tract submitted as the PUD application must be under the control of the applicant. The narrative text that accompanies the preliminary plan must demonstrate that this control will be workable throughout the PUD development period.

(C) *Size requirements.* Two-acre minimum.

(1979 Code, § 151.082) (Ord. 4370, passed 7-20-1998; Am. Ord. 4462, passed 1-13-2000) Penalty, see § 151.999

§ 151.098 SUBMITTAL REQUIREMENTS.

(A) Petitioner shall submit to the Planning and Zoning Office:

- (1) A completed application for a PUD zone change;
- (2) A preliminary site plan one copy if 11" x 17" or smaller, otherwise 15 copies. See divisions (B) and (C) below for specific submittal requirements for Conceptual or Standard PUDs; and
- (3) Any written documentation describing the PUD, by the filing date specified by the Plan Commission.

(B) Conceptual PUD.

(1) General site plan, including, but not limited to: property boundaries, existing natural features on or adjacent to the site, general street layout, proposed uses, individual parcels, setbacks and/or buffers from adjoining properties, and a general on-site drainage plan;

(2) Written documentation explaining the nature and purpose of the PUD and providing supplemental information for the site plan, including any restrictive covenants;

(C) Standard PUD.

(1) A detailed site plan including:

(a) Proposed dimensional layout to scale of any streets, buildings, building elevations (if available), open space, lots, parking areas, signage, on-site drainage, landscaping and other elements basic to the development; and

(b) Proposed locations, densities, and types of uses within the area of the development.

(2) Any written documentation providing supplemental information for the site plan, including any restrictive covenants.

(D) The Planning and Zoning Office may require submission of additional information deemed necessary for consideration of the PUD.

(1979 Code, § 151.083) (Ord. 4370, passed 7-20-1998) Penalty, see § 151.999

§ 151.099 PLAN COMMISSION ACTION.

An application for a PUD shall be filed as a petition for an amendment to the zoning map of the city's Zoning Ordinance. Following a public hearing, the Plan Commission shall pass the PUD application on to the Council with no recommendation or shall recommend denial, approval as submitted, or approval with modifications and/or conditions it may deem necessary.

(1979 Code, § 151.084) (Ord. 4370, passed 7-20-1998; Am. Ord. 4431, passed 7-12-1999)

§ 151.100 COUNCIL ACTION.

(A) The PUD ordinance, site plan and supporting written documentation, along with the Plan Commission recommendation, are forwarded to the City Council.

(B) Action by the Council shall be in accordance with § 151.290(B).

(C) If approved, with or without conditions, the PUD shall be implemented as follows:

(1) For a standard PUD, implementation shall be in conformance with the final approved site plan, the written requirements listed in the adopted PUD ordinance and all ordinances and regulations of the city not modified by the PUD.

(2) For a conceptual PUD, implementation shall be in conformance with the procedures outlined under § 151.101 below.

(1979 Code, § 151.085) (Ord. 4370, passed 7-20-1998)

§ 151.101 SECONDARY REVIEW.

(A) All conceptual PUDs approved by the City Council must submit a final site plan for the PUD or individual parcel site plans for multiple site PUDs to the Plan Commission for final approval within the time frame specified in the PUD ordinance.

(B) (1) The Plan Commission shall conduct a public hearing on the final site plan and provide all required notification to interested parties.

(2) Following the hearing, the Commission may approve the site plan as submitted or with modifications and/or conditions as it deems necessary.

(3) In making its decision, the Plan Commission must take into consideration requirements or conditions specified in the original PUD ordinance.

(1979 Code, § 151.086) (Ord. 4370, passed 7-20-1998)

§ 151.102 ISSUANCE OF PERMITS.

Permits and construction of the PUD or portion of the PUD shall be in compliance with the approved final site plan and all city ordinances and regulations not modified by the PUD.

(1979 Code, § 151.087) (Ord. 4370, passed 7-20-1998)

§ 151.103 REVOCATION OF PERMITS.

Failure to conform to the provisions of the PUD may result in a stop work order being issued and shall require the developer to show just cause at a public hearing conducted by the Plan Commission why the permits issued for the PUD should not be revoked.

(1979 Code, § 151.088) (Ord. 4370, passed 7-20-1998)

§ 151.104 MODIFICATIONS TO APPROVED FINAL SITE PLANS.

(A) *Minor modifications.*

(1) Modifications, such as minor relocation of a building, parking lot, or other site element, due to unforeseen site conditions, can be reviewed and approved by the planning staff. An adverse decision by the planning staff may be appealed to the Plan Commission as per division (A)(2) below.

(2) All other modifications, except those deemed major as defined in division (B) below, shall be presented in writing to the Plan Commission. The Commission shall review and reject or approve the proposed changes without a public hearing.

(B) *Major modifications.* Proposed changes to an approved PUD final site plan which:

(1) Change the land area of the PUD;

- (2) Change the density of use of the PUD;
- (3) Allow a use previously not permitted in the PUD; or

(4) Constitute a change which, in the sole discretion of the Plan Commission, should be considered by the City Council as a new proposed development; shall be deemed a new application for approval of a planned unit development and shall follow the procedures previously set forth in this section.

(1979 Code, § 151.089) (Ord. 4370, passed 7-20-1998)

§ 151.105 AUTHORITY OF REVIEWING BODY.

(A) *City Council action.* When adopting or amending a PUD ordinance the City Council may:

- (1) Impose reasonable conditions on a proposed PUD;
- (2) Condition issuance of a zoning clearance permit on the furnishing of a bond or satisfactory written assurance guaranteeing the timely completion of any proposed public improvements; and
- (3) Allow or require the property owner to make a written commitment.

(B) *Plan Commission or planning staff action.* When recommending adoption of a PUD ordinance to the City Council, or approving a final site plan or modification of a final site plan, the Plan Commission or Planning staff, as appropriate, may:

- (1) Impose reasonable conditions on a proposed PUD;
- (2) Condition issuance of a zoning clearance permit on the furnishing of a bond or satisfactory written assurance guaranteeing the timely completion of any proposed public improvements; and
- (3) Allow or require the property owner to make a written commitment.

(1979 Code, § 151.090) (Ord. 4370, passed 7-20-1998)

§ 151.106 PROOF OF RECORDING OF APPROVED FINAL SITE PLAN.

A copy of the approved final site plan shall be recorded at the Elkhart County Recorder's Office, and proof of such action in the form of a receipt of filing for recording of the documents provided to the planning and zoning staff shall be provided prior to the issuance of a certificate of occupancy for any such project.

(1979 Code, § 151.091) (Ord. 4762, passed 8-1-2003)

FLOOD DAMAGE PREVENTION

§ 151.120 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND METHODS.

(A) *Statutory authorization.* The Indiana Legislature has in I.C. 36-1-4-11 granted the power to local government units to control land use within their jurisdictions. Therefore, the City Council of the City of Elkhart does hereby adopt the following floodplain management regulations.

(B) *Findings of fact.* The flood hazard areas of the City of Elkhart are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

(C) *Statement of purpose.* It is the purpose of this subchapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight area;
- (7) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;

- (8) Minimize the impact of development on adjacent properties within and near flood prone areas;
- (9) Ensure that the flood storage and conveyance functions of the floodplain are maintained;
- (10) Minimize the impact of development on the natural, beneficial values of the floodplain;
- (11) Prevent floodplain uses that are either hazardous or environmentally incompatible; and
- (12) Meet community participation requirements of the National Flood Insurance Program.

(D) *Methods of reducing flood loss.* In order to accomplish its purposes, these regulations include methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (4) Controlling filling, grading, dredging, excavating, and other development which may increase flood damage; and
- (5) Preventing or regulating the construction of flood barriers, which will unnaturally divert floodwaters, or which may increase flood hazards in other areas.

(Ord. 5995, passed 7-1-2024)

§ 151.121 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY STRUCTURE. A structure with a floor area of 400 square feet or less that is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure; an **ACCESSORY STRUCTURE** specifically excludes structures used for human habitation.

(1) **ACCESSORY STRUCTURES** are considered walled and roofed where the structure includes at least 2 outside rigid walls and a fully secured roof.

(2) Examples of accessory structures include but are not necessarily limited to 2 car detached garages (or smaller), carports, storage and tool sheds, and small boathouses.

(3) The following may have uses that are incidental or accessory to the principal structure on a parcel but are generally not considered to be **ACCESSORY STRUCTURES** by the NFIP:

(a) Structures in which any portion is used for human habitation, whether as a permanent residence or as temporary or seasonal living quarters, such as a detached garage or carriage house that includes an apartment or guest quarters, or a detached guest house on the same parcel as a principal residence;

(b) Structures used by the public, such as a place of employment or entertainment; and

(c) Development that does not meet the NFIP definition of a structure for floodplain management purposes. Examples include, but are not necessarily limited to, a gazebo, pavilion, picnic shelter, or carport that is open on all sides (roofed but not walled).

ADDITION (TO AN EXISTING STRUCTURE). Any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition which is connected by a firewall or is separated by independent perimeter load-bearing walls is new construction.

ALTERATION OF A WATERCOURSE. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other modification which may alter, impede, retard, or change the direction and/or velocity of the flow of water during conditions of the base flood.

APPEAL. A request for a review of the Floodplain Administrator's interpretation of any provision of this subchapter, a request for a variance, or a challenge of a Board decision.

AREA OF SPECIAL FLOOD HAZARD. The land within a community subject to a 1% or greater chance of being flooded in any given year.

BASE FLOOD. The flood having a 1% chance of being equaled or exceeded in any given year. The **BASE FLOOD** may also be referred to as the 1% annual chance flood or 100 year flood.

BASE FLOOD ELEVATION (BFE). The water surface elevation of the base flood in relation to a specified datum, usually the North American Vertical Datum of 1988.

BASEMENT. That portion of a structure having its floor sub-grade (below ground level) on all sides.

BEST AVAILABLE FLOOD LAYER (BAFL). Floodplain studies and any corresponding floodplain maps prepared and/or approved by the Indiana Department of Natural Resources which provide base flood elevation information, floodplain limits, and/or floodway delineations for flood hazards identified by approximate studies on the currently effective FIRM (Zone A) and/or for waterways where the flood hazard is not identified on available floodplain mapping.

BUILDING. See **STRUCTURE**.

COMMUNITY. A political entity that has the authority to adopt and enforce floodplain ordinances for the areas within its jurisdiction.

CRITICAL FACILITY. A facility for which even a slight chance of flooding might be too great. **CRITICAL FACILITIES** include, but are not limited to, schools, nursing homes, hospitals, police, fire, and emergency response installations, and installations which produce, use, or store hazardous materials or hazardous waste.

DEVELOPMENT.

(1) For floodplain management purposes, any man-made change to improved or unimproved real estate including but not limited to:

- (a) Construction, reconstruction, or placement of a structure or any addition to a structure;
- (b) Installing a manufactured home on a site, preparing a site for a manufactured home, or installing a recreational vehicle on a site for more than 180 days;
- (c) Installing utilities, erection of walls and fences, construction of roads, or similar projects;
- (d) Construction of flood control structures such as levees, dikes, dams, channel improvements, and the like;
- (e) Mining, dredging, filling, grading, excavation, or drilling operations;
- (f) Construction and/or reconstruction of boat lifts, docks, piers, and seawalls;
- (g) Construction and/or reconstruction of bridges or culverts;
- (h) Storage of materials; or
- (i) Any other activity that might change the direction, height, or velocity of flood or surface waters.

(2) **DEVELOPMENT** does not include activities such as the maintenance of existing structures and facilities such as painting; re-roofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent structures.

ELEVATION CERTIFICATE. A FEMA form that is routinely reviewed and approved by the White House Office of Management and Budget under the Paperwork Reduction Act that is encouraged to be used to collect certified elevation information.

ENCLOSED AREA (ENCLOSURE). An area of a structure enclosed by walls on all sides.

ENCLOSURE BELOW THE LOWEST FLOOR. See **LOWEST FLOOR** and **ENCLOSED AREA**.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the community's first floodplain ordinance.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA. The Federal Emergency Management Agency.

FILL. For floodplain management purposes, any material deposited or placed which has the effect of raising the level of the ground surface above the natural grade elevation. **FILL** material includes but is not limited to consolidated material such as concrete and brick and unconsolidated material such as soil, sand, gravel, and stone.

FLOOD or FLOODING.

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
- (a) The overflow of inland or tidal waters;
 - (b) The unusual and rapid accumulation or runoff of surface waters from any source; or
 - (c) Mudslides (i.e., mudflows) which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(2) **FLOOD** or **FLOODING** also includes the collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or current of water exceeding anticipated cyclical levels that result in a flood as defined above.

FLOOD HAZARD AREA. Areas subject to the 1% annual chance flood. (See **SPECIAL FLOOD HAZARD AREA**.)

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community. A **FIRM** that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

FLOOD INSURANCE STUDY (FIS). The official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM and the water surface elevation of the base flood.

FLOOD PRONE AREA means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See **FLOODPLAIN**.)

FLOOD PROTECTION GRADE (FPG). The BFE plus 2 feet at any given location in the SFHA.

FLOODPLAIN or **FLOOD PRONE AREA.** Any land area susceptible to being inundated by water from any source. (See **FLOOD**.)

FLOODPLAIN MANAGEMENT. The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

FLOODPLAIN MANAGEMENT REGULATIONS. Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance), and other applications of police power which control development in flood-prone areas. The term describes such state or local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOODPROOFING (DRY FLOODPROOFING). A method of protecting a structure that ensures that the structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation with walls that are substantially impermeable to the passage of water. All structural components of these walls are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.

FLOODPROOFING CERTIFICATE. A form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG.

FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulative increasing the water surface elevation more than a designated height.

FREEBOARD. A factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

FRINGE or **FLOOD FRINGE.** The portion of the floodplain lying outside the floodway.

FUNCTIONALLY DEPENDENT USE. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

HARDSHIP. As related to variances of this subchapter, the exceptional **HARDSHIP** that would result from a failure to grant the requested variance. The city requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial **HARDSHIP** alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional **HARDSHIP**. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

HISTORIC STRUCTURE. Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by:

- (a) An approved state program as determined by the Secretary of Interior; or
- (b) Directly by the Secretary of Interior in states without approved programs.

HYDROLOGIC AND HYDRAULIC ENGINEERING ANALYSIS. Analyses performed by a professional engineer licensed by the State of Indiana, in accordance with standard engineering practices that are accepted by the Indiana Department of Natural Resources and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

INTERNATIONAL CODE COUNCIL– EVALUATION SERVICE (ICC-ES) REPORT. A document that presents the findings, conclusions, and recommendations from a particular evaluation. **ICC-ES REPORTS** provide information about what code requirements or acceptance criteria were used to evaluate a product, and how the product should be identified, installed.

LETTER OF FINAL DETERMINATION (LFD). A letter issued by FEMA during the mapping update process which establishes final elevations and provides the new flood map and flood study to the community. The **LFD** initiates the 6-month adoption period. The community must adopt or amend its floodplain management regulations during this 6-month period unless the community has previously incorporated an automatic adoption clause.

LETTER OF MAP CHANGE (LOMC). A general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They are broken down into the following categories:

(1) **CONDITIONAL LETTER OF MAP REVISION (CLOMR).** FEMA's comment on a proposed project that would, upon construction, result in modification of the SFHA through the placement of fill outside the existing regulatory floodway.

(2) **CONDITIONAL LETTER OF MAP REVISION BASED ON FILL (CLOMR-F).** A letter from FEMA stating that a proposed structure that will be elevated by fill would not be inundated by the base flood.

(3) **LETTER OF MAP AMENDMENT (LOMA).** An amendment by letter to the currently effective FEMA map that establishes that a building or area of land is not located in a SFHA through the submittal of property specific elevation data. A **LOMA** is only issued by FEMA.

(4) **LETTER OF MAP AMENDMENT OUT AS SHOWN (LOMA-OAS).** An official determination by FEMA that states the property or building is correctly shown outside the SFHA as shown on an effective NFIP map. Therefore, the mandatory flood insurance requirement does not apply. An out-as-shown determination does not require elevations.

(5) **LETTER OF MAP REVISION (LOMR).** An official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

(6) **LETTER OF MAP REVISION BASED ON FILL (LOMR-F).** FEMA's modification of the SFHA shown on the FIRM based on the placement of fill outside the existing regulatory floodway.

LOWEST ADJACENT GRADE. The lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

LOWEST FLOOR. For floodplain management purposes, the lowest elevation described among the following:

- (1) The lowest floor of a building;
- (2) The basement floor;
- (3) The garage floor if the garage is connected to the building;
- (4) The first floor of a structure elevated on pilings or pillars;
- (5) The floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of floodwaters. Designs for meeting the flood opening requirement must either be certified by a registered professional engineer or architect or meet or exceed the following criteria:
 - (a) The walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of floodwaters; and
 - (b) At least 2 openings are designed and maintained for the entry and exit of floodwater; and these openings provide a total net area of at least 1 square inch for every 1 square foot of enclosed area. The bottom of all such openings shall be no higher than 1 foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher. Doorways and windows do not qualify as openings.
- (6) The first floor of a building elevated on pilings or columns in a coastal high hazard area (as that term is defined in 44 CFR 59.1), as long as it meets the requirements of 44 CFR 60.3.

MANUFACTURED HOME. A structure, transportable in 1 or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term **MANUFACTURED HOME** does not include a **RECREATIONAL VEHICLE**.

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into 2 or more manufactured home lots for rent or sale.

MITIGATION. Sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of **MITIGATION** is twofold: to protect people and structures, and to minimize the cost of disaster response and recovery.

NATURAL GRADE. For floodplain management purposes, the elevation of the undisturbed natural surface of the ground. Fill placed prior to the date of the initial identification of the flood hazard on a FEMA map is also considered **NATURAL GRADE**.

NEW CONSTRUCTION. For floodplain management purposes, any structure for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the community's first floodplain ordinance.

NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88). As adopted in 1993, a vertical control datum used as a reference for establishing varying elevations within the floodplain.

OBSTRUCTION. Includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

ONE PERCENT ANNUAL CHANCE FLOOD. The flood that has a 1% chance of being equaled or exceeded in any given year. See **REGULATORY FLOOD**.

PHYSICAL MAP REVISION (PMR). An official republication of a community's FEMA map to effect changes to base (1% annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

PREFABRICATED BUILDING. A building that is manufactured and constructed using prefabrication. It consists of factory-made components or units that are transported and assembled on-site to form the complete building.

PRINCIPALLY ABOVE GROUND. At least 51% of the actual cash value of the structure, less land value, is above ground.

RECREATIONAL VEHICLE. A vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use.

REGULATORY FLOOD. The flood having a 1% chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in § 151.122(B). The **REGULATORY FLOOD** is also known by the term **BASE FLOOD**, **ONE PERCENT ANNUAL CHANCE FLOOD**, and **100-YEAR FLOOD**.

REPETITIVE LOSS. Flood-related damages sustained by a structure on 2 separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeded 25% of the market value of the structure before the damage occurred.

RIVERINE. Relating to, formed by, or resembling a river (including tributaries), stream, brook, and the like.

SOLID WASTE DISPOSAL FACILITY. Any facility involved in the storage or disposal of non-liquid, non-soluble materials ranging from municipal garbage to industrial wastes that contain complex and sometimes hazardous substances. Solid waste also includes sewage sludge, agricultural refuse, demolition wastes, mining wastes, and liquids and gases stored in containers.

SPECIAL FLOOD HAZARD AREA (SFHA). Synonymous with "areas of special flood hazard" and floodplain, those lands within the jurisdiction of the city subject to a 1% or greater chance of flooding in any given year. **SPECIAL FLOOD HAZARD AREAS** are designated by the Federal Emergency Management Agency on flood insurance rate maps, flood insurance studies, flood boundary and floodway maps and flood hazard boundary maps as Zones A, AE, AH, AO, A1-30, A99, or VE. The **SFHA** includes areas that are flood prone and designated from other federal, state or local sources of data including but

not limited to best available flood layer maps provided by or approved by the Indiana Department of Natural Resources, historical flood information reflecting high water marks, previous flood inundation areas, and flood prone soils associated with a watercourse.

START OF CONSTRUCTION. Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual **START OF CONSTRUCTION** means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE. A walled and roofed building, including a gas or liquid storage tank, which is principally above ground. The term includes a manufactured home, as well as a prefabricated building. It also includes recreational vehicles installed on a site for more than 180 consecutive days.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "repetitive loss" or "substantial damage" regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

VARIANCE. A grant of relief from the requirements of this subchapter consistent with the variance conditions herein.

VIOLATION. The failure of a structure or other development to be fully compliant with this subchapter.

WALLED AND ROOFED. A building that has 2 or more exterior rigid walls and a fully secured roof and is affixed to a permanent site.

WATERCOURSE. A lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. **WATERCOURSE** includes specifically designated areas in which substantial flood damage may occur.

(Ord. 5995, passed 7-1-2024)

§ 151.122 GENERAL PROVISIONS.

(A) *Lands to which this subchapter applies.* This subchapter shall apply to all areas of special flood hazard (SFHAs) within the jurisdiction of the City of Elkhart, Indiana as identified in division (B) below, including any additional areas of special flood hazard annexed by the City of Elkhart, Indiana.

(B) *Basis for establishing the areas of special flood hazard.*

(1) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of the City of Elkhart, delineated as an "AE Zone" on the Elkhart County and Incorporated Areas Flood Insurance Rate Map dated August 2, 2011 shall be determined from the 1% annual chance flood profiles in the Flood Insurance Study of Elkhart County and Incorporated Areas and the corresponding flood insurance rate maps (FIRM) dated August 2, 2011, as well as any subsequent updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. Should the floodway limits not be delineated on the flood insurance rate map for a studied SFHA designated as an "AE Zone", the limits of the floodway will be according to the best available flood layer as provided by the Indiana Department of Natural Resources.

(2) The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of the City of Elkhart, delineated as an "A Zone" on the Elkhart County and Incorporated Areas Flood Insurance Rate Map, dated August 2, 2011, as well as any subsequent updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date, shall be according to the best available flood layer provided by the Indiana Department of Natural Resources, provided the upstream drainage area from the subject site is greater than 1 square mile. Whenever a party disagrees with the best available flood layer data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, this data must be submitted to the Indiana Department of Natural Resources for review and subsequently approved.

(3) In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community's known flood prone areas shall be according to the best available flood layer as provided by the Indiana Department of Natural Resources, provided the upstream drainage area from the subject site is greater than 1 square mile.

(4) Upon issuance of a Letter of Final Determination (LFD), any more restrictive data in the new (not yet effective)

mapping/study shall be utilized for permitting and construction (development) purposes, replacing all previously effective less restrictive flood hazard data provided by FEMA.

(C) *Establishment of floodplain development permit.* A floodplain development permit shall be required in conformance with the provisions of this subchapter prior to the commencement of any development activities in areas of special flood hazard.

(D) *Compliance.*

(1) No structure shall hereafter be located, extended, converted, or structurally altered within the SFHA without full compliance with the terms of this subchapter and other applicable regulations.

(2) Where an existing or proposed structure or other development is affected by multiple flood zones, by multiple base flood elevations, or both, the development activity must comply with the provisions of this subchapter applicable to the most restrictive flood zone and the most conservative (highest) base flood elevation affecting any part of the existing or proposed structure; or for other developments, affecting any part of the area of the development.

(3) No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this subchapter and other applicable regulations.

(E) *Abrogation and greater restrictions.* This subchapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this subchapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(F) *Discrepancy between mapped floodplain and actual ground elevations.*

(1) In cases where there is a discrepancy between the mapped floodplain (SFHA) with base flood elevations provided (riverine or lacustrine Zone A or AE) on the FIRM and the actual ground elevations, the elevation provided on the profiles or table of still water elevations shall govern.

(2) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.

(3) If the natural grade elevation of the site in question is at or above the base flood elevation and a LOMA or LOMR-FW is obtained, the floodplain regulations will not be applied provided the LOMA or LOMR-FW is not subsequently superseded or invalidated.

(G) *Interpretation.* In the interpretation and application of this subchapter, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(H) *Warning and disclaimer of liability.* The degree of flood protection required by this subchapter is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this subchapter does not create any liability on the part of the City of Elkhart, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this subchapter, or any administrative decision made lawfully thereunder.

(I) *Penalties for violation.* Failure to obtain a floodplain development permit in the SFHA or failure to comply with the requirements of a floodplain development permit or conditions of a variance shall be deemed to be a violation of this subchapter. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Code for the City of Elkhart. All violations shall be punishable by a fine not exceeding \$2,500.

(1) A separate offense shall be deemed to occur for each day the violation continues to exist.

(2) The City of Elkhart shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a standard flood insurance policy to be suspended.

(3) Nothing herein shall prevent the city from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

(Ord. 5995, passed 7-1-2024)

§ 151.123 ADMINISTRATION.

(A) *Designation of Administrator.* The Common Council of Elkhart hereby appoints the Planning Department to administer and implement the provisions of this subchapter and is herein referred to as the Floodplain Administrator.

(B) *Floodplain development permit and certification requirements.* An application for a floodplain development permit shall be made to the Floodplain Administrator for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be made by the owner of the property or his/her authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished for that purpose. Such applications shall include, but not be limited to plans drawn to scale showing the nature,

location, dimensions, and elevations of the area in question, existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

(1) *Application stage.*

- (a) A description of the proposed development;
- (b) Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams;
- (c) A legal description of the property site;
- (d) For the reconstruction, rehabilitation, or improvement of an existing structure, or an addition to an existing building, a detailed quote and description of the total work to be completed including but not limited to interior work, exterior work, and labor as well as a certified valuation of the existing (pre-improved or pre-damaged) structure;
- (e) A site development plan showing existing and proposed development locations and existing and proposed land grades;
- (f) A letter from a licensed professional surveyor or engineer noting that an elevation reference benchmark has been established or confirmed for those projects requiring elevations to be met;
- (g) Verification that connection to either a public sewer system or to an approved on-site septic system is available and approved by the respective regulatory agency for proposed structures to be equipped with a restroom, kitchen or other facilities requiring disposal of wastewater;
- (h) Plans showing elevation of the top of the planned lowest floor (including basement) of all proposed structures in Zones A and AE. Elevation should be in NAVD 88;
- (i) Plans showing elevation (in NAVD 88) to which any non-residential structure will be floodproofed;
- (j) Plans showing location and specifications for flood openings for any proposed structure with enclosed areas below the flood protection grade;
- (k) Plans showing materials to be used below the flood protection grade for any proposed structure are flood resistant;
- (l) Plans showing how any proposed structure will be anchored to resist flotation or collapse;
- (m) Plans showing how any electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities are designed and/or located. Elevation should be in NAVD 88;
- (n) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering analysis is required, and any watercourse changes submitted to DNR for approval. Once DNR approval is obtained, a FEMA conditional letter of map revision must be obtained prior to construction (see divisions (C)(8) and (E) below for additional information); and
- (o) Any additional information, as requested by the Floodplain Administrator, which may be necessary to determine the disposition of a proposed development or structure with respect to the requirements of this subchapter.

(2) *Construction stage.* Upon establishment of the lowest floor of an elevated structure or structure constructed on fill, it shall be the duty of the applicant to submit to the Floodplain Administrator an elevation certificate for the building under construction. The Floodplain Administrator shall review the elevation certificate. Any deficiencies detected during the review shall be corrected by the applicant before work is allowed to continue. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

(3) *Finished construction.*

- (a) Upon completion of construction of any structure requiring certification of elevation, an elevation certificate which depicts the "as-built" lowest floor elevation and other applicable elevation data is required to be submitted by the applicant to the Floodplain Administrator. The elevation certificate shall be prepared by or under the direct supervision of a registered land surveyor and certified by the same.
- (b) Upon completion of construction of an elevated structure constructed on fill, a fill report is required to be submitted to the Floodplain Administrator to verify the required standards were met, including compaction.
- (c) Upon completion of construction of a floodproofing measure, a floodproofing certificate is required to be submitted by the applicant to the Floodplain Administrator. The floodproofing certificate shall be prepared by or under the direct supervision of a registered professional engineer or architect and certified by same.

(C) *Duties and responsibilities of the Floodplain Administrator.* The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this subchapter. The Administrator is further authorized to render interpretations of this subchapter, which are consistent with its spirit and purpose. Duties and responsibilities of the Floodplain Administrator shall include, but are not limited to:

- (1) Enforce the provisions of this subchapter;

(2) Evaluate applications for permits to develop in special flood hazard areas to assure that the permit requirements of this subchapter have been satisfied;

(3) Interpret floodplain boundaries and provide flood hazard and flood protection elevation information;

(4) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met or refuse to issue the same in the event of noncompliance;

(5) Advise permittee that additional federal, state and/or local permits may be required. If specific federal, state and/or local permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit;

(6) Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas identified by FEMA, must meet the development standards of these regulations;

(7) For applications to improve structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator shall:

(a) Verify and document the market value of the pre-damaged or pre-improved structure;

(b) Compare the cost to perform the improvement; or the cost to repair a damaged building to its pre-damaged condition; or the combined costs of improvements and repair, if applicable, to the market value of the pre-damaged or pre-improved structure. The cost of all work must be included in the project costs, including work that might otherwise be considered routine maintenance. Items/activities that must be included in the cost shall be in keeping with guidance published by FEMA to ensure compliance with the NFIP and to avoid any conflict with future flood insurance claims of policyholders within the community;

(c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement" for proposed work to repair damage caused by flood and evaluation of previous permits issued to repair flood-related damage as specified in the definition of substantial damage; and

(d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the applicable general and specific standards in § 151.124 are required;

(8) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse and submit copies of such notifications to FEMA;

(9) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to § 151.124(A)(1), § 151.124(A)(3)(a) and § 151.124(A)(4); maintain a record of such authorization (either copy of actual permit/ authorization or floodplain analysis/regulatory assessment);

(10) Verify the upstream drainage area of any proposed development site near any watercourse not identified on a FEMA map to determine if division (C)(9) above is applicable;

(11) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;

(12) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with division (B) above;

(13) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with division (B) above;

(14) Make on-site inspections of projects in accordance with division (D) below;

(15) Coordinate with insurance adjusters prior to permitting any proposed work to bring any flood-damaged structure covered by a standard flood insurance policy into compliance (either a substantially damaged structure or a repetitive loss structure) to ensure eligibility for ICC funds;

(16) Ensure that an approved connection to a public sewer system or an approved on-site septic system is planned for any structures (residential or nonresidential) to be equipped with a restroom, kitchen or other facilities requiring disposal of wastewater;

(17) Provide information, testimony, or other evidence as needed during variance hearings;

(18) Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with division (D) below;

(19) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and "as-built" elevation and floodproofing data for all buildings constructed subject to this subchapter in accordance with division (D) below;

(20) Coordinate map maintenance activities and associated FEMA follow-up in accordance with division (E) below;

(21) Utilize and enforce all letters of map change (LOMC) or physical map revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community; and

(22) Request any additional information which may be necessary to determine the disposition of a proposed development or structure with respect to the requirements of this subchapter.

(D) *Administrative procedures.*

(1) *Inspections of work in progress.* As the work pursuant to a permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and terms of the permit. In exercising this power, the Administrator has a right, upon presentation of proper credential, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.

(2) *Stop work orders.*

(a) Upon notice from the Floodplain Administrator, work on any building, structure or premises that is being done contrary to the provisions of this subchapter shall immediately cease.

(b) Such notice shall be in writing and shall be given to the owner of the property, to his or her agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

(3) *Revocation of permits.*

(a) The Floodplain Administrator may revoke a permit or approval issued under the provisions of this subchapter in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.

(b) The Floodplain Administrator may revoke a permit upon determination by the Floodplain Administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this subchapter.

(4) *Floodplain management records.*

(a) Regardless of any limitation on the period required for retention of public records, records of actions associated with the administration of this subchapter shall be kept on file and maintained under the direction of the Floodplain Administrator in perpetuity. These records include permit applications; plans; certifications; flood insurance rate maps; letter of map change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations required by this subchapter; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this subchapter.

(b) These records shall be available for public inspection at Elkhart City Hall, 229 South 2nd Street, Elkhart, Indiana 46516.

(5) *Periodic inspection.* Once a project is completed, periodic inspections may be conducted by the Floodplain Administrator to ensure compliance. The Floodplain Administrator shall have a right, upon presentation of proper credential, to enter on any premises within the territorial jurisdiction of the Department at any reasonable hour for the purposes of inspection or other enforcement action.

(E) *Map maintenance activities.* To meet NFIP minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that the City of Elkhart flood maps, studies and other data identified in § 151.122(B) accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

(1) *Requirement to submit new technical data.*

(a) For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within 6 months of the date such information becomes available. These development proposals include:

1. Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;
2. Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area; and
3. Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and subdivision or large-scale development proposals requiring the establishment of base flood elevations.

(b) It is the responsibility of the applicant to have required technical data for a conditional letter of map revision or letter of map revision and submitted to FEMA. The Indiana Department of Natural Resources will review the submittals as

part of a partnership with FEMA. The submittal should be mailed to the Indiana Department of Natural Resources at the address provided on the FEMA form (MT-2) or submitted through the online letter of map change website. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.

(c) The Floodplain Administrator shall require a conditional letter of map revision prior to the issuance of a floodplain development permit for proposed floodway encroachments that increase the base flood elevation.

(d) Floodplain development permits issued by the Floodplain Administrator shall be conditioned upon the applicant obtaining a letter of map revision from FEMA for any development proposal subject to this section.

(2) *Right to submit new technical data.* The Floodplain Administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the Mayor of Elkhart and may be submitted to FEMA at any time.

(3) *Annexation/detachment.* Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the City of Elkhart have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the Elkhart County and Incorporated Areas Flood Insurance Rate Map accurately represents the City of Elkhart boundaries, include within such notification a copy of a map of the City of Elkhart suitable for reproduction, clearly showing the new corporate limits or the new area for which the City of Elkhart has assumed or relinquished floodplain management regulatory authority.

(F) *Variance procedures.*

(1) The Board of Zoning Appeals (the Board), as established by Common Council of Elkhart, shall hear and decide appeals and requests for variances from requirements of this subchapter.

(2) The Board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this subchapter. Any person aggrieved by the decision of the Board may appeal such decision to the Elkhart County Circuit or Superior Court.

(3) In considering such applications, the Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this subchapter, and:

- (a) The danger to life and property due to flooding or erosion damage;
- (b) The danger that materials may be swept onto other lands to the injury of others;
- (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) The importance of the services provided by the proposed facility to the community;
- (e) The necessity to the facility of a waterfront location, where applicable;
- (f) The compatibility of the proposed use with existing and anticipated development;
- (g) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (h) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (i) The expected height, velocity, duration, rate of use, and sediment of transport of the floodwaters at the site; and
- (j) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(4) A written report addressing each of the above factors shall be submitted with the application for a variance.

(5) Variances from the provisions of this subchapter shall only be granted when the Board can make positive findings of fact based on evidence submitted at the hearing for the following:

- (a) A showing of good and sufficient cause;
- (b) A determination that failure to grant the variance would result in exceptional hardship as defined in §151.121; and
- (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

(6) No variance for a residential use within a floodway subject to §151.124(A)(1), § 151.124(A)(3)(a) or § 151.124(A)(4) may be granted.

(7) Any variance granted in a floodway subject to §151.124(A)(1), § 151.124(A)(3)(a) or § 151.124(A)(4) will require a permit from the Indiana Department of Natural Resources. Variances shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

(8) Variances to the provisions for flood hazard reduction of §151.124 may be granted only when a new structure is to

be located on a lot of ½ acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.

(9) Variances may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a "historic structure" and the variance is the minimum to preserve the historic character and design of the structure.

(10) Variances may be issued for new construction, substantial improvements, and other development necessary for the conduct of a functionally dependent use.

(11) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(12) Upon consideration of the factors listed above and the purposes of this subchapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this subchapter.

(13) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the flood protection grade and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(14) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request.

(Ord. 5995, passed 7-1-2024)

§ 151.124 PROVISIONS FOR FLOOD HAZARD REDUCTION.

(A) Floodplain status standards.

(1) *Floodways (riverine)*. Located within SFHAs established in § 151.122(B) are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. Under the provisions of the Flood Control Act (I.C. 14-28-1), a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing, and paving undertaken before the actual start of construction of the structure. General licenses and exemptions to the requirements of the Flood Control Act (I.C. 14-28-1 and 312 IAC 10) may apply to qualified additions/improvements to existing lawful residential structures, rural bridges, logjam removals, wetland restoration, utility line crossings, outfall projects, creek rock removal, and prospecting.

(a) If the site is in a regulatory flood way as established in § 151.122(B), the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for approval for construction in a floodway, provided the activity does not qualify for a general license or exemption (I.C. 14-28-1 or 312 IAC 10).

(b) No action shall be taken by the Floodplain Administrator until approval has been granted by the Indiana Department of Natural Resources for construction in the floodway, or evidence provided by an applicant that the development meets specified criteria to qualify for a general license or exemption to the requirement of the Flood Control Act. The floodplain development permit shall meet the provisions contained in this section.

(c) The floodplain development permit cannot be less restrictive than an approval issued for construction in a floodway issued by the Indiana Department of Natural Resources, or the specified criteria used to qualify for a general license or exemption to the Flood Control Act for a specific site/project. However, a community's more restrictive regulations (if any) shall take precedence.

(d) In floodway areas identified on the FIRM, development shall cause no increase in flood levels during the occurrence of the base flood discharge without first obtaining a conditional letter of map revision and meeting requirements of § 151.123(E)(1). A conditional letter of map revision cannot be issued for development that would cause an increase in flood levels affecting a structure and such development should not be permitted.

(e) In floodway areas identified by the Indiana Department of Natural Resources through detailed or approximate studies but not yet identified on the effective FIRM as floodway areas, the total cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not adversely affect the efficiency of, or unduly restrict the capacity of the floodway. This adverse effect is defined as an increase in the elevation of the regulatory flood of at least 0.15 of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the natural or pre-floodway condition as proven with hydraulic analyses.

(f) For all projects involving channel modifications or fill (including levees) the city shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR 65.12.

(2) *Fringe (riverine)*. If the site is in the fringe (either identified on the FIRM or identified by the Indiana Department of Natural Resources through detailed or approximate studies and not identified on a FIRM), the Floodplain Administrator may issue the local floodplain development permit provided the provisions contained in this section have been met.

(3) *SFHAs without established base flood elevation and/or floodways/fringes (riverine).*

(a) 1. *Drainage area upstream of the site is greater than one square mile.* If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than 1 square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

2. No action shall be taken by the Floodplain Administrator until written approval from the Indiana Department of Natural Resources (approval for construction in a floodway, letter of authorization, or evidence of general license qualification) or a floodplain analysis/regulatory assessment citing the 1% annual chance flood elevation and the recommended flood protection grade has been received from the Indiana Department of Natural Resources.

3. Once the Floodplain Administrator has received the proper written approval, evidence of general license qualification, or floodplain analysis/regulatory assessment approving the proposed development from the Indiana Department of Natural Resources, a floodplain development permit may be issued, provided the conditions of the floodplain development permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in this section have been met.

(b) *Drainage area upstream of the site is less than 1 square mile.*

1. If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than 1 square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and 1% annual chance flood elevation for the site.

2. Upon receipt, the Floodplain Administrator may issue the local floodplain development permit, provided the provisions contained in this section have been met.

(4) *SFHAs not identified on a map.*

(a) If a proposed development site is near a waterway with no SFHA identified on a map, the Floodplain Administrator shall verify the drainage area upstream of the site. If the drainage area upstream of the site is verified as being greater than 1 square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

(b) No action shall be taken by the Floodplain Administrator until written approval from the Indiana Department of Natural Resources (approval for construction in a floodway, letter of authorization, or evidence of general license qualification) or a floodplain analysis/regulatory assessment citing the 1% annual chance flood elevation and the recommended flood protection grade has been received from the Indiana Department of Natural Resources.

(c) Once the Floodplain Administrator has received the proper written approval, evidence of general license qualification, or floodplain analysis/regulatory assessment approving the proposed development from the Indiana Department of Natural Resources, a floodplain development permit may be issued, provided the conditions of the floodplain development permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in this section have been met.

(B) *General standards.* In all areas of special flood hazard, the following provisions are required:

(1) All new construction, reconstruction or repairs made to a repetitive loss structure, and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(2) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.

(3) New construction and substantial improvements must incorporate methods and practices that minimize flood damage.

(4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be located at/above the FPG for residential structures. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG for non-residential structures. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.

(5) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(8) Any alteration, repair, reconstruction, or improvements to a structure that is in compliance with the provisions of this subchapter shall meet the requirements of "new construction" as contained in this subchapter.

(9) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including

manufactured home parks and subdivisions) which are greater than the lesser of 50 lots or 5 acres.

(10) Where an existing or proposed structure or other development is affected by multiple flood zones, by multiple base flood elevations, or both, the development activity must comply with the provisions of this subchapter applicable to the most restrictive flood zone and the highest base flood elevation affecting any part of the existing or proposed structure; or for other developments, affecting any part of the area of the development.

(11) Fill projects that do not involve a structure must be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than 3 feet horizontal to 1 foot vertical.

(12) Non-conversion agreements shall be required for all new or substantially improved elevated structures with an enclosure beneath the elevated floor, accessory structures, and open-sided shelters.

(13) Construction of new solid waste disposal facilities, hazard waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in areas of special flood hazard.

(C) *Specific standards.* In all areas of special flood hazard where base flood elevation data or flood depths have been provided, as set forth in § 151.122(B), the following provisions are required:

(1) *Building protection requirement.* In addition to the general standards described in division (B) above, structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:

(a) Construction or placement of a residential structure;

(b) Construction or placement of a non-residential structure;

(c) Addition or improvement made to an existing structure where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land). An addition and/or improvement project that is continuous in scope or time is considered as one project for permitting purposes;

(d) Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to its before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred (the costs of any proposed additions or improvements beyond restoring the damaged structure to its before damaged condition must be included in the cost);

(e) Installing a manufactured home on a new site or a new manufactured home on an existing site;

(f) Installing a travel trailer or recreational vehicle on a site for more than 180 days;

(g) Reconstruction or repairs made to a repetitive loss structure; and

(h) Addition or improvement made to any existing structure with a previous repair, addition or improvement constructed since the community's first floodplain ordinance.

(2) *Residential construction.*

(a) New construction or substantial improvement of any residential structures shall meet provisions described in division (A) above and applicable general standards described in division (B) above.

(b) In Zone A and Zone AE, new construction or substantial improvement of any residential structure shall have the lowest floor, including basement, at or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of division (C)(2)(c) below. Should fill be used to elevate a structure, the standards of division (C)(2)(d) below must be met.

(c) Fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall meet the following requirements:

1. Designed to preclude finished living space and designed to allow for the automatic entry and exit of floodwaters to equalize hydrostatic flood forces on exterior walls. Flood openings must be designed and installed in compliance with criteria set out in FEMA Technical Bulletin 1. Engineered flood openings must be designed and certified by a registered design professional (requires supporting engineering certification or make/model specific ICC-ES report), or meet the following criteria for non-engineered flood openings:

a. Provide a minimum of 2 openings on different sides of an enclosure. If there are multiple enclosed areas, each is required to meet the requirements for enclosures, including the requirement for flood openings in exterior walls (having a total net area of not less than 1 square inch for every 1 square foot of enclosed area).

b. The bottom of all openings shall be no more than 1 foot above the higher of the final interior grade (or floor) and the finished exterior grade immediately under each opening.

c. If the floor of the enclosure is below the BFE, the openings must be located wholly below the BFE.

d. If the floor of the enclosure is at or above the BFE, but below the FPG, the openings must be located wholly below the FPG.

e. Doors and windows do not qualify as openings.

f. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions.

g. Openings are to be not less than 3 inches in any direction in the plane of the wall. This requirement applies to the hole in the wall, excluding any device that may be inserted such as typical foundation air vent device.

2. The floor of such enclosed area must be at or above grade on at least 1 side.

(d) A residential structure may be constructed on a fill in accordance with the following:

1. Fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file;

2. Fill shall extend 10 feet beyond the foundation of the structure before sloping below the BFE;

3. Fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than 3 feet horizontal to 1 foot vertical;

4. Fill shall not adversely affect the flow of surface drainage from or onto neighboring properties; and

5. Fill shall be composed of clean granular or earthen material.

(e) A residential structure may be constructed using a stem wall foundation (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill). Any backfilled stem wall foundation (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill) must be backfilled with compacted structural fill, concrete, or gravel that supports the floor slab. No flood openings are required for this type of construction.

(3) *Non-residential construction.*

(a) New construction or substantial improvement of any non-residential structures (excludes accessory structures) shall meet provisions described in division (A) above and applicable general standards described in division (B) above.

(b) In Zone A and Zone AE, new construction, or substantial improvement of any commercial, industrial, or non-residential structure (excludes accessory structures) shall either have the lowest floor, including basement, elevated to or above the FPG or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of division (C)(3)(c). Should fill be used to elevate a structure, the standards of division (C)(3)(d) must be met.

(c) Fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall meet the following requirements:

1. Designed to preclude finished living space and designed to allow for the automatic entry and exit of floodwaters to equalize hydrostatic flood forces on exterior walls. Flood openings must be designed and installed in compliance with criteria set out in FEMA Technical Bulletin 1. Engineered flood openings must be designed and certified by a registered design professional (requires supporting engineering certification or make/model specific ICC-ES report), or meet the following criteria for non-engineered flood openings:

a. Provide a minimum of 2 openings on different sides of an enclosure. If more than 1 enclosed area is present, each must have openings on exterior walls (having a total net area of not less than 1 square inch for every 1 square foot of enclosed area).

b. The bottom of all openings shall be no more than 1 foot above the higher of the final interior grade (or floor) and the finished exterior grade immediately under each opening.

c. If the floor of the enclosure is below the BFE, the openings must be located wholly below the BFE.

d. If the floor of the enclosure is at or above the BFE, but below the FPG, the openings must be located wholly below the FPG.

e. Doors and windows do not qualify as openings.

f. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions.

g. Openings are to be not less than 3 inches in any direction in the plane of the wall. This requirement applies to the hole in the wall, excluding any device that may be inserted such as typical foundation air vent device.

2. The floor of such enclosed area must be at or above grade on at least 1 side.

(d) A non-residential structure may be constructed on fill in accordance with the following:

1. Shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file;

2. Shall extend 10 feet beyond the foundation of the structure before sloping below the BFE;
3. Shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than 3 feet horizontal to 1 foot vertical;
4. Shall not adversely affect the flow of surface drainage from or onto neighboring properties; and
5. Shall be composed of clean granular or earthen material.

(e) A non-residential structure may be floodproofed in accordance with the following:

1. A registered professional engineer or architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the Floodplain Administrator.

2. Floodproofing measures shall be operable without human intervention and without an outside source of electricity.

(f) A non-residential structure may be constructed using a stem wall foundation (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill). Any backfilled stem wall foundation must be backfilled with compacted structural fill, concrete, or gravel that supports the floor slab. No flood openings are required for this type of construction.

(4) *Manufactured homes and recreational vehicles.*

(a) These requirements apply to all manufactured homes to be placed on a site in the SFHA:

1. The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

2. Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in division (C)(2)(c) above.

3. Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.

(b) Recreational vehicles placed on a site in the SFHA shall either:

1. Be on site for less than 180 days and be fully licensed and ready for use on a public highway (defined as being on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or

2. Meet the requirements for manufactured homes as stated earlier in this section.

(5) *Accessory structures.* Within SFHAs, new construction or placement of an accessory structure must meet the following standards:

(a) Shall have a floor area of 400 square feet or less;

(b) Use shall be limited to parking of vehicles and limited storage;

(c) Shall not be used for human habitation;

(d) Shall be constructed of flood resistant materials;

(e) Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;

(f) Shall be firmly anchored to prevent flotation;

(g) Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG.

(h) Shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in division (C)(3)(a); and

(i) Shall not have subsequent additions or improvements that would preclude the structure from its continued designation as an accessory structure.

(6) *Free-standing pavilions, gazebos, decks, carports, and similar development.* Within SFHAs, new construction or placement of free-standing pavilions, gazebos, decks, carports, and similar development must meet the following standards:

(a) Shall have open sides (having not more than one rigid wall);

(b) Shall be anchored to prevent flotation or lateral movement;

(c) Shall be constructed of flood resistant materials below the FPG;

(d) Any electrical, heating, plumbing and other service facilities shall be located at/above the FPG; and

(e) Shall not have subsequent additions or improvements that would preclude the development from its continued designation as a free-standing pavilion, gazebo, carport, or similar open-sided development.

(7) *Above ground gas or liquid storage tanks.* Within SFHAs, all newly placed aboveground gas or liquid storage tanks shall meet the requirements for a non-residential structure as required in division (C)(3) above.

(D) *Standards for subdivision and other new developments.*

(1) All subdivision proposals and all other proposed new development shall be consistent with the need to minimize flood damage.

(2) All subdivision proposals and all other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(3) All subdivision proposals and all other proposed new development shall have adequate drainage provided to reduce exposure to flood hazards.

(4) In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and all other proposed new development (including manufactured home parks and subdivisions), which are greater than the lesser of 50 lots or 5 acres.

(5) All subdivision proposals shall minimize development in the SFHA and/or limit density of development permitted in the SFHA.

(6) All subdivision proposals shall ensure safe access into/out of SFHA for pedestrians and vehicles (especially emergency responders).

(7) Streets, blocks lots, parks and other public grounds shall be located and laid out in such a manner as to preserve and utilize natural streams and channels. Wherever possible, the floodplains shall be included within parks or other public grounds.

(E) *Standards for critical facilities.* Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

(Ord. 5995, passed 7-1-2024)

WETLANDS CONSERVATION OVERLAY DISTRICT

§ 151.145 GENERAL PROVISIONS.

(A) *Purpose.* The intent of this section is to prevent harm to the human and natural environment from water pollution, increased flooding and loss of ground water supply that may result when natural wetlands are drained, filled or otherwise subjected to uses incompatible with public health, safety and welfare. This purpose is consistent with the Comprehensive Plan of the city. The provisions of this section are intended to achieve this purpose by:

- (1) Providing a method of identifying wetlands within the planning and zoning jurisdictions of the city;
- (2) Establishing regulations that permit reasonable economic use of wetlands consistent with sound wetland conservation practices;
- (3) Guiding development adjacent to wetlands to prevent harm to wetlands and protect property from potential flood damage; and
- (4) Establishing procedures to assure compliance with the Federal Clean Water Act (33 U.S.C. §§ 1251*et seq.*, as amended) and with state regulations that may affect wetlands.

(B) *Definitions.* Words or terms used in this section should be interpreted by their common-sense meanings unless more specifically defined otherwise. The definitions and rules of construction that apply to the other parts of the zoning ordinance shall apply to this section unless a different definition or rule is provided for in this division.

ADVERSE IMPACT. Anything that would destroy, harm, impair, diminish or degrade the value or utility of a wetland for pollution control, flood preservation, ground water recharge or habitat for fish and wildlife.

FILL MATERIAL. Any solid material that displaces water or reduces water holding capacity.

HYDROPHYTIC VEGETATION. Plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. Plant species of this type are listed in: P.B. Reed, Jr., National List of Plant Species that Occur in Wetlands (North Central - Region 3), Biological Report 88 (24) Washington, D.C.: U.S. Fish and Wildlife Services, 1988.

NATIONAL WETLANDS INVENTORY (NWI). A series of maps produced by the U.S. Fish and Wildlife Services showing the location and classification of wetlands in standard topographic areas. Such maps, as amended, are hereby incorporated into this chapter by reference.

NATURAL WATER STORAGE CAPACITY. The maximum volume of water a wetland can contain up to its ordinary high water mark without alterations to its natural grade or contour.

ORDINARY HIGH WATER MARK. A mark delineating permanent or periodic inundation or prolonged soil saturation sufficient to support hydrophytic vegetation. In general terms, it indicates the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape.

PERIODIC MAINTENANCE. Ordinary inspection and repair of facilities accessory to use of a wetland. This includes erosion control and removal of silt and non-hydrophytic vegetation in ways that do not substantially disturb hydrophytic plant and animal life. **PERIODIC MAINTENANCE** does not include any modification of a wetland's contour or natural water storage capacity.

PRACTICABLE ALTERNATIVE. An alternative in terms of the size or location of a proposed development that would accomplish the development's basic purpose and avoid or have less adverse impact on a wetland.

UNIFIED FEDERAL METHOD FOR WETLAND DELINEATION. A standard method for identifying wetlands and delineating their boundaries as described in: Federal Interagency Committee for Wetland Delineation, Federal Manual for Identifying and Delineating Jurisdictional Wetlands, (Washington, D.C.: U.S. Government Printing Office, 1989).

(C) *Wetlands Overlay Districts.*

- (1) The Wetland Districts that are established by this subchapter are overlay districts.
- (2) No development may take place in a Wetland District without a zoning clearance/building permit.
- (3) Only uses that are permitted by right or by special exception may be placed in a Wetland District. All other uses are prohibited.

(D) *Application.*

- (1) This subchapter does not apply to:
 - (a) Artificially-constructed ponds, drainage ditches, storm water retention/detention basins, gravel pits, stone quarries or waste treatment lagoons, except to the extent that such uses are restricted or prohibited in Wetland Districts;
 - (b) Wetlands or portions thereof for which federal or state permits for fill were issued prior to the extension of the planning and zoning jurisdiction of the city over the areas for which the permits were issued; or to
 - (c) Any area or use excluded from local planning and zoning jurisdiction by federal or state law.
- (2) Notwithstanding division (D)(1)(b), if a wetland has been divided by the discharge or placement of fill material, the separated parts shall be considered a single wetland.
- (3) Wetlands of different National Wetlands Inventory (herein the "NWI") classification that are contiguous to one another shall be considered a single wetland.
- (4) In the event of a conflict between the provisions of this subchapter and those of any other section of the zoning ordinance that governs the management of flood hazard areas, this section shall take precedence.

(E) *Coordination with federal and state agencies.* No application made under this subchapter for a zoning clearance/building permit, shall be accepted unless the applicant first obtains all necessary federal and state permits, approvals, waivers or letters of non-applicability.

(1979 Code, § 151.115) (Ord. 4370, passed 7-20-1998) Penalty, see § 151.999

§ 151.146 WETLAND DISTRICT.

(A) *Designation.*

- (1) A Wetland District is any wetland area other than those exempted in §151.145(D)(1) that is at least 1 acre in size that appears on the most current NWI map or maps published by the U.S. Fish and/or Wildlife Services for areas subject to the planning and zoning jurisdiction of the city. The most current edition of the applicable NWI map or maps and any subsequent revisions thereto are hereby adopted by reference and declared to be part of this section. A Wetland District must also meet the standards of the Unified Federal Method for Wetland Delineation, applied according to the procedures set forth in this subdivision.
- (2) The NWI shows only the general location of wetlands. Precise delineation shall be made by the applicant for a zoning clearance/building permit through the performance of a full field survey applying the wetland delineation methodology in affect at the time of application. Areas containing hydric soils as mapped and designated by the Natural Resource Conservation Service; or soils containing hydric inclusions must be assessed via full field survey, as well. All permit applications for development in a Wetland District or areas containing soils that may harbor wetlands shall be accompanied by a scaled drawing showing the district boundary. The applicant shall document the results of the boundary survey to the

Planning and Zoning Office. The documentation shall include:

- (a) Statement of qualifications of individual(s) and/or firm conducting the boundary delineation;
- (b) Certified copy of the boundary delineation; and
- (c) All other documentation submitted to the Indiana Department of Environmental Management (IDEM) and/or the U.S. Army Corps of Engineers (COE).

(d) Documentation shall be submitted to the city no later than the date of submittal to IDEM and/or COE. The Planning and Zoning staff may review the documentation to determine its general accuracy and completeness.

(3) The city, through the Planning and Zoning Office, may forward to IDEM and/or COE any recommendation, question or concern regarding an application for any state and/or federal permits that pertain to the area described in the application for the zoning clearance/building permit.

(4) In applying for a zoning clearance/building permit, the applicant consents to allowing the Planning and Zoning Office to enter upon the applicant's land to gather information to obtain a basis for a recommendation described at division (A)(3).

(B) *Permitted uses.* The following uses are permitted by right, provided they do not involve erecting a building or structure, opening an excavation, depositing or discharging fill material, dredging, earth moving, extending existing drainage systems or creating new drainage systems:

(1) Agriculture uses, except animal feed lots, but including general farming, grazing, gardening, sustained-yield forestry in accordance with a management plan approved by the State Forester, nurseries and the erection and maintenance of wire agricultural fences;

(2) Hunting, trapping and fishing, where not otherwise prohibited by law;

(3) Parks, when left in a natural state, wildlife and natural preserves, recreational uses, including swimming, boating and natural-surface hiking and bridle paths, and educational and scientific uses;

(4) Uses incidental to the enjoyment of residential properties, provided that the impact of such uses does not affect more than ½ acre of wetlands (Nationwide Permit 29); and

(5) Maintenance and repair of existing streets, roads, highways and public utilities; provided that, the uses are not enlarged and that such maintenance or repair is done in a way that minimizes or avoids adverse impacts to wetlands.

(C) *Special exceptions.* The following special exceptions may be permitted upon approval by the Board of Zoning Appeals in accordance with § 151.285 of the Zoning Ordinance; such special exceptions are expressly contingent upon the receipt of all required federal and state permits:

(1) Structures accessory to permitted uses, provided that they do not significantly obstruct circulation of water in the wetland, threaten water quality, create erosion hazards or disrupt significant wildlife habitat. The structures include, but are not limited to:

- (a) Temporary structures not intended for human habitation or sheltering livestock;
- (b) Boat anchorages, moorings and piers;
- (c) Walkways, benches, informational displays, directional signs, foot bridges and observation decks; and
- (d) Residential wells.

(2) Enhancement of wetlands to improve wildlife habitat in accordance with a plan approved by the I.D.N.R.

(3) Public infrastructure, other than buildings and electrical substations, but including public utilities, streets, roads and bridges, provided that:

- (a) There is no practicable alternative route outside the wetland;
- (b) The public need cannot be met by existing facilities of the modification thereof;

(c) The proposed facility is designed to permit the unimpeded circulation of water in the wetland, control runoff from paved surfaces in accordance with division (C)(4), and otherwise minimize adverse impacts on the wetland;

(d) Any filling, excavating or draining must be necessary for the construction and maintenance of the proposed facility and done in a way that minimizes adverse impacts on the wetland;

(e) Erosion control measures are taken in accordance with the U.S. Department of Agriculture Soil Conservation Service Field Office Technical Guide; and

(f) Underground utilities are installed in watertight conduits; and

(g) Such activities comply with the General and Specific conditions of Nationwide Permits 12 and 14.

(4) Storm water retention/detention, provided that there is no practicable alternative site outside a wetland and that a wetland utilization plan is prepared by the applicant and approved by the Board of Zoning Appeals listing steps for monitoring surface and subsurface water quality and a schedule of periodic maintenance of the wetland while in use as a

storm water retention/detention facility; and further provided that net flow does not exceed the wetland's natural water storage capacity and that the storm water undergoes pre-treatment to prevent silt, debris and chemical pollutants from entering the wetland.

(a) No special exception for storm water retention/detention use of a wetland shall involve decreasing the wetland's natural water storage capacity or placing more than 25% of the surface area of the retention/detention pond in the Wetland District. No retention/detention pond shall occupy more than 10% of the area of a Wetland District. The natural outflow from the Wetland District shall not be changed so as to increase or decrease the normal pool elevation. Minor alteration of a wetland's contour may be permitted for the installation of facilities accessory to storm water inflow and outflow, provided that it does not significantly alter the wetland's pre-existing hydrology.

(b) Pre-treatment measures may include sedimentation basins, vegetated swales and buffer strips. Rip-rap made of natural rock may be used only where vegetation cannot control erosion. Storm drains may not discharge directly into a wetland. Lining of swales with paving materials shall not be permitted.

(c) No retention/detention facility shall be constructed within a forested wetland, but overflow into a forested wetland may be permitted.

(d) No more than 1 retention/ detention pond may be placed within a single Wetland District.

(e) Any portion of a Wetland District used for storm water retention/detention shall remain part of the Wetland District.

(f) No special exception shall be granted for storm water retention/detention in a wetland subject to divided ownership unless the applicant first obtains and records an easement of use from the owners of all other affected properties.

(g) A constructed outflow to a regulated county drain requires approval of the county drainage board or appropriate joint drainage board and/or the county surveyor.

(5) Maintenance of existing boat channels, provided that the applicant has received a permit from the I.D.N.R. under I.C. 14-26-2, as amended, (Lakes Preservation) and that dredging will be limited as follows:

(a) Dredging shall be located so as to minimize adverse impacts on vegetation;

(b) Dredging shall not adversely change water circulation;

(c) The size of the dredging area shall be limited to the minimum required for boat ingress and egress; and

(d) Dredged material shall not be disposed of within any lake, wetland or flood hazard area or in any manner that is unlawful or would constitute a public or private nuisance.

(e) Activities shall comply with all other general and specific conditions of Nationwide Permits 1, 2, 3, 9, 10 and 22.

(1979 Code, § 151.116) (Ord. 4370, passed 7-20-1998) Penalty, see § 151.999

§ 151.147 GENERAL DEVELOPMENT STANDARDS.

In order to guide development outside a Wetland District to prevent harm to wetlands inside the district, the following standards are established:

(A) No building, structure, street, road, alley, driveway parking area or paved surface shall be placed closer than 75 feet from the boundary of a Wetland District.

(B) No septic system shall be installed closer than 150 feet from the boundary of a Wetland District.

(C) The lowest ground floor elevation of all buildings or additions to existing buildings within 50 feet of the boundary of a Wetland District shall be at least two feet above the ordinary high water mark.

(D) No soil storage pile shall be placed nearer than 25 feet from the boundary of a Wetland District. Erosion from all soil storage piles placed within 200 feet of the boundary of a Wetland District shall be controlled by placing straw bales, filter fence or other effective containment barriers around the piles. Soil loss from any construction site within 200 feet of the district boundary shall be controlled by measures described in the U.S. Department of Agriculture Soil Conservation Service Field Office Technical Guide.

(E) No storm water runoff from a development shall be directed into a Wetland District except as provided in §151.146(C) (4).

(1979 Code, § 151.117) (Ord. 4370, passed 7-20-1998) Penalty, see § 151.999

§ 151.148 NONCONFORMING USES.

Any building, structure or other use that does not conform to §151.147 is a non-conforming use and is subject to the following provisions:

(A) A non-conforming use may be altered, enlarged or extended on a 1-time-only basis, provided that:

(1) The lowest ground floor elevation of any addition to an existing building is at least 2 feet above the ordinary high

water mark;

(2) The proposed alterations, enlargements or extensions, excluding improvements made solely to comply with state or local health, sanitary or safety codes or to assure safe living conditions, do not increase the value of the use by more than 40% of its pre-improvement market value, excluding the value of the land; and

(3) No extension of a non-conforming use that does not conform to the setback requirements of §151.147(A) shall be constructed in the direction of a Wetland District.

(B) A non-conforming use that is damaged by accident, flood, fire, explosion, natural disaster or the public enemy may be restored to its original dimensions and condition provided the damage does not reduce the value of the use, excluding the value of the land, by more than 40% of its pre-damaged value.

(1979 Code, § 151.118) (Ord. 4370, passed 7-20-1998) Penalty, see § 151.999

§ 151.149 BOARD OF ZONING APPEALS.

(A) The Board of Zoning Appeals may grant variances from the provisions of this subchapter, provided the applicant establishes that:

(1) The grant of the proposed variance complies with I.C. 36-7-4-918.4 as amended and § 151.287(A) and (B) of the Zoning Ordinance; and that

(2) The grant of the proposed variance will not adversely affect the water quality, volume of ground water supply or flood storage capacity of the Wetland District.

(B) Variances shall give the minimum relief necessary to alleviate the applicant's hardship.

(C) No variances shall permit storm water runoff from a street, parking area or roof of an industrial or commercial building to be directed into a Wetland District.

(D) Variances and special exceptions may be granted contingent upon receipt by the Planning and Zoning Staff of all required federal and state permits.

(E) No variance or special exception shall allow construction or dredging to disturb waterfowl breeding areas during breeding season or fish spawning areas during spawning season.

(F) Whenever a variance or special exception is granted for a use that may alter the grade or contour of land in a Wetland District, the Board of Zoning Appeals shall require that, upon completion of the proposed construction, the applicant will restore the land as closely as possible to its original grade and contour.

(G) No variance or special exception shall allow a net loss of wetland area. Where all or part of a wetland in a Wetland District would be destroyed or substantially altered by a proposed development, the Board of Zoning Appeals shall require mitigation by the applicant and his or her successors in interest according to the following standards:

(1) Acre-for-acre replacement of the same or a better type of wetland providing the environmental benefits that would be lost because of the proposed development.

(2) Replacement wetlands shall be located reasonably close to the Wetland District, as determined by the Board of Zoning Appeals, in which the losses are sustained and shall become part of the District, if practical.

(3) Periodic maintenance for replacement wetlands shall be carried out by the applicant for a minimum of 3 years to control erosion, remove nuisance vegetation and assure the establishment and survival of predominantly hydrophytic vegetation.

(4) The Board of Zoning Appeals may require the applicant to post a bond or other performance guarantee sufficient to assure the city the satisfactory completion of replacement wetlands.

(5) If replacement of the same or better type of wetland is not possible adjacent to the Wetland District in which the projected losses would be sustained, the Board of Zoning Appeals may consider replacement at ratios greater than one to one of a lesser quality wetland adjacent to the Wetland District.

(6) The Board of Zoning Appeals may require replacement of wetland losses of less than 1/3 of an acre even when the applicant has received federal or state approval for the proposed construction without mitigative conditions.

(7) The authorization of replacement wetlands shall not be used as a means of permitting avoidable losses of natural wetlands.

(1979 Code, § 151.119) (Ord. 4370, passed 7-20-1998; Am. Ord. 4683, passed 7-1-2002)

§ 151.150 ENFORCEMENT.

In addition the enforcement powers and penalties for violation prescribed in §§151.280 *et seq.*, the Planning and Zoning Staff, Plan Commission or Board of Zoning Appeals, pursuant to I.C. 36-7-4-1000 *et seq.* (Local Planning and Zoning -1000 Series-Remedies and Enforcement) may institute civil proceedings in a court of competent jurisdiction to compel complete

restoration of wetlands damaged in violation of this section.

(1979 Code, § 151.120) (Ord. 4370, passed 7-20-1998; Am. Ord. 4683, passed 7-1-2002)

DEVELOPMENT PLAN OVERLAY DISTRICT

§ 151.160 PURPOSE.

(A) The city recognizes that development, especially within certain districts or geographic areas, can have major impacts on the visual and physical character of the city. Consequently, it has established the requirement of “development plan” submittal and approval within critical specified zoning districts. These include: CBD, Central Business District; B-4, Regional Business District; OP, Office Park District; and BP, Business Park District. Within these districts, a high level of site and building plan review is required.

(B) The city further recognizes that the need for this increased level of review may not always occur within the fixed boundaries of a specific zoning district. Instead, areas of major developmental impact may occupy only a portion of a zoning district or include all or portions of several districts. These could include:

- (1) Corridors along major traffic arteries, including gateways into the city; or
- (2) A specific geographic area which due to its location, land uses, physical character or other factors significantly affects on the overall character of the city.

(C) It is the intent of this section to permit the establishment of Development Plan Overlay Districts to supplement those specified zoning districts requiring the submittal and approval of a “development plan.” The purpose of these overlay districts is to:

- (1) Encourage orderly and compatible development;
- (2) Encourage a high standard of visual quality within the district;
- (3) Protect existing and future property values;
- (4) Promote the safe flow of traffic on streets within the district and the integration of various transportation options including pedestrian, bicycle and vehicular networks; and
- (5) Protect and preserve the quality and integrity of residential neighborhoods within and adjacent to the districts.

(1979 Code, § 151.130) (Ord. 4370, passed 7-20-1998)

§ 151.161 DEFINITION.

The Development Plan Overlay District is a floating zone that may overlay a portion of an underlying zoning district or all or portions of several zoning districts. All properties located in the district undergoing modification or new construction shall be required to submit a development plan to the city’s Plan Commission for review and approval in accordance with the requirements of the Zoning Ordinance. Additional design and development standards, including site and building, may be incorporated into the district at the time of its establishment, supplementing or superseding those of the underlying zoning district and the general development standards of the Zoning Ordinance. The establishment of the Development Plan Overlay District does not affect the uses permitted by right, special exception or conditional use of the underlying zoning.

(1979 Code, § 151.131) (Ord. 4370, passed 7-20-1998)

§ 151.162 BASIC REQUIREMENTS.

A Development Plan Overlay District boundary shall encompass those properties that share a common identity due to geographic location, historic or locational significance, design characteristics (site and/or building), use, significant transportation routes or physical features, or other identified unifying characteristics. Boundaries will be determined at the time a district is created.

(1979 Code, § 151.132) (Ord. 4370, passed 7-20-1998)

§ 151.163 PROCEDURES FOR ESTABLISHING DISTRICT.

(A) *General requirements.*

(1) An application for establishing a Development Plan Overlay District shall be filed with the Planning and Zoning office at least 30 days prior to the Plan Commission meeting at which it is to be heard. A proposal to establish a District may be initiated by the Plan Commission or by a petition signed by the property owners of not less than 75% of the land to be included in the district.

(2) Since the district does not dictate land use, but only requires adherence to the development plan review process and associated design and developmental standards as specified in the Zoning Ordinance, notification shall be required only to those property owners within the proposed district. The notification shall be by legal notice in the local newspaper and

direct mailing to the affected property owners.

(B) *Preliminary review.*

(1) Preliminary review of a proposed district is required for those applications initiated by petition of property owners. Prior to filing a formal application for a district, the petitioner(s) shall submit to the Planning and Zoning office no less than 6 copies of the proposal including the following information:

- (a) A map indicating the boundaries of the proposed district;
 - (b) A narrative explaining the reason or need for creating the district;
 - (c) Whether Type I and/or Type II Design Standards will apply; and
 - (d) Additional development standards, if any, being recommended and explanation as to why they are necessary.
- (2) The Planning staff may request additional information deemed necessary for consideration of the proposed district.

(3) The Planning staff shall review the proposal for compliance with the city's Zoning Ordinance and the Comprehensive Land Use Plan. General discussions may be conducted between staff and the petitioner(s) to clarify the proposal or incorporate necessary modifications prior to filing of the formal petition.

(C) *Plan Commission action.* The Plan Commission shall conduct a public hearing on a proposed Development Plan Overlay District and forward its recommendation consisting of any conditions or modifications and the district boundary map to the City Council for final action.

(D) *City Council action.* The City Council shall make the final determination on the proposed district. Action by the Council shall be in accordance with § 151.291(B), "Map Amendment," of the City Zoning Ordinance. All development within an approved district shall comply with the procedures for development plan review, as specified in the City Zoning Ordinance, and any additional development standards incorporated at the time the district was created.

(1979 Code, § 151.133) (Ord. 4370, passed 7-20-1998)

§ 151.164 ESTABLISHED DISTRICTS.

(A) *Establishment.* The following districts are established as of the effective date of this chapter:

- (1) Cassopolis Street: Bristol Street to north city limits;
- (2) Main Street: Lusher Avenue to south city limits;
- (3) Nappanee Street: Bristol Street to south city limits;
- (4) Bristol Street: Nappanee Street to 600 feet east of Osolo Road;
- (5) C.R. 6: Between east and west city limits;
- (6) Johnson Street: St. Joseph River to Bristol Street;
- (7) C.R.17: Between north and south city limits; and
- (8) Jackson Boulevard: Main Street to Prairie Street.

(B) *Riverwalk Overlay District.* All development in these districts shall comply with Type I and Type II Design Standards except for manufacturing uses located in an M-1 or M-2 zoning district which shall not be required to comply with Type II design standards, but shall comply with the following: all structures shall present a decorative facade on the front facade facing the district street and the front 1/3 of any side facade visible from the district street or river.

(C) *Inclusions.* Each district, with the exception of the Riverwalk Overlay District, shall include the entirety of each lot(s) or non-subdivided property being developed as a single development which abuts the district street to a maximum depth of 200 feet. However, in the event a proposed development extends beyond the 200-foot depth, the entire parcel(s) being developed including that portion of the parcel(s) beyond the 200-foot depth shall be included in the development plan district, so long as any portion of the development is located within the 200-foot depth.

(1979 Code, § 151.134) (Ord. 4370, passed 7-20-1998; Am. Ord. 4533, passed 11-6-2000; Am. Ord. 5618, passed 9-11-2017) Penalty, see § 151.999

DEVELOPMENT PLAN PROCEDURES AND DESIGN CRITERIA

§ 151.175 PURPOSE.

Development within certain districts or geographic areas may have a major impact on the visual, physical and functional character of that portion of the city, or of the city as a whole. Appropriate development in these areas must serve to protect the public health, safety and welfare; preserve the natural environment; encourage efficient use of resources; promote the visual quality of the city; and minimize the burdens of new development on city services. Consequently, within those specified zoning and overlay districts the submission of development plans will be required for review and approval prior to

the issuance of any permits. The purpose of this section is to establish procedures and requirements for the review, approval and amendment of development plans.

(1979 Code, § 151.145) (Ord. 4370, passed 7-20-1998)

§ 151.176 AUTHORIZATION TO REVIEW AND APPROVE DEVELOPMENT PLANS.

(A) The Planning staff is authorized to review and approve all development plans in accordance with the procedures established herein. However, review and approval of a development plan by the Plan Commission may be required if:

(1) At the time a zoning map change is approved, the Plan Commission or City Council stipulates that a required development plan be reviewed and approved by the Plan Commission following a public hearing; or

(2) Planning staff determines that the development may have significant visual or physical impact on surrounding properties, whether developed or undeveloped, and/or existing streets.

(B) The Plan Commission will review and take action upon any appeal by an applicant of a staff decision. An appeal shall require a public hearing.

(C) The entity charged with the responsibility for reviewing a development plan, whether the Plan Commission or planning staff, shall be referred to herein as the reviewing authority.

(1979 Code, § 151.146) (Ord. 4370, passed 7-20-1998)

§ 151.177 EXEMPTIONS.

(A) The following categories of development shall be exempt from compliance with Type I and Type II Design Standards and shall not require development plan approval:

(1) Interior remodeling resulting in no increase in parking or loading requirements and no enlargement of the existing building;

(2) Reconstruction and/or reconfiguration of an existing parking lot in compliance with the city's Zoning Ordinance;

(3) The installation of a new sign or the relocation or reconfiguration of an existing sign in compliance with the city sign regulations; and

(4) Improvements as part of the general maintenance and upkeep of the property.

(B) The following categories of development shall be exempt from Type II Design Standards only and shall otherwise require development plan approval.

(1) Development on a property which has been designated a historic district by the City of Elkhart Historic Commission;

(2) Additions to an existing structure, provided that the addition is architecturally consistent with the existing structure;

(3) Roof repair or replacement; and

(4) Alteration of an existing facade which does not affect more than 25% of the square footage of the existing facade.

(1979 Code, § 151.147) (Ord. 4370, passed 7-20-1998)

§ 151.178 PRE-SUBMISSION MEETING.

A meeting between the planning staff and the developer is recommended prior to formal submittal of the development plan for review. Such a meeting allows staff to familiarize itself with the proposed development and provide information regarding the review process and required development standards.

(1979 Code, § 151.148) (Ord. 4370, passed 7-20-1998)

§ 151.179 APPLICATION FOR PRELIMINARY APPROVAL.

(A) Application for preliminary approval of a development plan shall be filed with the Planning and Zoning Office and shall include the following:

(1) Completed and signed (by all owners of record) application containing:

(a) Description of the proposed project;

(b) Any restrictive covenants to be incorporated into the development;

(c) General statement on method for disposing of on-site drainage; and

(d) Availability of city sanitary sewer and water; or if unavailable, method of service.

(2) The following number of site plans and support drawings illustrating the proposed development shall be provided by

the applicant. The plan shall represent the entire tract for which approval is being requested.

(a) Planning staff review and approval: 6 copies.

(b) Plan Commission review and approval: 15 copies.

(B) Incomplete submissions will be returned to the applicant and withheld from the review process.

(1979 Code, § 151.149) (Ord. 4370, passed 7-20-1998)

§ 151.180 CONTENTS OF DEVELOPMENT PLAN FOR PRELIMINARY APPROVAL.

The submitted development plan shall include supporting documentation, site plan and other drawings containing the following information, as may be applicable:

(A) Supporting documentation.

(1) Identification of: the number, type and square footage of structures; parcel size, proposed lot coverage by buildings and structures, number of parking spaces required and proposed; gross residential density, number and types of dwelling units, where applicable;

(2) Statement on measures to insure long term maintenance of public or common open spaces;

(3) Any restrictive covenant, declaration, written commitment or other document(s) related to the development which is intended to be recorded or included in any sale or lease agreements;

(4) Anticipated development traffic counts (daily and peak hours) and a traffic impact analysis if deemed necessary during the pre-submission meeting; and

(5) Proof of submission of curb cut and on-site drainage retention applications to the City Public Works and Utilities Department.

(B) Site plan and supporting drawings.

(1) Date, scale (written and graphic), north point, name and address of developer and name of proposed development;

(2) Legal description of the project site, including dimensioned boundaries of the tract;

(3) Existing site conditions including contours (at minimum 2-foot intervals), if necessary, water courses and drainage ways, flood plain elevations, significant vegetation and existing buildings, roads, parking areas and other improvements;

(4) Location, size and configuration of areas to be conveyed, dedicated or otherwise reserved as common open spaces, parks or other public or semi-public uses, as applicable;

(5) Existing and proposed vehicular circulation system, public and private, including dimensioned public rights-of-way and streets, private drives, parking and loading areas, intersection radii, points of access to public streets;

(6) For properties located on arterial streets, the location of existing and proposed cross-access drives interconnecting adjoining properties.

(7) Existing and proposed pedestrian circulation system, including links to public walks, nearby land uses and public transit, where applicable;

(8) Location and size of all existing and proposed buildings and proposed lot lines of development if it is to be subdivided; (Any subdivision of land shall be in compliance with the city's Subdivision Ordinance.)

(9) (a) Landscape plan in accordance with the Zoning Ordinance requirements including all screening, fences, walls and manmade design elements including, but not limited to ponds, plazas, trellises, sculpture and the like;

(b) At its discretion, staff may permit the landscape plan to be submitted and approved following the issuance of a building permit, however, a specific date for its submission must be agreed upon in writing as a condition to postponing the submission of the landscape plan.

(10) A street and/or site lighting plan indicating both vehicular and pedestrian lighting, fixture type and height, areas to be lighted and their corresponding intensity levels;

(11) Uniform signage plan for the entire development for both the site and buildings, including all necessary elevation drawings;

(12) Elevations of buildings and structures located within the proposed development;

(13) The following general information:

(a) Surfacing materials for all streets, drives, parking areas, plazas and pedestrian walks;

(b) Location of existing city water and sanitary sewer lines and points of connection;

(c) Location of all proposed fire hydrants;

(d) Location, size and shape of all storm water retention areas;

(14) Such other data or information as may be required by the Planning staff or Plan Commission for consideration of the development plan.

(1979 Code, § 151.150) (Ord. 4370, passed 7-20-1998) Penalty, see § 151.999

§ 151.181 DEVELOPMENT REQUIREMENTS FOR PRELIMINARY APPROVAL.

Preliminary approval of a proposed development plan shall be based on a determination by the reviewing authority that the development plan:

- (A) Complies with the design standards of this chapter;
- (B) Complies with the purpose of this section;
- (C) Is consistent with the stated goals and purposes of the city's Comprehensive Land Use Plan;
- (D) Adequately satisfies the following general development standards:
 - (1) Compatibility with surrounding land uses;
 - (2) Availability and coordination of water, sanitary sewer, storm drainage and utility services or facilities;
 - (3) Appropriate building separation and location, parking, site improvements (including landscaping and lighting) and signage;
 - (4) Provision of sufficient public safety access and facilities; and
 - (5) The development will not create noise, smoke, heat, glare or odor which would constitute a nuisance.
- (E) Provides for vehicular and pedestrian circulation in a manner which creates conditions favorable to the health, safety, convenience and harmonious development of the community, particularly considering the following factors:
 - (1) The extent to which the design and location of proposed street and highway access points minimize safety hazards and congestion;
 - (2) The capacity of adjacent streets and highways to safely and efficiently handle traffic projected to be generated by the development; and
 - (3) Whether streets, drives, loading and parking areas, and pedestrian walks both within and adjacent to the development are coordinated to provide a safe, efficient and integrated circulation system.

(1979 Code, § 151.151) (Ord. 4370, passed 7-20-1998) Penalty, see § 151.999

§ 151.182 DEVELOPMENT PLAN DESIGN STANDARDS - TYPE I.

The following minimum design standards shall apply to all improvements within any development plan district, except as indicated, and shall be considered in the review process by the planning staff or Plan Commission. The requirements of the underlying zoning district shall also be criteria for review. In the case of a conflict between the provisions of this section and other regulations in this chapter, the more restrictive standard shall apply, unless otherwise determined by the planning staff.

(A) *District character.* The proposed development shall be compatible with the design character of adjacent development in regard to scale and mass and shall promote the development goals and purpose of the zoning or overlay district in which it is located.

(B) *Environmental design.*

(1) It is the intention of the city to encourage the preservation of natural site amenities and to minimize the disturbance to the natural environment.

(2) Existing trees and other natural amenities shall be preserved wherever possible. The location of these features must be considered when planning common open space, building location, underground services, walks, paved areas and finished grade levels. Inquiries may be made into the means by which natural features will be protected during construction.

(3) The proposed development shall have a logical relationship to the topography of the site and adjacent property.

(4) Landscaping in the Riverwalk Overlay District shall be designed to soften the placement of buildings within the district and screen parking areas to create an overall streetscape along the Riverwalk. Landscaping standards shall be as follows:

(a) Parking areas and access drives located within 20 feet of the Riverwalk shall be screened so that vehicles are not visible from the Riverwalk. Landscape screening shall include one or more of the following treatments:

1. A 5-foot high opaque wall or fence in conjunction with shrubbery and/or trees. Fence and/or wall materials shall be compatible with facade materials used on the primary building.

2. Coniferous trees or hedges that are at least 5 feet in height.

3. An earthen berm that is at least 5 feet high in height. The earthen berm shall have vegetative ground cover.

(b) Yard areas that are adjacent to the Riverwalk shall have vegetative ground cover and include 2 or more of the following treatments:

1. Canopy trees;

2. Decorative trees;

3. Decorative bushes; and

4. Decorative fencing;.

(C) *Site development.*

(1) Structures shall be located to allow adequate light, air, and ease of entry and access by the general public and emergency personnel. The development shall conform to all applicable development standards and district regulations specified in this chapter.

(2) Riverwalk Overlay District structures shall be located to create an inviting, pedestrian-scaled "streetscape" along the Riverwalk (as amended per Ordinance No. 4533, dated November 8, 2000). For parcels within the Riverwalk Overlay that front Main Street, Jackson Boulevard, or Elkhart Avenue, the site should be designed to primarily address these streets. Consideration should still be given to creating an inviting atmosphere along the Riverwalk but these parcels must support an established street wall along these important corridors.

(D) *Vehicular circulation systems - general.* The following standards apply to all properties located within a development plan district:

(1) The number, location and dimensions of accel-decel lanes, passing blisters and entry drives, shall be evaluated on the basis of city's Public Works and Utilities standards.

(2) All public drives shall conform to the standards established by the city's Public Works and Utilities Department. Private drives shall conform to the standards of the city's Zoning Ordinance.

(3) All streets, access drives and off-street parking areas shall be paved with concrete, asphalt or other approved surfacing material to adequately provide a durable and dust-free surface.

(E) *Vehicular circulation systems - arterial streets.* The following standards apply only to properties located on an arterial street within a development plan district:

(1) In order to reduce traffic hazards and maintain the traffic carrying capacity of the arterial streets, required access control elements may include:

(a) *Cross-access agreements.* The property owner enters into an easement agreement with adjacent property owner(s) and/or the city to provide cross property access allowing multiple developments to share a common entry from the arterial street. The agreement shall be in a form approved by the reviewing authority and shall be recorded.

(b) *Frontage roads.* The property owner grants the city an easement for the construction of a parallel frontage road to connect individual developments to a common entry from the arterial street.

(c) *Temporary access drives.* Where parcels adjacent to the subject property are undeveloped, a development plan may be approved with direct access to and from the arterial street provided that the property owner delivers to the city a commitment that if at any time access becomes available through a cross access easement or frontage road connected to a common entry, the property owner will close the direct access drive.

(2) The reviewing authority may require delivery of such other commitments as it may deem necessary to control site access.

(F) *Vehicular circulation systems.* Riverwalk Overlay District parking lots shall be designed to minimize vehicular traffic along the Riverwalk. Primary structures shall be located between the Riverwalk and access drives and parking lots. Service and access drives shall not be located adjacent to the Riverwalk.

(G) *Pedestrian circulation systems.* Walkways and plazas shall be constructed to provide pedestrian circulation throughout the development separate from all vehicular drives and parking areas. Where distance separation cannot be achieved, physical separation by means approved by the reviewing authority shall be required. Pavement treatment and materials should be such that they clearly differentiate pedestrian and vehicular circulation areas. Developments located in the Riverwalk Overlay District shall provide pedestrian access between the development and the Riverwalk. Materials used to construct the pedestrian circulation systems shall be complimentary to those used in the Riverwalk.

(H) *Sanitary sewage disposal and water supply systems.* All water supply and sanitary sewage disposal systems shall comply with the requirements of the city's and state's Board of Health, as applicable.

(I) *Public or semi-public space.* All developments including public or semi-public space must contain acceptable covenants insuring adequate maintenance of these spaces.

§ 151.183 DEVELOPMENT PLAN DESIGN STANDARDS - TYPE II.

The following design standards shall apply to all improvements within any development plan district where Type II design standard review is required. These standards shall be considered in the review process by the planning staff or Plan Commission along with the requirements of the underlying zoning district and the Type I design standards. In the case of a conflict between the provisions of this section and other regulations in this chapter, the more restrictive standard shall apply, unless otherwise determined by the planning staff.

(A) *Definitions.* The following definitions pertain to Type II design standards:

ARCADE. A permanently affixed covered wall composed of rigid roofing material supported by vertical columns extending along a facade of a building.

CANOPY. A roof-like cover attached to a building generally of a material different from that of the building and which projects from the wall of the building.

CORNICE. Exterior trim on a structure at the meeting of the roof and wall consisting of architectural elements including bed molding, soffit, fascia and crown molding.

FACADE. Any exterior wall of a building.

MANSARD ROOF. A roof having a double slope on all sides, the lower slope being nearly vertical and the upper slope nearly horizontal.

MASS. The three dimensional volume of a building.

PARAPET. A wall which extends above the plane of the adjacent roof.

PITCH. The slope of a roof expressed as a ratio of vertical distance (rise) over horizontal distance (run).

PORTICO. A porch or covered walk at a building entrance or exit consisting of a roof supported by columns.

PRIMARY FACADE. Any facade of a building at least 50% of which is visible from a public street, the Riverwalk or from a customer parking lot for that building.

RELIEF. The projection of shapes and forms from a flat surface.

TRELLIS. An open grating or lattice work of either metal or wood.

WING WALL. A subordinate wall, one end of which is built against an abutment, usually acting as support for the abutment and as a retaining wall.

(B) *Facade standards.* All primary facades of a building shall be designed with consistent architectural style, detail and trim features. Primary facades of accessory structures have detail, trim features, and an architectural style that is consistent with the primary building.

(1) The horizontal lengths and curves of exterior facades shall be interrupted by recesses and projections. Exterior facades shall be designed to employ the following design treatments;

(a) Buildings in excess of 10,000 square feet (based upon footprint not total square footage):

1. No uninterrupted horizontal length or curve of a non-arcaded facade shall exceed 100 linear feet.
2. No uninterrupted horizontal length or curve of an arcaded facade shall exceed 120 linear feet. Varied lengths and curves are preferred.
3. Projections and recesses shall have a minimum depth of 32 inches.
4. Projections and recesses shall have a minimum width of 48 inches.

(b) Buildings of less than 10,000 square feet (based upon footprint, not total square footage):

1. No uninterrupted horizontal length or curve of a non-arcaded facade shall exceed 50 linear feet.
2. No uninterrupted horizontal length or curve of an arcaded facade shall exceed 80 linear feet.
3. Projections and recesses shall have a minimum depth of 8 inches.
4. Projections and recesses shall have a minimum width of 24 inches.

(2) Each primary facade shall incorporate a minimum of 3 of the following design treatments from subdivisions (a) through (k) hereof and at least one from items (1) through (n) hereof within 50% of its area for buildings in excess of 10,000 square feet, and within 33% of its area for buildings of less than 10,000 square feet.

(a) Arcades with a minimum width of 8 feet clear for buildings in excess of 10,000 square feet and 6 feet clear for

buildings of less than 10,000 square feet;

- (b) Display windows;
- (c) Color banding through the use of colored exterior building materials or paint;
- (d) Canopies or porticos;
- (e) Roofs which extend (overhang) at least 8 inches beyond the wall;
- (f) Sculpted art work;
- (g) Raised cornice parapets over doors;
- (h) Arches;
- (i) Towers;

(j) Landscaping along a primary facade in excess of landscaping otherwise required by this chapter; (The additional landscaping shall be of sufficient quantity to meet the intent of a separate design treatment.)

- (k) Color change;
- (l) Change in the exterior building material; and
- (m) Vertical or horizontal banding of architectural (not color) features.

(C) *Roof standards.* Roof features shall be in scale with the building and complement the character of adjacent buildings. Roofs shall comply with the following standards:

(1) The roof edge of each primary facade shall have at least one vertical change of at least 3 feet from the predominate roof design. Roof mounted mechanical equipment shall be concealed through the use of parapet walls or enclosures with an architectural and design style consistent with the parent building.

(2) Each roof shall incorporate at least 2 of the following design elements:

- (a) Overhangs of not less than 2 feet beyond the supporting walls with a minimum fascia of 8 inches.
- (b) Multiple plane slopes on each primary facade;
- (c) Three-dimensional cornice treatment which is at least 12 inches in height and contains at least 3 reliefs; or
- (d) Vertical roof changes with a minimum change in elevation of 2 feet other than the vertical roof changes required above.

(3) Roofing material shall be constructed of durable high quality material. Use of the following types of roofing materials and designs is prohibited, except as noted:

- (a) Asphalt shingles, except laminated 25 year architectural grade asphalt shingles or a higher grade of asphalt shingles;
- (b) Mansard roofs and canopies with a vertical distance of less than 8 feet or an angle of less than 25 degrees or an angle greater than 70°;
- (c) Roofs with less than or equal to a 2 to 12 pitch unless full parapet coverage is used; and
- (d) Back-lit awnings used as a mansard or canopy roof.

(D) *Material standards.*

(1) Exterior building colors and materials shall be integrated into a comprehensive design style for the building. The following materials shall be prohibited:

- (a) Smooth concrete masonry units;
- (b) Stone construction with a rubble appearance; and
- (c) Sheet plywood and other similar paneling products used as exterior building materials.

(2) All facades which face roadways, parking areas or residential districts shall utilize vinyl or aluminum siding for no more than 50% of the facade and shall utilize corrugated metal for no more than 25% of the facade.

(E) *Parking structure standards.* A minimum of 60% of the area of any primary facade of a parking structure or covered parking facility shall be composed of at least 2 of the following elements.

(1) Transparent windows, with clear or lightly-tinted glass, where businesses are located within the parking structure, at street level along a primary facade of the parking structure;

- (2) Display windows;
- (3) Decorative metal grille-work or similar detailing which provides texture and partially and/or fully covers the parking

structure opening(s);

- (4) Art or architectural treatment such as sculpture, mosaic, glass block, opaque art glass or relief work;
- (5) Vertical trellis;
- (6) Landscaping; or
- (7) An entryway plaza which complies with all entryway standards.

(1979 Code, § 151.153) (Ord. 4370, passed 7-20-1998; Am. Ord. 4533, passed 11-6-2000; Am. Ord. 5618, passed 9-11-2017) Penalty, see § 151.999

§ 151.184 PRELIMINARY REVIEW AND APPROVAL PROCEDURE.

(A) *Planning staff review.* For those development plans not designated for review by the Plan Commission, the following procedure shall be followed:

(1) Review by the planning staff may be conducted without a public hearing. Plans will be reviewed in accordance with a schedule adopted by the staff.

(2) The development plan shall be reviewed by the planning staff with input from other city departments, government agencies or public utilities as deemed necessary to insure compliance with the requirements of this chapter and any other applicable, codes, regulations and ordinances.

(3) In the event that Type II Design Standards apply, the development plan shall be reviewed by the Plan Commission Architectural Review Committee. The Architectural Review Committee shall issue an advisory opinion to the planning staff on whether the Type II Design Standards have been met. The planning staff may adopt or reject the Architectural Review Committee opinion in rendering its decision to grant or deny preliminary approval of the development plan.

(4) Staff may request that the applicant attend any review meetings to facilitate the review and approval process.

(5) Review of a development plan may be continued to permit resolution of outstanding issues, however, staff must render a decision within 45 days of submission of the development plan, unless the applicant agrees to extend this period.

(6) Following its review planning staff may approve, approve with modifications or conditions, or deny preliminary approval. The decision shall be in writing and shall include written reasons for the actions taken and shall be signed by a member of the planning staff.

(a) If approved with no changes the preliminary approval shall be considered as final approval.

(b) If approved with conditions, preliminary approval shall be for a period of 1 year from the date of approval, unless the applicant, prior to the expiration of the 1-year period, shall have applied for and received the Planning staff's approval for an extension to obtain final approval. If by the expiration of the initial 1 year period, or during any period of extension approved by the Planning Staff, the applicant does not obtain final approval of all or part of the area included in the development plan for which preliminary approval has been granted, then the preliminary approval shall lapse and be considered null and void.

(c) If preliminary approval is denied, a new application must be submitted for any subsequent request for development plan approval on the property.

(7) The planning staff shall send notice of its decision to the applicant and make the notice available to other interested parties upon request. The notice shall indicate whether final approval of the development plan is required. Notice shall be furnished within 5 working days after a decision has been rendered by the planning staff.

(B) *Plan Commission review.* In the event Plan Commission review and approval of a development plan is required as a condition of a zoning map change or by staff determination, the following procedure shall apply:

(1) An application for preliminary approval with the appropriate filing fee shall be submitted to the Planning and Zoning Office at least 30 days prior to the Plan Commission meeting at which it is to be reviewed.

(2) The planning staff shall review the development plan prior to the meeting at which the plan is to be heard and provide written findings of fact and a recommendation.

(3) In the event that Type II Design Standards apply, the development plan shall be reviewed by the Plan Commission Architectural Review Committee. The Architectural Review Committee shall issue an advisory opinion to the Plan Commission on whether the Type II Design Standards have been met. The Plan Commission may adopt or reject the Architectural Review Committee opinion in rendering its decision to grant or deny preliminary approval of the development.

(4) The Plan Commission shall conduct a public hearing prior to taking any action. At least 10 days prior to the hearing the Plan Commission staff shall have a legal notice of the hearing published in the local newspaper and a notice sent by regular mail to all property owners of record located within 300 feet of the proposed development.

(5) Following the public hearing the Plan Commission shall determine if the proposed development plan complies with the requirements of this chapter.

(6) Unless review of the development plan is tabled the Plan Commission shall either approve, with or without conditions, or deny preliminary approval of the proposed development plan and enter written findings in accordance with such decision, which shall be signed by the President of the Plan Commission.

(a) If approved with no changes, the preliminary approval shall be considered as final approval.

(b) If approved with conditions, preliminary approval shall be for a period of 1 year from the date of approval, unless the applicant, prior to the expiration of the 1-year period, shall have applied for and received the Plan Commission's approval for an extension to obtain final approval. If by the expiration of the initial 1-year period, or during any period of extension approved by the Plan Commission, the applicant does not obtain final approval of all or part of the area included in the development plan for which preliminary approval has been granted, then the preliminary approval shall lapse and be considered null and void.

(c) If preliminary approval is denied, a new application must be submitted for any subsequent request for development plan approval on the subject property.

(7) In rendering its decision, the Plan Commission shall take into consideration all pertinent information presented by the Planning staff, the applicant, the Architectural Review Committee, other city departments, boards and commissions, other governmental agencies and the general public.

(8) The Plan Commission shall send notice of its decision and written findings to the applicant and make such notice available to other interested parties upon request. The notice shall indicate whether final approval is required and whether the Plan Commission intends to retain authority over final approval. Notice shall be furnished within 5 working days after a decision has been rendered by the Plan Commission.

(1979 Code, § 151.154) (Ord. 4370, passed 7-20-1998)

§ 151.185 FINAL APPROVAL OF DEVELOPMENT PLANS: AUTHORITY AND PROCEDURE.

(A) Authority.

(1) The planning staff shall have the authority to grant final approval of a development plan, except in those instances in which the Plan Commission has retained authority.

(2) Final approval shall not require a public hearing, however, the Plan Commission may, if it deems necessary, require a public hearing for the final approval of a development plan over which it has retained authority.

(B) *Procedure.* The applicant shall submit the final development plan with all revisions, additions or deletions as prescribed in the preliminary plan approval to the Planning and Zoning Office. The proposed final plan may include less than the entire area for which preliminary approval was granted. In the event final approval is granted for only a portion of the development plan, the applicant thereafter will not be obligated to adhere to any time limitations for requesting final approval of the remainder of the development plan.

(1) Where final review and approval have been delegated to the planning staff:

(a) Staff shall review the final development plan to insure that the conditions specified at preliminary approval have been satisfied.

(b) A written notice of action, including the reasons therefor, shall be signed by the Planning staff and provided to the applicant and to other interested parties upon request. Notice shall be furnished within 5 working days after a decision has been rendered by the planning staff.

(2) Where final review and approval has been retained by the Plan Commission:

(a) The final development plan shall be submitted at least 30 days prior to the meeting at which the plan will be discussed.

(b) If the Plan Commission has determined that a public hearing is required then the appropriate filing fee shall be paid.

(c) The Plan Commission shall review the final development plan to insure that the conditions specified at preliminary approval have been satisfied.

(d) In rendering its decision the Plan Commission shall take into consideration all pertinent information presented by the planning staff, the applicant, the Architectural Review Committee, other city departments, boards and commissions, other governmental agencies and the general public.

(e) A written notice of action, including the reasons therefor, shall be signed by the Plan Commission President and provided to the applicant and to other interested parties upon request. Notice shall be furnished within 5 working days after a decision has been rendered by the Plan Commission.

(f) A copy of the approved final site plan shall be recorded at the Elkhart Count Recorder's Office, and proof of such action in the form of a receipt of filing for recording of the documents provided to the Planning and Zoning staff and shall be provided prior to the issuance of a certificate of occupancy for any such project.

(1979 Code, § 151.155) (Ord. 4370, passed 7-20-1998; Am. Ord. 4762, passed 8-1-2003)

§ 151.186 APPEAL OF STAFF DECISION TO PLAN COMMISSION.

An appeal of a staff decision, or a portion thereof, for either preliminary or final development plan approval, shall be in accordance with the following:

- (A) A written appeal shall be filed with the Planning and Zoning Office within 30 days of the date of the planning staff's written decision with the prescribed filing fee.
- (B) The appeal shall be on a form prescribed by the Plan Commission and include the following:
 - (1) Copy of the staff decision, or portion thereof, that is being appealed and the reasons for the appeal;
 - (2) Any additional documentation supporting the appeal; and
 - (3) List of property owners of record within 300 feet of the proposed development.
- (C) The Plan Commission shall conduct a public hearing prior to taking any action. At least 10 days prior to the hearing the Plan Commission staff shall have a legal notice of the hearing published in the local newspaper and a notice sent by regular mail to all property owners of record located within 300 feet of the proposed development.
- (D) Staff shall provide copies of all documentation supporting the decision under appeal.
- (E) Following the public hearing the Plan Commission shall either affirm, modify or reverse the staff decision.
- (F) In order to reverse or modify the staff decision, the Plan Commission must find that the development plan maintains the intent of the applicable development requirements and design standards.
- (G) A written notice of action, including the reasons therefor, shall be signed by the Plan Commission President and provided to the applicant and to other interested parties upon request. Notice shall be furnished within 5 working days after a decision has been rendered by the Plan Commission.

(1979 Code, § 151.156) (Ord. 4370, passed 7-20-1998)

§ 151.187 AMENDMENTS TO AN APPROVED DEVELOPMENT PLAN.

- (A) Authority to review and approve development plan amendments:
 - (1) The planning staff may review and approve proposed minor amendments provided that the changes:
 - (a) Maintain the purpose and intent of the original approved development plan; and
 - (b) Do not result in: the addition, deletion or relocation of approved curb cuts onto public streets or cross access drives onto adjoining properties; increase the density or size of the development; reduce or alter the perimeter treatment of the site; change the use of the development; reduce approved setbacks for buildings, structures and other site elements; or create a significant impact on surrounding properties or the development plan district in which it is located.
 - (2) The review shall be completed within 10 working days of submittal.
 - (3) All other amendments shall be deemed major and must be reviewed and approved by the Plan Commission following a public hearing.
- (B) After preliminary or final approval of a development plan has been granted, any amendments thereto shall be submitted by the applicant to the Planning and Zoning Office. The submission shall be on a form prescribed by the Plan Commission, signed by the owner(s) of record and include all supporting documentation and plans pertinent to the proposed amendment, and the appropriate filing fee if a public hearing is required.
- (C) Review and approval of a development plan amendment by either the planning staff or the Plan Commission shall be governed by the procedures specified for final plan approval by that authority.
- (D) The Plan Commission may require a public hearing on amendments to a development plan regardless of the procedure applied for preliminary or final approval of that development plan. The Plan Commission may waive any procedural or submission requirements otherwise specified under this section, as it deems necessary, when reviewing an amendment of an approved development plan.

(1979 Code, § 151.157) (Ord. 4370, passed 7-20-1998)

§ 151.188 DRAWINGS INCORPORATED BY REFERENCE.

Pursuant to Ord. 4762, passed 8-1-2003, the following figures are hereby incorporated by reference as if fully set out herein:

- (A) Figure 24A;
- (B) Figure 24B;
- (C) Figure 24D;

- (D) Figure 24E;
- (E) Figure 24F;
- (F) Figure 24G;
- (G) Figure 24H;
- (H) Figure 24I;
- (I) Figure 24J;
- (J) Figure 24K;
- (K) Figure 24L;
- (L) Figure 24M;
- (M) Figure 24N;
- (N) Figure 24O;
- (O) Figure 24P;
- (P) Figure 24Q;
- (Q) Figure 24R;
- (R) Figure 24S; and
- (S) Figure 24T.

(1979 Code, § 151.175.5) (Ord. 4762, passed 8-1-2003)

§ 151.189 WAIVER OF DESIGN CRITERIA AND ORDINANCE STANDARDS.

The reviewing authority may waive any of the design criteria and/or development requirements under which the development plan is reviewed, if:

- (A) The intent of the standard being waived is maintained;
- (B) The waiver does not significantly impact surrounding development or adjoining public streets; and
- (C) The waiver results in an overall design quality superior to that which would otherwise be attained by complying with the design criteria or ordinance standards.

(1979 Code, § 151.158) (Ord. 4370, passed 7-20-1998)

§ 151.190 AUTHORITY OF REVIEWING AUTHORITY.

When reviewing a development plan for preliminary or final approval, the reviewing authority may:

- (A) Impose conditions on the approval of the development plan which are reasonably necessary to satisfy the applicable development standards and conditions of this chapter.
- (B) Condition approval of the development plan on the furnishing of a bond or satisfactory written assurance guaranteeing the timely completion of any proposed public improvements.
- (C) Allow or require the property owner to make a written commitment.

(1979 Code, § 151.159) (Ord. 4370, passed 7-20-1998)

AIR SPACE CONTROL AREA OVERLAY DISTRICT

§ 151.210 PURPOSE.

(A) This district is an overlay district and may be established in addition to the underlying districts and shall place additional regulations upon the property located therein.

(B) The purpose of this section is to protect the airport environs by controlling the utilization of space above normal ground level which may interfere with or obstruct the proper operation of aircraft, the safety of persons and the effective operation of the airport.

(1979 Code, § 151.170) (Ord. 4370, passed 7-20-1998)

§ 151.211 ESTABLISHMENT OF ZONES.

The following zones are established within the Air Space Control Area District. These zones are shown on the Municipal Airport Zoning Map which is made a part of the Official Zoning Map.

(A) *Precision Instrument Approach Zone.* A Precision Instrument Approach Zone is established at each end of the precision instrument runways of the airport for precision instrument landings and take-offs. The precision instrument approach zones shall have a width of 1,000 feet at a distance of 200 feet beyond each end of the runways, widening thereafter uniformly to a width of 16,000 feet at a distance of 50,200 feet beyond each end of the runways, its centerline being the continuation of the centerline of the runways.

(B) *Nonprecision Instrument Approach Zone.* Nonprecision Instrument Approach Zones are established at each end of the nonprecision runways of the airport for nonprecision landings and take-offs. The nonprecision instrument approach zones shall have a width of 500 feet beginning at a distance of 200 feet beyond each end of the runways, widening thereafter uniformly to a width of 2,000 feet and 3,500 feet, respectively, at a distance of 5,200 feet and 10,200 feet, respectively, beyond each end of the runways, its centerline being the continuation of the centerline of the runways.

(C) *Transition zones.* Transition zones are hereby established adjacent to each runway and approach zone. Transition zones extend outward and upward, at right angles to the runway centerline and runway centerline extended and at a slope of 7 feet horizontally for each 1 foot vertically from the side of the primary zones and from the sides of the approach zones to a point where they intersect the horizontal zone. Transitional zones for those portions of the precision approach zone which project through and beyond the limits of the conical zone extend a distance of 5,000 feet measured horizontally from the edge of the approach zone and right angles to the runway centerline.

(D) *Horizontal zone.* A horizontal zone is hereby established as the area which is constructed by swinging arcs of 10,000 feet radii from each end of the precision instrument primary zone and the east end of the east-west nonprecision primary zone and connecting the adjacent arcs by lines tangent to those arcs.

(E) *Conical zone.* A conical zone is hereby established as the area that commences at the periphery of the horizontal zone and extends outward there from a distance of 4,000 feet. The conical zone does not include the instrument approach zones and transition zones.

(F) *Primary zone.* The primary zone is a surface longitudinally centered on a runway extending 200 feet beyond each end of that runway. The width of the primary surface is 500 feet for nonprecision runways and 1,000 feet for precision instrument runways.

(1979 Code, § 151.171) (Ord. 4370, passed 7-20-1998)

§ 151.212 HEIGHT LIMITATIONS.

(A) Except as otherwise provided in the section, no structure or tree shall be erected, altered, allowed to grow, or maintained in any zone created by this chapter to a height in excess of the height limit herein established for the zone. The height limitations are hereby established for each of the zones in question as follows:

(1) *Precision instrument approach zone.* One foot in height for each 50 feet horizontal distance beginning at a point 200 feet from and at the elevation of the end of the precision instrument runway and extending to a distance of 10,200 feet from the end of the runway, thence 1 foot in height for each 40 feet horizontal distance to a point 50,200 feet from the end of the runway;

(2) *Nonprecision instrument approach zones.* For the east-west nonprecision zone - 1 foot in height for each 34 feet horizontal distance beginning at the ends of the primary zone and extending for a distance of 10,000 feet. For the north-south nonprecision zone - 1 foot in height for each 20 feet horizontal beginning at the ends of the primary zone and extending for a distance of 5,000 feet;

(3) *Transition zones.* One foot in height for each 7 feet horizontal distance beginning at any point on the sides of the primary zone and approach zones, extending to a height of 150 feet above the airport elevation which is 777 feet above mean sea level. Further, where the precision instrument approach zone projects through and beyond the conical zone, a height limit of 1 foot for each 7 feet horizontal distance shall be maintained beginning at the edge of the instrument approach zone measured normal to the centerline of the runway extended;

(4) *Horizontal zone.* One hundred and fifty feet above the airport elevation or a height of 927 feet above mean sea level; and

(5) *Conical zone.* One foot in height for each 20 feet horizontal distance beginning at the periphery of the horizontal zone, extending to a height of 350 feet above the airport elevation;

(6) *Primary zone.* The elevation of any point on the primary zone is the same as the elevation of the nearest point on the runway centerline.

(B) Where an area is covered by more than one height limitation, the more restrictive limitation shall prevail. Nothing in this section shall be construed as prohibiting the growth, construction or maintenance of any tree or structure to a height consistent with the provisions of this chapter.

(1979 Code, § 151.172) (Ord. 4370, passed 7-20-1998) Penalty, see § 151.999

§ 151.213 USE RESTRICTIONS.

(A) No use may be made of the land within any zone established by this chapter in such manner as to create interference with any form of communication whose primary purpose is for air navigation.

(B) All lights in such zones shall be:

- (1) Located in such a manner that they do not interfere with the runway, taxiway, tower or any other airport lights;
- (2) Shielded such that no light is directed, focused or beamed to an angle greater than five degrees above horizontal; and
- (3) Prohibited which may result in glare in the eyes of air crews using the airport in the landing, taking off or maneuvering of aircraft.

(1979 Code, § 151.173) (Ord. 4370, passed 7-20-1998) Penalty, see § 151.999

§ 151.214 MARKERS AND LIGHTS ON NONCONFORMING STRUCTURES AND TREES.

The owner of any nonconforming structure or tree is hereby required to permit the installation, operation and maintenance thereon of the markers and lights as shall be deemed necessary by the Board of Aviation Commissioners to indicate the presence of such airport hazards to the operators of aircraft in the vicinity of the airport. The markers and lights shall be installed, operated and maintained at the expense of the city.

(1979 Code, § 151.174) (Ord. 4370, passed 7-20-1998) Penalty, see § 151.999

§ 151.215 PERMITS.

(A) *Future uses.*

(1) Except as specifically provided in this section, no material change shall be made in the use of land and no structure or tree shall be erected, altered, planted, or otherwise established in any zone hereby created unless a zoning clearance permit therefore shall have been applied for and granted. Each application for a zoning clearance permit shall indicate the purpose for which the permit is desired with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations herein prescribed.

(a) In the area lying within the limits of the horizontal zone and the conical zone, no permit shall be required for any tree or structure less than 75 feet in height, except when, because of terrain, land contour or topographic features, the tree or structure would extend above the height limits prescribed for the zone.

(b) In the areas lying within the limits of the instrument and non-instrument approach zones but at a horizontal distance of not less than 4,200 feet from each end of the runways, no permit shall be required for any tree or structure less than 75 feet in height, except when the tree or structure would extend above the height limit prescribed for the instrument or non-instrument approach zone.

(c) In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than 75 feet in height, except when such tree or structure, because of terrain, land-contour or topographic features, would extend above the height limit prescribed for transition zones.

(2) Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction or alteration of any structure or growth of any tree in excess of any of the height limits established by this chapter, as set forth in § 151.212.

(B) *Existing uses.* No permit shall be granted that would allow the establishment or creation of any airport hazard or permit a nonconforming use, structure or tree to be made or become higher or become a greater hazard to air navigation, than it was on the effective date of this chapter or than it is when the application for a permit is made.

(C) *Hazard marking and lighting.* Any permit or variance granted may, if the action is deemed advisable to effectuate the purpose of this section and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the Board of Aviation Commissioners, at its own expense, to install, operate and maintain thereon the markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

(D) *Increase.* Any person desiring to erect any structure or increase the height of any structure or permit the growth of any plant life or use his property not in accordance with the regulations prescribed in this section may apply to the Board of Zoning Appeals for a variance in accordance with the procedure set forth in § 151.287, plus the mandatory referral of the applications to the Board of Aviation Commissioners for their recommendation.

(1979 Code, § 151.175) (Ord. 4370, passed 7-20-1998) Penalty, see § 151.999

DEVELOPMENT STANDARDS

§ 151.225 ACCESSORY STRUCTURES.

(A) *Intent.* The provisions set forth in this section are intended to qualify and supplement the district regulations in the interest of public health, safety and welfare. The following provisions shall apply to all structures that are accessory to

residential, commercial and manufacturing uses as permitted herein, including, but not limited to detached garages, sheds, swimming pools, pool houses and other structures subordinate to the principal dwelling unit. Fences shall not be considered accessory structures.

(B) *Accessory structures; general provisions.*

(1) An accessory structure shall not be erected prior to the establishment or construction of the principal building to which it is accessory or to which it is intended to be accessory.

(2) No portion of an accessory structure may be closer to the front lot line than the nearest point of the principal structure.

(3) An accessory structure shall not be located closer than 3 feet to an interior side yard lot line and not closer than 5 feet to the rear lot line.

(4) On a corner lot, an accessory structure shall not be located closer to the side lot line nearest the intersecting street than the established building line along that street on the same side.

(5) All accessory structures, except free-standing amateur television and radio towers, shall be limited to a maximum height of 15 feet in residential and business districts, and a maximum height of 30 feet in manufacturing districts. Free-standing amateur television and radio towers shall be limited to a maximum height of 35 feet. The Planning Staff may approve an increase in height of up to 70 feet for a radio tower that is:

(a) Structurally attached to primary structures;

(b) Owned by federally licensed amateur ham radio operators; and

(c) When it has been demonstrated by study that the additional height is necessary for effective operation of the radio tower.

(6) An accessory structure in a manufacturing, office or business district shall be located at least 10 feet from the side and rear lot lines.

(7) Accessory buildings on property occupied by a 1- or 2-family residential use shall be limited to a maximum floor area of 720 square feet for the largest structure, with a maximum total of 840 square feet for all accessory buildings combined. Accessory buildings on all other residential use properties shall be limited to a maximum floor area of 960 square feet, both individually and aggregate. A maximum of 2 accessory buildings (not including a swimming pool or satellite dish) is allowed on each lot. Carports and detached garages within apartment complexes containing 10 or more dwelling units are exempted from these requirements.

(8) Accessory buildings shall have roof pitch and exterior materials and color consistent with those of the principal building unless approved otherwise by the Planning and Zoning Office.

(9) Filling station pumps, pump islands and canopies shall not be less than 15 feet from a property line.

(10) No accessory structures shall be used for permanent or temporary habitation.

(C) *Swimming pools.* A swimming pool shall be permitted as an accessory structure subject to the following additional provisions:

(1) A swimming pool may not be constructed closer than 6 feet to an adjacent property line.

(2) A swimming pool shall not be counted as part of lot coverage.

(3) A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, 6 feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.

(4) Swimming pool construction and operation shall meet all appropriate municipal, county or state requirements.

(5) Swimming pools shall not be constructed under utility lines.

(D) *Satellite antennas.*

(1) Any satellite antenna one meter or less in diameter shall be permitted in any zoning district regardless of location.

(2) Any satellite antenna 2 meters or less in diameter shall be permitted in any business or manufacturing district regardless of location.

(3) Any satellite antenna more than 1 meter in diameter located in any residential district or more than 2 meters in diameter located in any business or manufacturing district shall be permitted provided that such antenna is located:

(a) On an interior lot, in the rear yard at least 5 feet from both side and rear yard lines; or

(b) On a corner lot, in the rear yard, setback at least 5 feet from either the established building line along that side of the intersecting street or the facade of the principal structure on the lot facing the intersecting street, whichever is greater; and 5 feet from both the rear and interior side lot lines; or

(c) Mounted on the rear portion of any structure in a business or manufacturing district, or on the rear portion of a structure containing a minimum of 6 dwelling units in an R-4, Multiple-Family Dwelling District, provided that such antenna is not conspicuous from any public right-of-way.

(E) *Vehicular storage.* A vehicle or recreational vehicle may be stored in the side yard or rear yard on a paved surface. All vehicles stored outside on residentially zoned properties shall be operable and properly plated.

(F) *Decks.* All decks 24 inches or more in height above grade shall adhere to the following:

(1) If attached to a principal structure, the deck shall be considered part of the principal structure and shall comply with all required setbacks for principal structures within the zoning district.

(2) If attached to an accessory structure or free-standing, the deck shall be considered an accessory structure and shall comply with all required setbacks for accessory structures.

(1979 Code, § 151.185) (Ord. 4370, passed 7-20-1998; Am. Ord. 4431, passed 7-12-1999; Am. Ord. 4457, passed 12-6-1999; Am. Ord. 4462, passed 1-13-2000 ; Am. Ord. 5044, passed 7-9-2007) Penalty, see § 151.999

§ 151.226 LANDSCAPE AND SCREENING REQUIREMENTS.

(A) *Intent.*

(1) The requirements set forth in this section are intended to qualify and supplement the district regulations. Landscaping requirements shall be provided for an improved aesthetic quality of development, a visual barrier to partially or completely screen the view of structures or activities or as an acoustic screen to aid in absorbing or deflecting noise.

(2) Landscape plans and requirements shall apply to all developments:

- (a) In the R-4, O, CBD, OP, BP, PUD and all "B" zoning districts;
- (b) In "M" zoning districts fronting an arterial street (front and corner side yard only);
- (c) Requiring a development plan;
- (d) Requiring parking lot landscaping; and
- (e) When specified by this chapter.

(B) *Landscape plan.*

(1) A landscape plan must be submitted to the Planning and Zoning Office for approval. The plan may be submitted and approved following the issuance of a zoning clearance/building permit, however, a specified date for submission shall be agreed upon in writing at the time the zoning clearance permit is issued. Staff may also require that a bond be filed for all required landscape improvements. This plan shall be drawn to scale and include the following information:

- (a) Property owner's name, address and telephone number;
- (b) Landscape designer's and/or contractor's name, address and telephone number, if such has been hired;
- (c) Existing and proposed structures;
- (d) Parking areas and driveways;
- (e) Walkways;
- (f) Location of existing trees or wooded areas (showing trees over 8 caliper inches diameter at breast height (d.b.h.); tree groupings may be shown as a mass with a general range of tree sizes); (Plan shall indicate those existing trees or wooded areas that will be preserved.)
- (g) General type (evergreen, deciduous, shade or ornamental tree, shrub, hedge, groundcover and the like), location, size at planting or placement and number of all plant material to be installed; and
- (h) Type and location of all other landscape materials, both natural and man-made.

(2) The planning staff may request other information as may be deemed necessary for review and approval of the landscape plan.

(C) *Areas to be landscaped.*

(1) (a) All areas within the development portion of a lot not occupied by buildings, parking and other paved areas and permanent water features shall be landscaped and maintained. Within a front or corner side yard, landscaping shall consist of any combination of canopy and/or ornamental trees, shrubs and ground cover with:

- 1. At least 1 canopy or ornamental tree per 4,000 square feet of yard area for the first 25,000 square feet; and
- 2. One additional canopy or ornamental tree per 6,000 square feet of yard area above 25,000 square feet.

(b) Within "M" zoning districts these requirements shall be limited to those yards fronting on arterial streets.

(c) Those streets designated as arterial streets shall include the functional classification map housed at the Department of Public Works and Utilities: Baldwin Street, Beardsley Avenue, Beham Avenue, Bristol Street, Bypass Road, California Road, Cassopolis Street, County Road 1, County Road 3, County Road 4, County Road 5, County Road 6, County Road 7, County Road 9, County Road 10, County Road 11, County Road 12, County Road 13, County Road 15, County Road 17, County Road 20, Edwardsburg Avenue, Elkhart Avenue, Franklin Street, Goshen Avenue, Jackson Boulevard, Jefferson Street, Johnson Street, Hammond Avenue, Harrison Street, High Street, Hively Avenue, Indiana Avenue, Jeanwood Drive, John Weaver Parkway, Johnson Street, Lexington Avenue, Lusher Avenue, Main Street, MacDonald Street, Marion Street, Michigan Street, Middlebury Street, Middleton Run Road, Mishawaka Road, Mishawaka Street, Nappanee Street, Oakland Avenue, Old US 20, Osolo Road, Prairie Street, Richmond Street, Second Street, State Road 19, State Road 120, Sterling Avenue, Third Street, Tipton Street, Toledo Road, Vistula Street, Washington Street and Waterfall Drive.

(2) Areas as described in the zoning district regulations.

(3) Parking areas shall be screened according to § 151.231(C)(1) of this chapter.

(4) Roadway right-of-ways shall be landscaped with grass and trees as per city standards. No walls, fences, signs or hedges shall be permitted in a right-of-way without the approval of the Board of Public Works. Landscaping shall not impede visual clearance according to § 151.229 of this chapter.

(5) Retention ponds located in front yards or other areas visible to the public, either from within the site or from the street, shall be free-form (curvilinear) in shape and incorporated into the overall landscape design for the site. Architectural shapes consistent with the site and building design may be used with the approval of the planning staff.

(6) All dumpsters visible from public right-of-ways or an adjacent property shall be screened on at least three sides with an opaque wall or fence that is architecturally compatible with the primary facility on the property consisting of the same material and color scheme as is found on the majority of the exterior of the primary structure on the property. In addition, gates shall be provided if dumpsters are visible from the public right-of-way, an adjacent property, or areas of the site open to the public. Gates shall consist of an opaque material, and shall not be constructed of chain link with tinted slats or other weaved material.

(7) Storage areas for materials, equipment and vehicles shall be located behind the front or corner side building facade. All storage areas located on properties containing business uses(s) that are visible from the property line shall be screened. The screening material shall be 100% opaque and shall include fencing, retaining walls, plant material or a combination thereof. In addition, loading docks and mechanical equipment shall be screened from public view.

(D) *Landscape materials.* Landscaping materials selected shall be appropriate to local growing and climatic conditions. Wherever possible, existing trees should be conserved and integrated into the landscaping plan. Landscape materials may be used in any combination unless otherwise specified and include the following:

(1) *Plant material.*

(a) Trees or existing wooded areas. Minimum sizes are:

1. Deciduous canopy trees: 2-1/2" d.b.h.
2. Ornamental trees: 2" d.b.h.
3. Evergreen trees: 6' in height.

(b) Shrubs or hedges; (Shrubs shall have a minimum height of 24 inches unless otherwise specified.)

(c) Ground cover, including grass; and

(d) Vines.

(2) *Other landscape materials.*

(a) Boulders, rocks or mulch (including stone, pebbles, sand or bark) limited to walks, paths, seating areas, planting beds and around individual plants; (When used in planting beds or around individual trees shall not exceed 20% of the total square footage of the landscaped area.)

(b) Berms;

(c) Lakes, ponds, streams or fountains\;

(d) Ornamental fences or masonry walls, architecturally compatible with surrounding development; and

(e) Patios, decks, trellises and other similar landscape features.

(3) Prohibited species.

<i>Large Shade Trees</i>		
<i>Botanic Name</i>	<i>Common Name</i>	<i>Primary issue/Concern</i>

Large Shade Trees		
Botanic Name	Common Name	Primary issue/Concern
Acer negundo	Box Elder	Susceptible to Asian Longhorn Beetle
Acer nigrum	Black Maple	Susceptible to Asian Longhorn Beetle
Acer platanoides	Norway Maple	Susceptible to Asian Longhorn Beetle, general decline
Acer saccharinum	Silver Maple	Susceptible to Asian Longhorn Beetle, weak branches
Aesculus flava	Yellow Buckeye	Susceptible to Asian Longhorn Beetle
Aesculus glabra	Ohio Buckeye	Susceptible to Asian Longhorn Beetle
Aesculus hippocastanum ¹	Common Horsechestnut	Susceptible to Asian Longhorn Beetle
Ailanthus altissima	Tree of Heaven	DNR invasive list
Betula papyrifera	Paper Birch	Susceptible to Asian Longhorn Beetle
Betula populifolia	Grey Birch	Susceptible to Asian Longhorn Beetle
Chionanthus retusus	White Fringetree	Susceptible to Emerald Ash Borer
Chionanthus virginicus	Chinese Fringetree	Susceptible to Emerald Ash Borer
Diospyros virginiana	Persimmon	Messy fruit
Elaeagnus angustifolia	Russian Olive	Invasive
Elaeagnus umbellata	Autumn Olive	DNR invasive list
Fraxinus spp.	White, Green, Black Ash	Susceptible to Emerald Ash Borer
Ginkgo biloba ²	Ginkgo	Messy fruit
Lonicera spp.	Honeysuckle	Invasive
Maclura pomifera	Osage orange/Hedge apple	Large fruit
Malus spp. ³	Apples	Messy fruit
Morus spp.	Mulberry	Messy fruit, invasive
Populus deltoides	Cottonwood	Large leaf litter, pollen allergy
Pyrus spp.	Pears (including ornamentals)	Messy fruit, weak branches
Rhamnus cathartica	Common Buckthorn	Invasive
Rhamnus frangula	European Buckthorn	Invasive
Robinia spp.	Black locust	Invasive
Salix alba	White Willow	Susceptible to Asian Longhorn Beetle
Salix alba x matsudana	Hybrid Austree	Fast growing, weak limbs
Salix babylonica	Weeping Willow	Susceptible to Asian Longhorn Beetle
Salix nigra	Black Willow	Susceptible to Asian Longhorn Beetle
Tilia cordata	Littleleaf Linden	Susceptible to Japanese Beetles
Ulmus spp. ⁴	Elms	Susceptible to Dutch Elm Disease; Asian Longhorn Beetle
Shrubs		
Botanic Name	Common Name	Primary Issue/Concern
Euonymus alatus	Burning Bush	Invasive
Berberis vulgaris	European Barberry	Invasive, thorny
Berberis thunbergii	Japanese Barberry	Invasive, thorny
¹ Excluding Aesculus x carnea 'Briotii' ² Including all female varieties; excluding male varieties such as G. biloba 'Colonnade', 'Halka', 'The President', 'Autumn Gold', and 'Princeton Sentry' ³ Excluding crabapples or ornamental types that don't produce large fruit ⁴ Excluding hybrids and cultivars with excellent resistance to Dutch Elm Disease and phloem necrosis		

(E) *Landscaping installation and maintenance.*

(1) All landscaped areas shall be maintained to the standard to which they were designed and installed. Areas shall be maintained free of trash and weeds and shall not deteriorate into an unsafe condition.

(2) Whenever landscape screening is required adjacent to parking areas or driveways, such landscaping shall be protected by bumper blocks, posts or curbing to avoid damage to landscaping by vehicles.

(3) All approved landscaping plans shall be installed during the first planting season after the start of any construction in the development, unless otherwise required by the Planning and Zoning Office.

(F) *Figures*. Pursuant to Ord. 4762, passed 8-1-2003 the following figures are hereby incorporated by reference as if fully set forth herein:

(1) Figure 26A; and

(2) Figure 26B.

(1979 Code, § 151.186) (Ord. 4370, passed 7-20-1998; Am. Ord. 4683, passed 7-1-2002; Am. Ord. 4762, passed 8-1-2003; Am. Ord. 5618, passed 9-11-2017) Penalty, see § 151.999

§ 151.227 PERMITTED OBSTRUCTIONS IN REQUIRED YARDS.

(A) *Intent*.

(1) The provisions set forth in this section are intended to qualify and supplement the district regulations established earlier in this document.

(2) The following obstructions shall be permitted in required yards, subject to the conditions and limitations set forth in this section.

(B) *Obstructions permitted in front yards.*

- (1) Open terraces;
- (2) Awnings and canopies;
- (3) Chimneys projecting 2 feet or less into yard;
- (4) Arbors and trellises;
- (5) Residential paved driveways;
- (6) One-story bay windows projecting 3 feet or less into yard;
- (7) Overhanging eaves and gutters projecting 3 feet or less into yard;
- (8) Handicap access ramps located no further than 6 feet from the structure; and
- (9) Open porches or stoops projecting 6 feet or less into front yard.

(C) *Obstructions permitted in side yards.*

- (1) All obstructions permitted in front yards;
- (2) Open paved parking areas;
- (3) Outside stairway, open or enclosed, projecting 4 feet or less into the yard; and
- (4) Handicap access ramps located no further than 6 feet from the structures.

(1979 Code, § 151.187) (Ord. 4370, passed 7-20-1998) Penalty, see § 151.999

§ 151.228 FENCE REQUIREMENTS.

(A) *General provisions; all districts.*

(1) No fences, other than split rail, wrought iron or open picket fences (with 40% open spacing between pickets) not to exceed 4 feet in height, shall be permitted in any front or corner side yard.

(2) All fences shall be maintained to the standard to which they were designed and installed.

(3) The provisions of § 151.229 shall take priority over the provisions of this section in restricting the height and location of permitted fences.

(4) All fences and walls permitted herein shall be located entirely on the zoning lot and may be located immediately adjacent to the lot lines.

(5) Fences or walls not permitted herein but established in conjunction with a planned unit development plan or special exception may be authorized as part of that planned unit development plan or special exception.

(6) No fences, other than split rail, wrought iron or open picket fences (with 40% open spacing between pickets) not to exceed 4 feet in height, shall be permitted in any front yard.

(7) In all districts except manufacturing, all fences shall be no greater than 6 feet in height, with an additional 6 inches allowed for fence posts.

(8) Fence materials may include treated wood, painted wood, treated split rail, ornamental wrought iron, brick, stone, masonry block, decorative painted or vinyl coated aluminum, or other materials as approved by the Planning and Zoning Office. Scrap lumber, plywood, sheet metal, plastic or fiberglass sheets are specifically prohibited. In business and manufacturing districts, in the side and rear yards only, chain link fences with vinyl slats when the slats have been permanently installed by the fence manufacturer. The color of the slats must be coordinated with the color of the building and approved by the Planning Services staff.

(9) All fences shall be erected with the finished side facing outward toward the property line.

(B) Fences permitted in residential and business districts. A fence or wall not more than six feet in height may be placed, built or installed in the side and/or rear yards of any lot in a residential or business district, excepting in that portion of any required yard that lies within the corner lot visibility area (§ 151.229) and excepting further that, in a corner lot, no fence, wall or vegetation exceeding 4 feet in height or a fence, wall or vegetation that is opaque may be placed, built or installed:

(1) In the required side yard adjacent to the street; or

(2) In any portion of the rear yard lying closer to the street than the point of the principal building nearest said street.

(C) *Fences permitted in manufacturing districts.*

(1) Except as specified in division (D) below, a fence or wall not to exceed 8 feet in height may be placed, built or installed at the property lines in required side and rear yards, excepting in that portion of any required yard that lies within the corner lot visibility area (§ 151.229), and excepting further that, in a reversed corner lot, no fence or wall may be placed, built or installed:

(a) In the required side yard adjacent to the street; or

(b) In any portion of the rear yard lying closer to the street than the point of the principal building nearest the street.

(2) Additionally, the height of the fences may be increased by 6 inches for each 3 feet of distance from the property line, to a maximum height of 12 feet.

(D) *Fences around junk yards, motor vehicle impoundment yards, scrap or recycling yards, or motor vehicle wrecking yards.*

(1) (a) An opaque fence, a minimum of eight feet in height and a maximum of 15 feet in height (including any barbed wire), constructed of painted or treated wood, painted or textured block, or brick and set 15 feet or more inside the lot lines, shall be maintained in good repair around junk yards, motor vehicle impoundment yards, scrap yards, or motor vehicle wrecking yards (see Figure 26.A).

(b) In a front or corner side yard the fence shall not project beyond the front façade of buildings located on adjacent lots on the same side of the street.

(2) Entryways to junk yards, motor vehicle impoundment yards, scrap yards or motor vehicle wrecking yards shall be gated and closed at all times when not in use. Gates shall be opaque and match the style of the fence.

(3) (a) A landscaped strip shall be maintained between the fence and property line in the following yards:

1. All front and corner side yards;

2. The front 1/3 of any side yard; and

3. Any yard abutting a residential zoning district.

(b) The landscape strip shall consist of evergreen or deciduous trees, shrubs and groundcover with a minimum of 1 tree every 30 lineal feet of landscape strip.

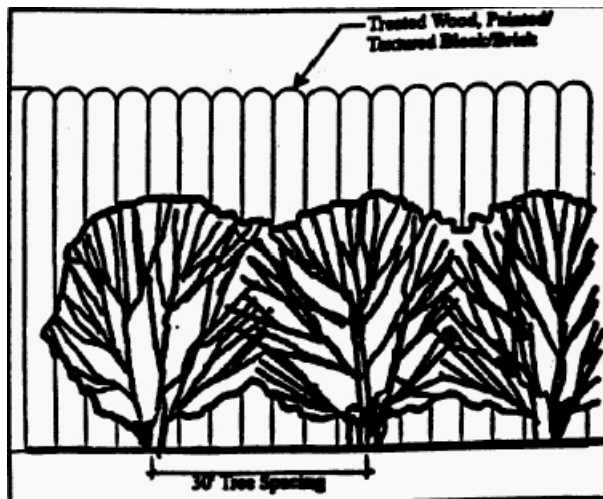


Figure 26.C Fences and Landscaping Around Junk Yards

(E) Fences around retention ponds. Every retention pond required by the city for water runoff storage and in which the deepest point is more than two feet below adjacent ground level with a slope from water's edge being no greater than 4 to 1, shall be enclosed with a fence or protective barrier a minimum of 6 feet in height. This requirement may be waived for those retention ponds that are incorporated within an approved landscape plan as a design feature.

(F) *Figure.* Pursuant to Ord. 4762, passed 8-1-2003 the following figure is hereby incorporated by reference as if fully set out herein: Figure 26D.

(1979 Code, § 151.188) (Ord. 4370, passed 7-20-1998; Am. Ord. 4462, passed 1-13-2000; Am. Ord. 4762, passed 8-1-2003 ; Am. Ord. 5044, passed 7-9-2007) Penalty, see § 151.999

§ 151.229 ROADWAY REGULATIONS.

(A) *Intent.* The provisions set forth in this section are intended to qualify and supplement the district regulations in the interest of public safety.

The following regulations shall apply to all development along primary streets and major thoroughfares and at roadway intersections.

(B) *Intersection visibility area.*

(1) Intersection visibility requirements: On a corner lot in any district, no fence, hedge, wall, sign or other structure shall be erected, placed, planted or allowed to grow, and no motor vehicle or recreational vehicle may be placed in such a manner as to impede vision between a height of 3 feet and 8 feet above the established curb level of the

intersecting streets in the area bounded by the street lines (curbs) of the corner lots and a line joining points along the street lines 50 feet from the point of the intersection; except that the location of principal buildings, traffic control devices and public utility fixtures shall not be affected by this requirement (see Figure 26.B).

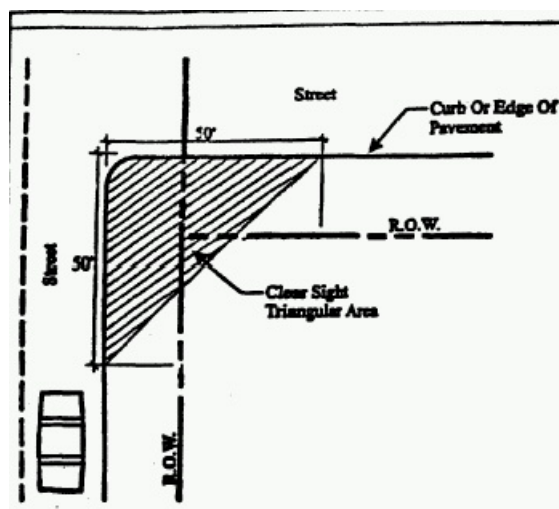


Figure 26.E Intersection Visibility Requirement

(2) Driveway and alley visibility requirements. At intersections of driveways and alleys with streets, no fence, hedge, wall, sign or other structure shall be erected, placed or allowed to grow, and no motor vehicle or recreational vehicle may be placed in such a manner as to impede vision between a height of 3 feet and 8 feet above the established driveway or alley grade level in the area

bounded by the driveway or alley lines and lot lines and a line joining points along the lines 8 feet from the point of intersection of the driveway or alley lines and such lot lines (see Figure 26.C).

(C) *Primary street setback.* The following setback requirements shall apply to property located along primary streets as designated in this chapter:

(1) No structure (excepting monument signs, portable display signs, temporary signs, public information signs, public safety signs and front yard fences), parking area, loading area or service drive shall be placed within 55 feet of the center line of the right-of-way of any primary street. No existing structure, parking area, loading area or service drive or part thereof within 55 feet of the center line shall be reconstructed, extended, enlarged or altered, except as herein provided.

(a) Monument signs, public information signs and permitted front yard fences may be placed within the primary street setback subject to the filing of an agreement prepared by the city which forfeits the property owner's rights to hold the city liable for the cost of the improvement or improvements should the primary street ever be widened.

(b) Portable display signs and temporary signs may be placed within the primary street setback no closer than five feet to any public right-of-way subject to all other requirements of this section.

(2) Property located in the city but fronting a primary street located entirely outside the city shall conform to the setback requirements for that street under applicable Elkhart County ordinances.

(3) The following streets in the city are designated as primary streets:

Baldwin Street	From Cassopolis Street to Bristol Street
Beardsley Avenue	From Osolo Road to West City Limits
Benham Avenue	From Harrison Street to South City Limits
Bristol Street	From East City Limits to West City Limits
California Road	From Nappanee Street to West City Limits
County Road 3	From Fort Wayne Road to California Road
County Road 108	From County Road 3 to West City Limits
County Road 15	From North to South City Limits
Edwardsburg Avenue	From Riverside Drive to Bristol Street
Fort Wayne Road	From Nappanee Street to West City Limits
Franklin Street	From Vistula Street to West City Limits
Goshen Avenue	From Jackson Boulevard to South City Limits
Hively Avenue	From East City Limits to West City Limits
Indiana Avenue	From East City Limits to West City Limits
Jeanwood Drive	From Bristol Street to North City Limits
Johnson Street	From Jackson Boulevard to North City Limits
Lexington Avenue	From Vistula Street to West City Limits
Main Street	From Prairie Street to South City Limits;
From Beardsley Avenue to Bristol Street	
Michigan Street	From Beardsley Avenue to North City Limits
Middleton Run Road	From Jackson Boulevard to South City Limits
Middlebury Street	From Main Street to East City Limits
Mishawaka Road	From East City Limits to West City Limits
Mishawaka Street	From Nappanee Street to Edwardsburg Avenue
Nappanee Street	From North City Limits to South City Limits
Oakland Avenue	From Franklin Street to South City Limits
Osolo Road	From Bristol Street to North City Limits
Pleasant Plain Avenue	From Hively Avenue to South City Limits
Prairie Street	From Jackson Boulevard to South City Limits
Richmond Street	From Waterfall Drive to McDonald Street
Sterling/Hammond Avenue	From Indiana Avenue to South City Limits
Toledo Road	From Goshen Avenue to East City Limits
Vistula Street	From Franklin Street to Jackson Boulevard
Waterfall Drive	From Jackson Boulevard to Richmond Street

(D) *Major thoroughfare setback.* The following setback requirements shall apply to property located along major thoroughfare streets as designated in this chapter:

(1) No principal building or structure shall be placed within 120 feet of the center line of the right-of-way of any street designated a major thoroughfare.

(2) (a) No structure (excepting monument signs, portable display signs, temporary signs, public information signs, public safety signs and front yard fences), parking area, loading area or service drive shall be placed within 55 feet of the center line of the right-of-way of any designated major thoroughfare.

(b) No existing structure, parking area, loading area or service drive or part thereof within 55 feet of the center line shall be reconstructed, extended, enlarged or altered, except as herein provided.

1. Monument signs, public information signs and permitted front yard fences may be placed within the major thoroughfare setback subject to the filing of an agreement prepared by the city which forfeits the property owner's rights to hold the city liable for the cost of the improvement or improvements should the major thoroughfare ever be widened.

2. Portable display signs and temporary signs may be placed within the major thoroughfare setback no closer than 5 feet to any public right-of-way subject to all other requirements of this section.

(c) Property located in the city but fronting a major thoroughfare located entirely outside the city shall conform to the setback requirements for that street under applicable Elkhart County ordinances.

(d) The following streets in the city are hereby designated as major thoroughfares:

Cassopolis Street	From Bristol Street to North City Limits
County Road 6	From the East to West City Limits
County Road 17	From the North to South City Limits
John Weaver Parkway	County Road 6 to Nappanee Street

(1979 Code, § 151.189) (Ord. 4370, passed 7-20-1998; Am. Ord. 4762, passed 8-1-2003; Am. Ord. 5044, passed 7-9-2007; Am. Ord. 5618, passed 9-11-2017)

§ 151.230 EXTERIOR LIGHTING STANDARDS.

(A) *Intent.* The provisions set forth in this section are intended to qualify and supplement the zoning district regulations. In order to provide for the community's health, safety and welfare, regulations for the placement, type and intensity of lighting for multi-family residential, commercial and manufacturing properties are set forth.

(B) *Exterior lighting standards.*

(1) All exterior lighting shall be designed in a consistent and coordinated manner for the entire site.

(2) All exterior lighting shall be shielded to avoid casting light above 3/10 foot candles or glare upon any property located in a residentially zoned district or used for residential purposes.

(3) All exterior lighting shall be shielded to avoid casting light above 5/10 foot candles or glare upon any non-residential adjacent property.

(4) Flood or area site lighting of high intensity whose light source is visible from off-site shall be prohibited. Specialized or decorative parking, site and pedestrian lighting with a visible light source is permitted with the approval of the Planning and Zoning Office.

(5) All lighting structures within a property or planned development shall be of uniform design and materials. Parking lot and street lights shall also be of uniform height.

(6) Lighting poles and structures shall be located within landscaped areas where possible.

(7) All exterior lighting shall be shielded so as not to cast direct light on street right-of-ways or adjacent properties.

(8) Ceiling lights in gas pump island canopies shall be recessed.

(1979 Code, § 151.190) (Ord. 4370, passed 7-20-1998)

§ 151.231 OFF-STREET PARKING AND LOADING.

(A) *Intent.* To maintain the public health, safety and welfare, it is necessary to establish standards regulating off street parking and loading, pedestrian movement, screening, landscaping and lighting for the enhancement of the community. The regulations of this section are designed to alleviate congestion of the public streets by establishing minimum requirements for the off-street parking and loading/unloading of motor vehicles in accordance with uses permitted under this chapter.

(B) *General provisions.*

(1) *Scope of regulations.* Off-street parking and loading provisions of this section shall apply as follows:

(a) For all buildings and structures erected and all uses of land established after the effective date of this chapter, accessory parking and loading facilities shall be provided as required by the regulations herein.

(b) Whenever the existing use of a building or structure is changed to a new use, parking or loading facilities shall be provided as required for such new use.

(c) Accessory off-street parking facilities required herein shall not be used for the storage, display, sale, repair, dismantling or wrecking of any vehicles, equipment or material. Parking of commercial vehicles as defined in this ordinance is prohibited in residential zones.

(d) Accessory off-street parking and loading spaces shall be provided on the same zoning lot as the use served except as otherwise provided in this chapter. Adequate area shall be provided to permit any maneuvering necessary to reach off-street parking and loading areas.

(e) Within the Central Business District (CBD), regulations pertaining to off-street parking shall not apply to commercial buildings in existence at the time of adoption of this chapter. No off-street parking is required for nonresidential uses in the CBD unless such uses exceed 3,000 square feet of gross floor area, in which case off-street parking must be provided for the floor area in excess of 3,000 square feet. Up to 25% of the number of public parking spaces within 400 feet of a proposed building in the CBD may be counted toward the required number of spaces. These regulations are intended to provide flexibility in site development while ensuring adequate parking for the Main Street and Jackson Boulevard corridors as a whole (as amended per Ordinance No. 4542 dated December 4, 2000; as amended per Ordinance No. 4985 on September 22, 2006).

(2) *Plan review.*

(a) Any off-street parking lots, parking structures or loading areas required under this chapter shall be required to submit a plan to the Planning and Zoning Office for review and approval of applicable regulations. The plan shall show the following:

1. Total number of parking spaces provided, existing and proposed; and total required by ordinance;
2. Parking aisles;
3. Vehicle circulation;
4. Entrances and exits;
5. Sidewalks and pedestrian circulation;
6. Signage;
7. Lighting;
8. Storm water retention areas;
9. Landscaping islands; and
10. Landscape and buffer areas.

(b) All elements shall be dimensioned on the plan and distances from property lines and structures shall be noted.

(C) *Regulations and requirements.*

(1) All open off-street parking areas for 4 or more vehicles shall be screened by a solid fence, wall, densely planted evergreen screen, earthen berm, or a combination thereof to the following height:

(a) A minimum of 4 feet if abutting or directly across an alley from either a residential district or a residential use if the development containing the parking area requires a development plan; or

(b) Two and one-half feet if across the street from either a residential district or a residential use if the development containing the parking area requires a development plan.

(2) Number of off-street parking spaces.

(a) Except as otherwise noted in this section, the number of off-street parking spaces for each new principal use shall be provided in accordance with division (D).

(b) The parking lot requirements for a use not specifically listed in the chart shall be the same as for a listed use of similar characteristics of parking demand generation as determined by the Planning and Zoning Office.

(c) For the purpose of determining off-street parking requirements, gross floor area shall be calculated as the sum of the gross horizontal area of the several floors of a building or buildings, including if habitable the horizontal areas of the basement. Basement space used solely for storage or utility shall be exempt.

(d) When computing the number of parking spaces, any number fraction or portion thereof, shall be rounded up to the next highest number.

(e) A maximum of 130% of the required number of parking spaces per division (D), may be provided (rounded down to the nearest whole number). Each 10% increase in the number of parking spaces shall require an additional one percent in the interior parking lot landscaping provisions provided in this section of the Zoning Ordinance. Provision of more than 130% of the requirement will require a variance from the Board of Zoning Appeals.

(f) In determining the number of parking spaces required for a business, industry or institution or any other concern which encompasses a number of different, yet related activities, the planning staff may determine the total number of parking spaces required by adding the amount of spaces required for each specific activity as listed in division (D).

(g) In off-street parking areas with greater than 25 automobile parking spaces, bicycle parking spaces may be substituted for automobile parking spaces at the rate of 10 bicycle spaces per 1 off-street parking space, up to 4% of the total number of required automobile parking spaces with a maximum of 10 automobile spaces replaced with bicycle parking.

(3) Location of parking facilities.

(a) The off-street parking areas required for residential buildings or uses shall be located on the same lot with the building or use served. The parking requirements for 1- and 2-family residential uses shall be accommodated in paved (concrete, asphalt, concrete and brick pavers and other approved materials) driveways which may be located in the front, side or rear yard but may not occupy more than 50% of any yard. Off-street parking areas located in the R-1, R-2, R-3 and R-5 residential zoning districts shall not be located in the front yard. This requirement shall not include paved driveways leading to an attached and/or detached garages or to rear yard parking areas.

(b) Two or more owners of buildings may join together in providing the required off-street parking spaces per division (D).

(c) Off-street parking areas may be located on any part of a lot, unless otherwise specified herein or within the zoning district development conditions. Parking spaces shall not be located in any required greenbelt or buffer yard area.

(4) Joint parking facilities.

(a) Joint use of up to 50% of required parking areas may be permitted for 2 or more uses located on the same or adjacent parcels provided that the developer or owner demonstrates to the satisfaction of the planning staff that the uses will not overlap in hours of operation or in demand for shared spaces. The owners of all parcels used for or making use of shared parking areas shall execute and a record a commitment stating that the uses will not overlap in hours of operation or in demand for shared spaces. The commitment shall be binding on future owners of the property(s) and shall be enforceable by the Board of Zoning Appeals.

(b) Shared parking areas shall be located not more than 300 feet from the uses they are intended to serve and shall be connected to that use by a defined pedestrian walkway.

(c) Any subsequent change in land uses among the shared parking users shall require adequate parking as defined in division (D).

(5) Reduction of spaces/land banking.

(a) For development in any zoning district, the planning and zoning staff may approve a total reduction of not more than 30% of the required off-street parking spaces where it has been demonstrated by study of the proposed use(s) and the customary operation of the use(s) that adequate parking would be provided.

(b) When such a reduction is approved, an area of sufficient size to include the number of parking spaces necessary to meet the minimum requirements stated herein shall be designated on the site plan and no structure or paved surface shall be permitted within such designated area. The area shall not be included in any required buffer yards. The areas shall be reserved to accommodate additional parking so as to meet the otherwise applicable minimum requirements. In the event additional parking is required, a site plan shall be submitted to the staff for approval. The additional parking shall be constructed within 4 months thereafter.

(6) Access. Driveway entrances and exits to parking lots shall be located as far away from street intersections as possible to prevent impeding the flow of traffic in the parking lot and prevent hazards in the street. Entrances shall be designed to allow vehicles entering the site to be stacked to prevent backup on the adjacent street. Parking lot entrances and exits shall be consolidated when possible to limit the number of access points to the site. In instances where parking areas are 100 feet or more wide, the parking lot entrance shall be a minimum of 50 feet from the nearest existing access drive.

(7) Parking lot design.

(a) All off-street parking areas, driveways, loading areas and maneuvering access thereto and outdoor display areas shall be surfaced with an a11-weather, dustless, impervious, hard-surface pavement, including drainage which shall meet city specifications as prescribed by the Board of Public Works. This surface shall be maintained in good condition and free of weeds, dirt, trash and debris.

(b) All parking areas and drives for commercial, manufacturing, institutional and residential uses shall be paved with concrete, asphalt or decorative concrete, brick or asphalt pavers.

(c) 1. In all "M" zoning districts, storage yards for construction equipment, raw materials, or partially or fully finished product, may be surfaced with gravel or slag when located in a rear yard.

2. The storage yard shall be properly graded and maintained to insure proper drainage and shall be kept free of weeds, trash and other debris.

(d) Required parking spaces for all uses shall be at least 162 square feet in size, exclusive of access drives or aisles and have a minimum width of 9 feet and a minimum length of 18 feet, except parallel parking spaces which shall have a minimum length of 22 feet.

(e) The number and dimensions (see Figure 26.D) of handicapped parking spaces are to be provided in conformance with the requirements of the Americans with Disabilities Act as follows:

<i>Number of Parking Spaces in Lot</i>	<i>Required Minimum Number of Accessible Spaces¹</i>
<i>Number of Parking Spaces in Lot</i>	<i>Required Minimum Number of Accessible Spaces¹</i>
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of Total Spaces
1,001 and Over	20 Plus 1 for Each 100 Over 1,000 Spaces
NOTE TO TABLE:	
¹ For every 8 accessible spaces, at least 1 must be a van accessible space.	

(f) All parking lots for commercial, institutional, and multi-family residential (ten or more dwelling units) uses shall be separated from adjoining non-paved surfaces with a continuous Portland cement concrete straight faced or rolled curb at least six inches in height. All parking lots shall be designed to provide adequate storm water drainage, including onsite detention capabilities. Curbed traffic islands are to be located on both ends of each parking row to facilitate safe traffic circulation within the parking lot. All curbing shall conform to city standards, unless approved otherwise by the Planning and Zoning Office.

(g) Required off-street parking spaces shall be so designed, arranged and regulated as to have individual spaces marked, be unobstructed and have access to an aisle or driveway so that any vehicle may be moved without moving another and so that no maneuvering directly incidental to entering or leaving a parking space shall be on any public right-of-way or in a required setback.

(h) 1. All parking areas shall be provided with circulation aisles of adequate dimension to assure efficient internal circulation. The minimum aisle dimension requirements indicated in Figure 26.E shall be provided for parking lots using various parking angles.

2. Parking lots with 300 or more spaces shall include perimeter drives and a central access drive leading to the main building.

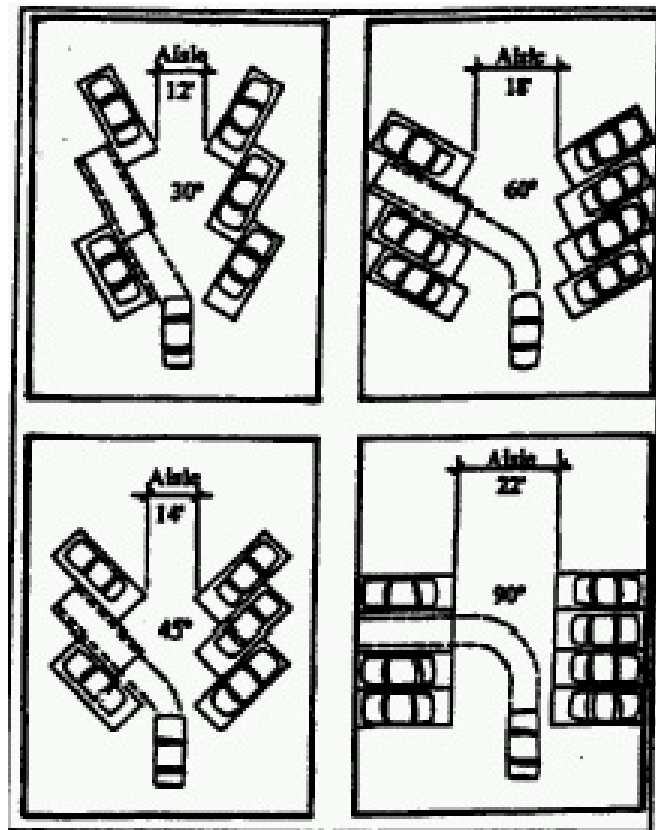


Figure 26.E Parking Area Aisle Widths

(i) A shelter of not more than 50 square feet in size for use by a parking lot attendant may be maintained on a parking lot containing at least 25 spaces.

(j) All signage within parking areas shall conform to the standards within the sign regulation section of this chapter.

(k) Lighting.

1. A parking lot lighting plan - including pole heights, pole location, light spread, and intensity - shall be submitted as a part of the parking lot landscape plan.

2. All parking lot lighting within a development shall be of uniform design, color, and materials.

3. Lighting levels within parking areas shall be consistent with the recommendations found in the IES Lighting Handbook, latest edition, by the Illuminating Engineering Society of North America.

4. In all projects, lighting shall not cause illumination in excess of five-tenths foot candles of light beyond the project property line, except illumination which spills into a residential zoned or used property, which shall not exceed three-tenths foot candles.

5. a. Unless otherwise approved, all project light standards shall be of uniform height, not to exceed 30 feet in height, except when lights abut or fall within 75 feet of a residential use property, where the maximum height shall not exceed 20 feet.

b. For parking lots in excess of 300 spaces, light standards may be a maximum of 50 feet in height provided they are located at least 200 feet from any residential use property.

6. To minimize visual clutter, parking lot lighting should be incorporated into planting areas where possible.

(l) Parking lot landscaping.

1. Parking lot landscape requirements shall be applicable to all parking areas in all districts, and a parking lot landscape plan shall be provided.

2. A landscape strip shall be provided around the perimeter of the parking lot, as defined below:

a. When the parking lot abuts a building(s) the strip shall be:

i. Four feet wide - parking lot with one to 40 spaces or a single parallel driving aisle, or any other configuration of equal or greater square footage.

ii. Six feet wide - parking lot with 41 or more spaces, or any other configuration of equal or greater square footage.

iii. For single use buildings with front facades less than 100 feet in length a minimum 150 square feet of landscape area may be installed at the building entrance (total square footage for both sides of entrance) in place of the

required planting strip along the front facade.

iv. For buildings with an arcade across the front facade or an access aisle immediately adjacent and parallel to the front facade, the required landscaping may be consolidated at focal points along the front facade and/or incorporated into other required parking lot landscape areas (perimeter or interior).

v. A landscape strip abutting a building shall have at least 50% of its length occupied by shrubs.

b. When the parking lot abuts a right-of-way, the strip will be:

i. In the CBD District - Six feet or the building setback, whichever is greater.

ii. In all other zoning districts:

1-75 spaces: 10 feet

76-150 spaces: 20 feet

151+spaces: 30 feet

c. When the parking lot abuts vacant land or an existing parking area with no landscape strip, the strip will have a minimum width as follows:

1-75 spaces: 6 feet

76-150 spaces: 8 feet

151+spaces: 12 feet

d. When the parking lot abuts an existing parking lot which provides for a perimeter landscape strip, the width of the strip will be equal to the additional width needed to create a strip with an overall minimum width as prescribed in division c. above. However, a landscape strip of at least four feet wide must extend from the property line inward.

e. When a parking lot abuts a residentially zoned or used property, a landscape area shall be provided as prescribed in the individual zoning district and shall have a screen as prescribed in division (C)(1) of this section.

f. When a new development is constructed either adjacent to or in between existing developments, the type and placement of street trees in the right-of-way along the new development shall be consistent with the type and placement of street trees along the existing development right-of-way (see Figure 26. F).

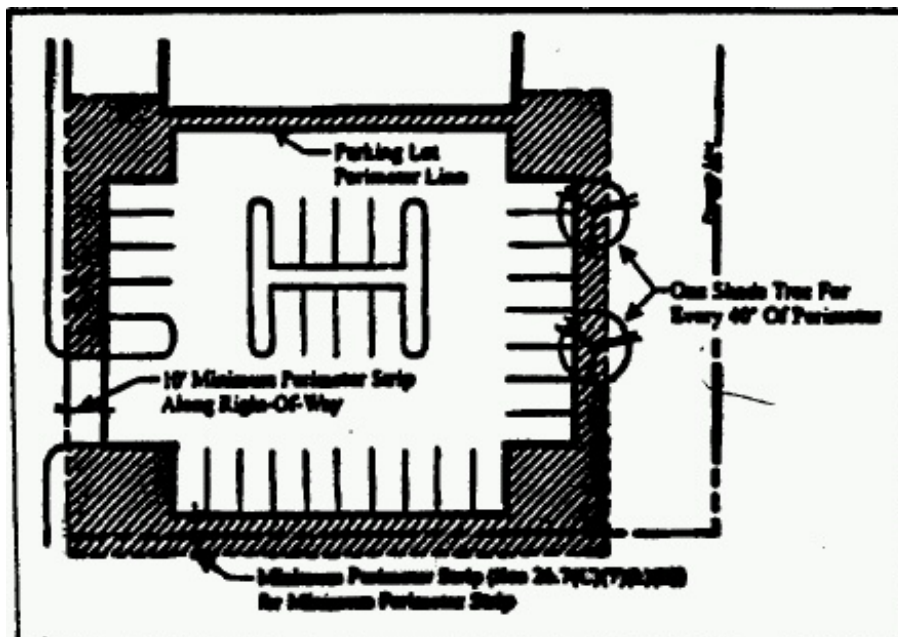


Figure 26.F Parking Lot Perimeter Landscaping

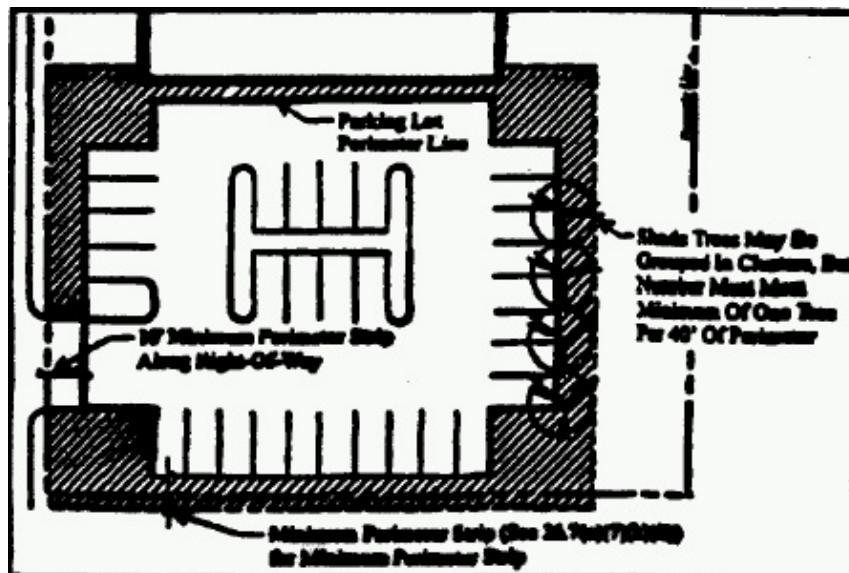


Figure 26.G Parking Lot Perimeter Landscaping

g. All landscape strips shall be planted with shrubbery, trees, and groundcover. There shall be one tree for every 40 feet of landscape strip.

h. Piped utilities, such as water, sewer, and gas, may cross through, run parallel and adjoining to, or within the outer two feet of a landscape strip.

i. Cable utilities, such as electricity, cable television, and telephones located within a landscape strip must be placed a minimum of 24 inches below grade.

iii. Landscaping of interior parking areas.

a. Parking areas totaling 76 or more spaces shall provide a minimum of 10% interior landscaping. Parking areas totaling 75 or less spaces shall provide a minimum of 5% interior landscaping, which may be transferred to the perimeter of the lot(s) if interior landscaping is not possible. Plant material within parking lots shall provide for safe visibility and maintain clear site lines between three and eight feet from the top of the curb.

b. Interior landscaping shall occur in any combination of planting islands, planting peninsulas, and entrance ways (see Figure 26.H).

c. Unless otherwise approved all parking lot interior landscape areas shall have a minimum width of 6 feet.

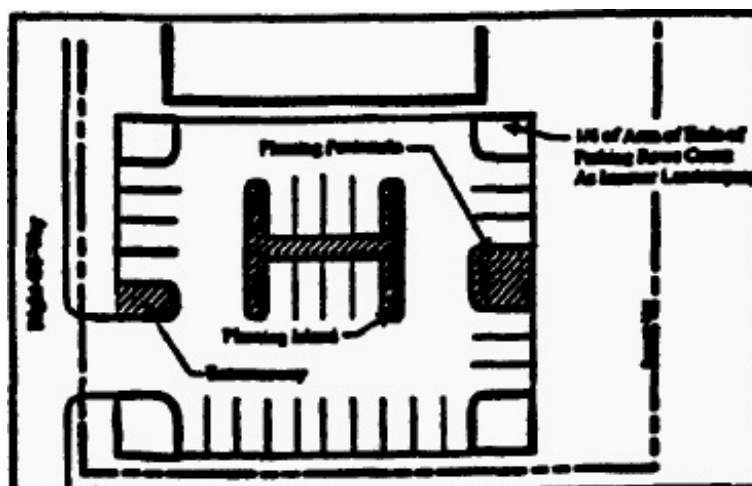


Figure 26.H Parking Lot Interior Landscaping

d. Unless otherwise approved, plantings within islands and peninsulas shall consist of at least one tree and mulch or groundcover for each 162 square feet, or portion thereof, of required landscape area. Shrubs may also be used as long as they do not exceed three feet in height.

iv. In cases in which trees exist on the property where the parking lot is proposed, the existing trees shall be maintained where they do not impede construction on the site and shall count toward the interior landscape requirement. Accepted best management practices for tree preservation shall be used. The location of existing trees to be saved shall be included in the landscape plan submitted to the Planning and Zoning Staff prior to site clearance.

v. Parking lots for 300 or more spaces requiring a central access drive shall have a minimum six foot wide landscape area on both sides and running the length of the drive. A minimum of one shade tree for every 50 lineal feet of landscape area shall be provided. This landscape area may count toward 50% of the interior landscape requirement for the

adjoining parking area of the development.

(m) Planting standards. Planting areas can be landscaped with a variety of trees, shrubs, or other planting materials. The variety of planting materials used should be tolerant of the existing urban conditions including exhaust, salt, and poor and/or compacted soils.

i. Deciduous canopy trees shall be a minimum of two and one-half caliper inches d.b.h.; ornamental trees shall be a minimum two caliper inches; coniferous trees shall be a minimum of six feet in height; evergreen and deciduous shrubbery shall be a minimum of 18 inches in height, except where required as a screen.

ii. All deciduous and coniferous trees and shrubs shall be prepared and planted in accordance with industry standards.

iii. Planting islands and peninsulas shall encompass an area of not less than 162 square feet for single parking rows and 324 square feet for double parking rows.

(n) Visibility requirements.

i. All landscape plantings, shrubs, trees, walls, fences, temporary and permanent, shall permit completely unobstructed vision within a clear sight triangle in accordance with § 151.229(B) intersection visibility area.

ii. Landscaping installed in parking areas shall be spaced and maintained so that a visual obstruction that represents a traffic hazard is not created.

(o) Pedestrian access.

i. For business and office use developments with parking lots abutting a public right-of-way there shall be a designated route(s) for pedestrians between the public sidewalk and the main entrance of the building or to the sidewalk fronting the building in the case of a multi-entrance building as per the following:

a. For properties with 100 feet or less of frontage abutting a public right-of-way there shall be a minimum of one designated route.

b. For properties with more than 100 feet of frontage abutting a public right-of-way a minimum of one designated route per vehicular access or 300 feet of frontage, whichever is greater.

c. For properties with frontage abutting two or more public streets, the minimum required designated routes shall be provided along each street.

ii. When a public sidewalk does not exist, the following shall apply:

a. For new construction on vacant land, both a public sidewalk as per city standards and the required designated pedestrian connections shall be installed. The sidewalk must be constructed with a minimum five foot landscaped green space (tree lawn) between the curb and the outside edge of the sidewalk. Street trees must be planted at intervals of not less than 40 feet apart (as amended by Ordinance 5044 on July 11, 2007).

b. For reconstruction on an existing development, a public sidewalk shall be installed if at least 40% of the properties on both sides of the street in the same block have public sidewalks, as well as the required designated pedestrian routes.

iii. Walkways shall be designed to be recognizable to both drivers and pedestrians. Any combination of at least two of the following walkway treatments shall be used:

a. Constructing the walk/ crosswalk from different materials, such as concrete or brick or other material approved or recognized under The Americans with Disabilities Act (ADA) requirements.

b. Placing bollards at sufficient regular intervals to delineate the walk/ crosswalk.

c. Aligning planting islands to define the walk/crosswalk.

d. Raising the walk/ crosswalk.

e. Painting pavement with walk/crosswalk striping.

(p) Drive-thru facilities.

i. Drive-thru lanes shall be of sufficient width so as to allow for the passage of two cars side-by-side in two marked driving lanes. In no case shall the required width be less than 16 feet. This requirement shall apply to the entire length of the queuing line of the drive-thru business. This requirement also applies to the area of the parking lot necessary for the overflow of waiting cars in the extended queuing line for drive-thru businesses. (As amended per Ordinance No. 4683 July 10, 2002.)

ii. Uses which offer drive-thru operations shall have a minimum first floor area of 800 square feet.

iii. Internal circulation and access to and egress from the site shall not substantially impair the movement of other modes of transportation, such as bicycles and pedestrians, to and through the site.

iv. Each facility shall provide sufficient queue area of a minimum of 20 feet per vehicle in advance of the service

window to accommodate a minimum of three vehicles per establishment. The queue area may not interfere with other on-site circulation and parking facilities.

v. Pedestrian walkways must have clear visibility and be emphasized by enhanced paving or markings when they intersect the drive-thru aisles.

vi. The drive-thru use shall be screened from adjacent rights-of-way and properties through placement of the drive-thru, screening, landscaping or other site design techniques.

vii. Any curb cuts serving the use are not located within 200 feet of any intersection of the rights-of-way of the major streets or major arterials.

viii. The location, size, design and operating characteristics of the proposed facility are such that the drive-thru operation will be reasonably compatible with and have minimal negative impact on the use of nearby properties.

(D) *Schedule of off-street parking space requirements.* Accessory off-street parking spaces shall be provided as required for the following uses:

<i>Type of Use</i>	<i>Space Requirements</i>
<i>Type of Use</i>	<i>Space Requirements</i>
Residential Uses	
Single- two-, multi-family and townhouse dwelling	2 spaces per dwelling unit
Boarding and lodging houses, fraternities and sororities	1 space per bed
Home occupation	1 space per 200 square feet devoted to the home occupation (in addition to the dwelling unit requirement)
Within the R-5 District	1 space per dwelling unit
Commercial Uses	
Automobile, mobile home, truck, recreational vehicle, boat and farm implement sales	1 space per 300 square feet of showroom floor area plus 1 space per 2,000 square feet of outdoor sales area
Auto service station and repair	1 space per pump plus 2 spaces per service bay
Car wash (self service or automatic)	1 space per employee on the largest shift
Convenience retail	6 spaces per 1,000 square feet
Greenhouse	1 space per 1,000 square feet
Hotel, motel and bed-and-breakfast	1 space per room plus 1 space per employee on the largest shift
Video Rental Store	1 space per employee on the largest shift plus 1 space per every 350 square feet
Movie theater	1 space per 2 seats
Office (Professional, Government and Business)	1 space per 300 square feet
Plant nursery	1 space per 300 square feet of sales area plus 1 space per acre
Rental agency	1 space per 300 square feet plus 1 space per 1,000 square feet outdoor display area
Restaurants and fast food establishment	1 space per 2.5 seats plus 1 space per employee on the largest shift
Retail sales and services establishment, under 150,000 SF	1 space per 300 square feet
Retail sales and services establishment, 150,000 SF or greater	1 space per 400 square feet
Roadside sales	5 spaces per stand
Tavern and night club	1 space per 100 square feet
Wholesale sales	1 space per 600 square feet plus 1 space per employee on the largest shift
Schools, Churches, Health Care Facilities and Other Institutions	

Assisted Living Facility	1 space per two dwellings plus 1 space per employee on the largest shift.
Religious Institutions	1 space per 4 seats in the main place of assembly plus other uses
College; university; business, trade or commercial; and high school	10 spaces per classroom
Day care and kindergarten	1 space per employee plus 1 space per 6 students
Elementary and middle schools	1 space per 2 employees plus 2 spaces per classroom
Hospital	1 space per 2 beds plus 1 space per employee on the largest shift
Medical office building	1 space per 250 square feet
Nursing or convalescent facility	1 space per 3 beds plus 1 space per employee on the largest shift
Penal or correctional institution	1 space per employee on the largest shift plus 1 space per 5 cells
Research, medical or optical laboratory	1 space per 300 square feet
Cultural and Entertainment Facilities	
Bowling alley	5 spaces per lane
Carnival, circus and fair	50 spaces per acre
Golf course	6 spaces per hole
Meeting or party hall, banquet facility, country club or dance hall	1 space per 200 square feet of indoor space; plus 1 space per 5,000 square feet of outdoor space; plus 1 space per 50 square feet of dining or activity space
Private club or lodge	1 space per 200 square feet plus 1 space per 2 seats in main place of assembly
Race track	1 space per 4 seats or six feet of benches
Riding stable (public)	1 space per stall
Stadium or coliseum	1 space per 3 seats or six feet of benches
Tennis or racquetball facility	2 spaces per court plus 1 space per employee on the largest shift
Manufacturing, Warehouse and Miscellaneous	
Cemetery	1 space per employee on the largest shift
Airport	1 space per employee on the largest shift plus 1 space for every 1,000 square feet of hangar space or outdoor aircraft storage space
Manufacturing establishment	1 space per employee on the largest shift, plus 1 space per 300 square feet of public office area
Mineral extraction, borrow pit, top soil removal and storage	1 space per employee on the largest shift
Mortuary or crematory	1 space per 50 square feet of public area
Motor bus or railroad passenger station	1 space per 4 seats of waiting area seat
Post office	1 space per official vehicle plus 1 space per employee on the largest shift plus 1 space per 200 square feet
Sanitary landfill or refuse dump; sewage, trash, garbage disposal or recycling plant	1 space per employee on the largest shift plus 1 space per 4 acres
Self-service storage	1 space per 2,000 square feet
Truck terminal	1 space per 1,000 square feet
Warehouse and storage facility	1 space per employee on the largest shift, plus 1 space per 300 square feet of public office space
Water treatment or storage facility	1 space per employee on the largest shift

(E) *Off-street loading requirements.*

(1) Every building which requires the receipt or distribution of materials or merchandise by trucks or similar vehicles, shall be required to have off-street loading zones in accordance with requirements of this chapter.

(2) All required off-street loading facilities which serve a building, structure or use of land erected, established, altered, enlarged or intensified after the effective date of this chapter shall be located on the same lot as the building, structure or use of land to be served.

(3) All required off-street loading facilities shall be located within the side or rear yard of the lot on which the principle structure or use is located. In the M-1 Limited Manufacturing District and the M-2 General Manufacturing District, loading facilities may be located in front of the principal building but not in the required front yard. Off-street loading facilities shall be located in a manner to prevent vehicle maneuvering in or blockage of rights-of-way.

(4) Areas designated as off-street loading facilities may not be used to satisfy the parking requirements established in division (D).

(5) Off-Street loading space requirement: Each loading berth shall have a minimum dimension of not less than 12 feet in width; 65 feet in length; and 14 feet vertical clearance, exclusive of access drives, aisles and maneuvering space.

(6) Off-street loading areas shall not be closer than 50 feet to any property in a residential district unless completely enclosed by building walls, a compact evergreen screen, a uniformly painted fence or any combination thereof not less than 6 feet in height.

(F) *Images.* Pursuant to Ord. 4762, passed 8-1-2003 the following figures are hereby incorporated by reference as if fully set out herein:

- (1) Figure 26H;
- (2) Figure 26I;
- (3) Figure 26J; and
- (4) Figure 26K.

(1979 Code, § 151.191) (Ord. 4370, passed 7-20-1998; Am. Ord. 4462, passed 1-13-2000; Am. Ord. 4542, passed 12-4-2000; Am. Ord. 4683, passed 7-1-2002; Am. Ord. 4762, passed 8-1-2003; Am. Ord. 4960, passed 4-3-2006; Am. Ord. 4985, passed 9-11-2006; Am. Ord. 4994, passed 10-16-2006; Am. Ord. 5044, passed 7-9-2007; Am. Ord. 5618, passed 9-11-2017) Penalty, see § 151.999

§ 151.232 ADULT ENTERTAINMENT FACILITIES.

(A) *Intent.* The requirements set forth in this section are intended to qualify and supplement the district regulations in order to manage the development, operation and maintenance of adult entertainment facilities in the interest of public health, safety and welfare.

(B) *Adult entertainment facility development standards.* The following provisions shall apply to all adult entertainment facilities:

- (1) No adult entertainment use shall be located within a 1,000-foot radius of any other such use.
- (2) Adult entertainment uses shall not be located within 1,000 feet of schools whether public or private, religious institutions, parks, playing fields or other areas in which large numbers of minors regularly travel or congregate.
- (3) These provisions may be waived by the City Council if it is found that:
 - (a) The proposed use would not be contrary to the public interest or injurious to nearby properties, and the spirit and the intent of this section will be observed; and
 - (b) All other applicable regulations of the zoning code of the city will be observed.
- (4) Signage for adult entertainment facilities shall be regulated as provided in §151.234.

(1979 Code, § 151.192) (Ord. 4370, passed 7-20-1998; Am. Ord. 4431, passed 7-12-1999) Penalty, see § 151.999

§ 151.233 BED AND BREAKFAST HOMES.

(A) *Intent.* The provisions set forth in this section of the zoning ordinance are intended to qualify and supplement the district regulations in the interest of public health, safety and welfare in order to assure that bed and breakfast homes are developed, maintained and operated in a manner consistent with the neighborhood in which they exist.

(B) *Development standards.* The following provisions shall apply to all bed and breakfast homes:

- (1) Food shall be offered only to overnight guests.
- (2) The Board of Zoning Appeals may attach other conditions to the operation of the bed and breakfast home including,

but not limited to: parking, signs, number of rooms, patrons and time of operation.

(3) No special exception shall be granted until the Board of Zoning Appeals, in their deliberations, determines that the bed and breakfast home will not change the residential character of the neighborhood.

(4) All uses and operations shall be conducted within completely enclosed buildings. All on-site vehicular circulation and traffic patterns shall be approved by the planning and zoning staff.

(5) No show windows or other exterior display, except for 1 sign which shall be a non-illuminated identification sign attached to the residence not exceeding 6 square feet.

(6) Bed and breakfast homes shall provide 1 parking space per guest room, plus 1 parking space per staff member. All parking shall be located in rear yards and shall be screened from adjoining land uses.

(7) Accessory buildings and structures such as barns, sheds and the like may not be used for guest rooms in a bed and breakfast home.

(8) A landscaping plan shall be submitted for approval by the planning and zoning staff.

(9) All bed and breakfast homes located in an R-1, R-2, R-3, or R-5 Residential District must be owner occupied, and shall have a maximum of 5 guest rooms.

(1979 Code, § 151.193) (Ord. 4370, passed 7-20-1998; Am. Ord. 4683, passed 7-1-2002) Penalty, see § 151.999

§ 151.234 SIGN REGULATIONS.

(A) Purpose.

(1) The use of signs to identify uses, advertise business and provide general orientation in the city is a recognized need and right of property owners within appropriately zoned districts.

(2) It is the purpose of this section to provide a balanced system of signage to facilitate communication between people and their environment and to avoid visual clutter that is potentially harmful to traffic safety, property values, community appearance and the economic vitality of the city.

(B) Prohibited signs. The following signs are prohibited in all districts:

- (1) Flashing signs;
- (2) Strings of pennants, propellers, pinwheels, streamers, and similar small objects except as temporary signs;
- (3) Signs imitating or resembling official traffic or government signs or signals;
- (4) Signs attached to trees, rocks or natural formations or public property including but not limited to utility poles, benches, trash containers and parking meters, except as specifically authorized by the city;
- (5) All signs not specifically identified within this chapter;
- (6) Roof-mounted signs;
- (7) Animated message boards, except when located in the Central Business District at a motion picture theater or performing arts center with a minimum seating capacity of 200 seats, or when located on the city's freestanding sign on Civic Plaza;
- (8) Signs that contain moving parts, including signs that spin or rotate; and
- (9) All signage located in the public right-of-way except public information, directional, emergency, and traffic signs as approved by the City Engineer or his or her duly authorized agent.

(C) Illumination of signs.

(1) Sign illumination shall be designed and placed to not cause glare which may result in traffic hazards or which may interfere with the customary use of nearby residences in accordance with § 151.230 of this chapter.

(2) In residential districts, only nameplates and bulletin boards may be illuminated. In non-residential districts, all signs may be illuminated provided they meet the other provisions established in this chapter.

(3) The following restrictions shall apply to signs located in, adjacent to or across a street or alley from a residential zoning district: no commercial or industrial sign shall be illuminated between the hours of 11:00 p.m. and 7:00 a.m. except for:

- (a) Those businesses open to the public during that time, in which case, illumination shall cease upon closing;
- (b) Apartment complex, subdivision and mobile home park signs;
- (c) Signs for hospitals and emergency health care facilities; and
- (d) Off-premise signs may be illuminated except between the hours of 12:00 a.m. and 6:00 a.m.

(D) *General location standards.*

(1) All on-premise signs, except wall, marquee and awning signs, shall be located no closer than 5 feet from any right-of-way.

(2) Signs shall be erected so as not to obstruct sight lines along any right-of-way or so as to obstruct sight lines to traffic control lights, street name signs at intersections or signals at railroad grade crossings.

(3) The lowest element of any sign which occupies the vertical space above a pedestrian or vehicular way and is designed to permit traffic thereunder shall be at least 10 feet above the finished grade of a sidewalk and at least 16 feet above the finished grade of a pavement used for vehicular traffic, unless otherwise specified.

Table 1 Maximum Sign Area in Square Feet (SF)

	Residential Districts		O-Office, BP-Business Park, and OP-Office Park Districts	
	All Single-Family and Two-Family Uses	All Other Uses Specifically Permitted in Residential Districts		
	Residential Districts		O-Office, BP-Business Park, and OP-Office Park Districts	
	All Single-Family and Two-Family Uses	All Other Uses Specifically Permitted in Residential Districts		
Freestanding signs	1 SF name and address only	10 SF for office uses; 32 SF for places of worship and educational institutions; 2 sign structure; 2 sign faces; all other uses, 4 SF; 1 sign structure; 2 sign faces; For schools and places of worship: an integrated message board may be mounted on the same supporting structure as the principal freestanding sign. When using such message board, the sign face may be increased to a maximum of 48 square feet in size.	50 SF or 1 times the lot frontage, whichever is smaller; 1 sign structure; 2 sign faces. An integrated message board may be mounted on the same supporting structure as the principal freestanding sign. Such a message board shall be limited in size to 50% of the sign area of the principal sign and shall not count against the maximum permitted sign size identified within this table or elsewhere within this Zoning Ordinance.	
		One 32 SF freestanding sign shall be permitted at each entry to a subdivision, apartment complex, office park, business park or multi-tenant building to identify the development; 1 sign structure, 2 sign faces or 2 sign structures, 1 sign face		
Wall signs	2 SF; 1 wall sign; name and address only	10% of the signable area or 20 SF whichever is smaller	20% of the signable area or 50 SF, whichever is smaller	
		See division (D)(6)(b) for “signable area.”		
		See division (D)(6)(d) for “wall sign increase.”		
Projecting signs	Not permitted	Not permitted	6 SF in O-Office District; all other districts, not permitted	
Temporary signs (as described in division (F)(5))	5 SF per sign; 2 sign faces	5 SF	32 SF for construction signs; all others 25 SF	
Directional signs	Not permitted	1 SF not to exceed 2 signs per driveway	2 SF not to exceed 2 signs per driveway	
	B-1 Business District	B-2, B-3, and B-4 Business Districts	CBD-Central Business District	M-1 and M-2 Manufacturing Districts
	B-1 Business District	B-2, B-3, and B-4 Business Districts	CBD-Central Business District	M-1 and M-2 Manufacturing Districts

Freestanding signs	50 SF or 1 times the lot frontage, whichever is smaller	50 SF or 1 times the lot frontage, whichever is smaller	40 SF or 1 times the lot frontage, whichever is smaller	60 SF or 1 times the lot frontage, whichever is smaller
	An integrated message board may be mounted on the same supporting structure as the principal freestanding sign. Such a message board shall be limited in size to 50% of the sign area of the principal sign and shall not count against the maximum permitted sign size identified within this table or elsewhere within this Zoning Ordinance.			
Wall Signs	30% of the signable area to a maximum of 50 SF per facade for single tenant buildings; 30% of the signable area to a maximum of 25 SF per store front for multiple tenant buildings	40% of the Signable Area to a maximum of 75 SF per facade for single tenant buildings; 40% of the signable area to a maximum of 32 SF per store front for multiple tenant buildings	50% of the signable area to a maximum of 50 SF per facade for single tenant buildings; 50% of the signable area to a maximum of 32 SF per store front for multiple tenant buildings	50% of the signable area to a maximum of 75 SF per facade
	See division (D)(6)(b) for "Signable Area.;" See division (D)(6)(d) for "Wall Sign Increase."			
Projecting Signs	6 SF; 2 sign faces	9 SF; 2 sign faces	9 SF; 2 sign faces	Not permitted
Temporary Sign (as described in division (F)(5))	32 SF for construction signs; all others 25 SF	32 SF for construction signs; all others 25 SF	32 SF for construction signs; all others 25 SF	32 SF
Directional Signs	4 SF Not to exceed 2 signs per driveway	4 SF not to exceed 2 signs per driveway	4 SF not to exceed 2 signs per driveway	4 SF not to exceed 2 signs per driveway

(4) (a) One free-standing sign is permitted per zoning lot frontage excluding temporary and portable display signs.

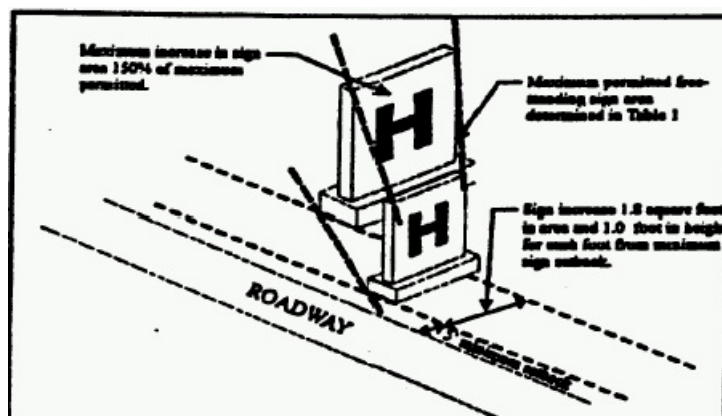
(b) A free-standing sign located in a front yard shall be set within a landscaped island or area a minimum of 100 square feet in area.

(c) Free-standing sign increases.

1. The permitted size of a free-standing sign face may be increased at the rate of 2 square feet for every one foot the sign is located in excess of the required five feet minimum distance from the right-of-way. The sign may be increased to a maximum size of 150% of the permitted sign area identified in Table 1.

2. The permitted height of a free-standing sign may be increased at the rate of 1 foot for every 2 feet the sign is located in excess of the required 5 feet minimum distance from the right-of-way. The sign may be increased in height to a maximum of 20 feet. Freestanding signage shall not be permitted within the perimeter of the parking area. For the purpose of this requirement, perimeter shall be considered the area of a parking lot between the building and the outer curb, including all interior parking lot landscape areas such as peninsulas and islands.

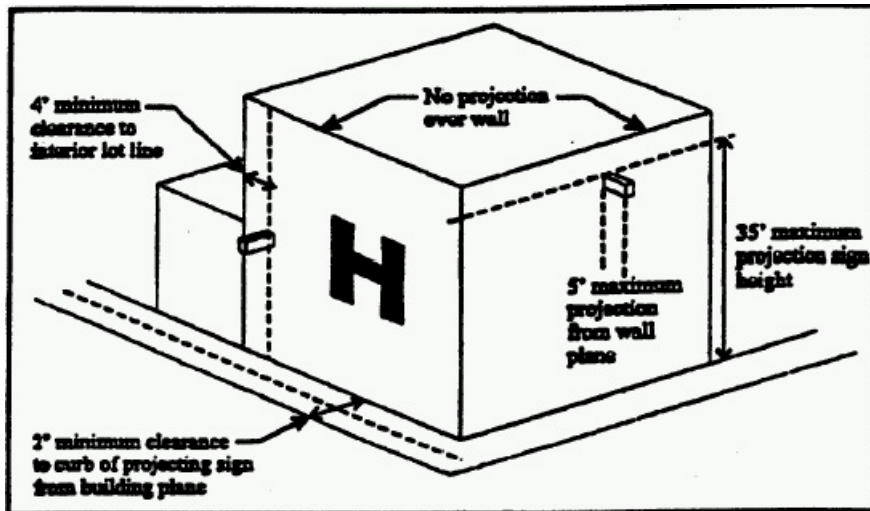
(d) Free-standing signs shall be centered on the property, or if not possible, at least 20 feet from any adjacent side property line (see Figure 26.I).



(e) Poles, supports, pedestals, and other means of supporting a free-standing sign shall not be included in the

determination of sign area.

(5) A projecting sign shall not extend above the wall to which it is attached and shall not extend horizontally more than 5 feet from the wall surface, shall not extend closer than 2 feet to a curb, and shall be located no less than 4 feet from an interior side lot line or party wall. In no case shall a projecting sign be attached to a building so that the sign is suspended more than 35 feet above the ground (see Figure 26.J).



(6) (a) A wall sign shall not extend above the wall to which it is attached, and such signs shall be set back from the ends of the building or party wall lines a minimum distance of 1 foot.

(b) Signable area.

1. For walls or buildings with architectural detailing (windows, doors, cornices, moldings columns and the like), the signable area shall be the 2-dimensional area that describes the square, rectangle or parallelogram on the facade of a building free of architectural details where a wall sign would be placed. (See Figure 26.K).

2. The signable area for a building facade, with or without architectural detailing, shall not exceed 25% of the total square footage of the facade.

(c) Wall sign area. The total square footage of wall sign(s) on a facade of a building shall be limited to the permitted sign area specified in Table 1.

(d) Wall sign increase.

1. The permitted size of a wall sign may be increased by an additional 20% of the wall sign square footage requirements as stipulated in § 151.234(D) Table 1, if a 6-foot high and 50 SF monument sign is installed in lieu of a pole sign.

2. This provision shall apply to all permitted free-standing signs regardless of the number of zoning lot frontages.

(7) The number of facades containing wall signage shall not exceed the number of zoning lot frontages for the property on which the building is located.

(a) Wall, marquee or awning signage may be placed on any facade of a building facing a public street or a customer parking lot provided a monument style sign, not to exceed 6 feet in height, is used as the only free-standing signage on the zoning lot.

(8) (a) One free-standing sign shall be permitted per zoning lot frontage. In addition, wall, marquee or awning signage may be used as per the following:

1. Where the business name of individual tenants is not placed on the free-standing sign; wall, marquee or awning signage may be used in accordance with Table 1 herein.

2. Where individual tenants business names are located on the permitted free-standing sign; wall, marquee or awning signage shall be limited to 75% of the maximum permitted sign square footage for the storefront on which the signage is to be placed.

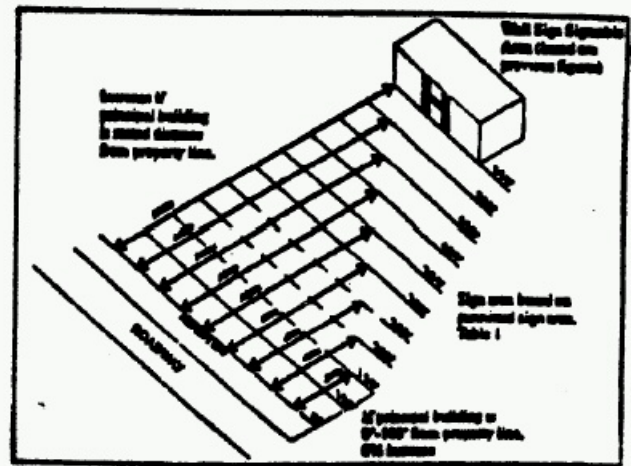
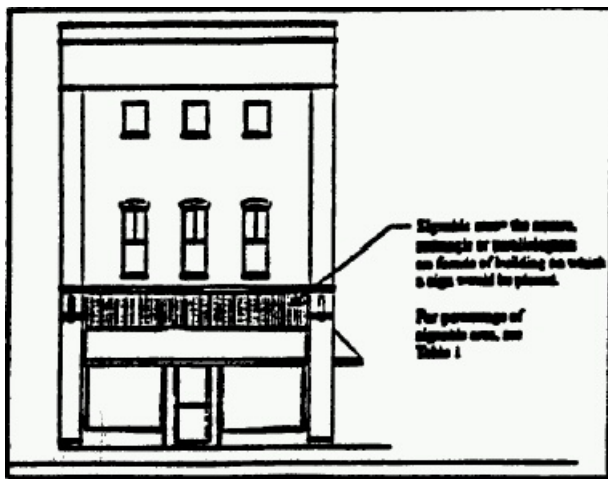
a. Anchor stores shall be exempt from the above restriction.

b. A maximum of four stores in an enclosed mall may qualify as anchor stores.

c. A maximum of 3 stores in an unenclosed shopping center may qualify as anchor stores.

3. All wall, marquee and awning signage for multi-tenant buildings or developments shall be of a consistent size and character, except for anchor stores which shall be permitted proportionately larger signage.

(b) Wall, marquee or awning signage may be placed on any storefront fronting a public street or a customer parking lot.



(9) Informational signage, whether wall or free-standing, shall be limited to that necessary to direct the public to particular uses of a building or site with lettering no larger than 1 foot in height.

(E) *Area and height of signs for all districts.* Table 1 establishes the maximum sign area and Table 2 the maximum sign height for freestanding, wall, projecting, temporary and directional signs in all established zoning districts. All other signs permitted within the city are discussed in division (F).

Table 2 Maximum Sign Height¹

	All Residential Districts		
	All Single-Family and Two-Family Uses	All Other Uses Specifically Permitted in Residential Districts	O-Office, BP-Business Park, and OP-Office Park District
Free-standing sign	5 feet	5 feet	6 feet
Projecting Sign	Below eave line	Below eave line	Not permitted, except in O-Office District; within such districts, below eave line
Directional	Not permitted	3 feet	3 feet

	B-1 Business District	B-2, B-3, and B-4 Business Districts	CBD-Central Business District	M-1 and M-2 Manufacturing Districts
Free-Standing Sign	6 feet	6 feet	6 feet	6 feet
	The maximum height of a freestanding sign may be increased at the rate of 1.8 foot in height for each foot of additional setback. In no case shall the sign exceed a maximum height of 20 feet.			
Projecting signs	35 feet maximum, but in no case higher than building wall	35 feet maximum, but in no case higher than building wall	35 feet maximum, but in no case higher than building wall	35 feet maximum, but in no case higher than building wall
Directional	3 feet	3 feet	3 feet	3 feet

¹sign height measured from existing curb height.

(F) *Supplemental sign regulations.*

(1) *Drive-thru signs.* Two drive-thru menu or information signs shall be permitted at each building which has a drive-thru facility. Drive-thru signs shall not exceed 6 feet in height with a minimum setback of 20 feet from any property line. Drive-thru signs are not permitted in any front yard. Information signs shall be limited to the name of the drive-thru business and information regarding the drive-thru services provided by the business.

(2) *Gas pump signs.* A maximum of 2 square feet of signage shall be permitted on each of the 2 sides of each gas pump. This restriction does not apply to any sign required by law.

(3) *Window signs.* No more than 25% of any window panel shall be covered by a window sign.

(4) *Off-premises signs.*

(a) Off-premises signs shall only be permitted in the B-3 and M, Manufacturing Districts.

(b) Off-premises signs shall be permitted only as either free-standing or wall signs unless otherwise restricted by this

chapter.

(c) Off-premises sign faces shall not exceed 300 square feet in area. The sign faces of off-premises signs shall be constructed back-to-back.

(d) Off-premises signs shall not exceed 30 feet in height.

(e) The minimum distance between off-premises signs shall be 1,000 feet measured linearly along the right(s)-of-way to which they are visible.

(f) Off-premises signs shall be located behind the required building setback line of the lots on which they are located. Off-premises signs shall be located a minimum distance of 25 feet measured in any direction from the point of intersection of the right-of-way lines of 2 intersecting streets.

(g) Off-premises signs shall be set back at least 60 feet from residential districts and parks, except when measured along a common right-of-way, in which case the setback shall be no less than 120 feet.

(h) Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited. Off-premises signs shall not include automatically changeable copy signs.

(i) Off-premises signs shall not be located within 1,000 feet of any local, state or federally-created historic district or structure.

(j) Off-premises signs shall not be located within 1,300 feet of the St. Joseph River, the Elkhart River and/or Christiana Creek as measured from the stream bed.

(k) Off-premise signs shall not be located in the front yard.

(l) The owners of all off-premises signs shall provide to the Planning and Zoning Office an annual inventory of all such signs by March 15 of each year. The inventory shall include the following information:

1. Location by address and legal description;
2. Height of sign;
3. Number of faces and orientation;
4. Size of sign(s); and
5. Setbacks from property lines.

(m) Cigarette and alcoholic beverage advertisements.

1. No person may place any sign, poster, placard, device, graphic display or other form of advertising that advertises cigarettes and/or alcoholic beverages in a publicly visible location. In this section, publicly visible location includes any off-premise freestanding or wall sign. This section shall not apply to:

a. The placement of signs, including advertisements, on commercial vehicles used for transporting cigarettes and/or alcoholic beverages;

b. Any off-premise sign located in an M-1 or M-2 District located more than 600 feet away from the boundary of any other zoning district which is not an M-1 or M-2 District, provided such sign faces away from any such other adjoining zoning district.

2. Division (F)(4)(m)1. will be applied to or interpreted to effect any contract executed after the effective date of this chapter and to any renewal term of a pre-existing contract beginning after the effective date of this chapter.

3. If any section, provision, clause, sentence or phrase of division (F)(4)(m) is for any reason held to be unenforceable or void, such holding shall not affect the reliability, enforceability or validity of the remaining provisions of division (F)(4)(m).

(5) *Temporary signs.* Temporary signs shall be permitted in addition to otherwise permitted signs and sign area in accordance with the following regulations. A zoning lot may utilize 2 of the following 3 types of temporary signs (inflatable display, yard sign, balloons) at a given time:

(a) *Inflatable display, non-residential lot.* (This item refers to a large, bag-like, flexible item filled with air or other gas to a point where it takes on a discernible shape. Display is usually rented, delivered to the site, filled with air or other gas and secured to the ground.)

1. Shall be permitted in "B" zoning districts or on lots containing a "B" use.
2. Display is limited to one item per zoning lot.
3. Display shall not encroach over right-of-way nor have motion caused by a varying supply of air or gas.
4. Inflatable display shall not be roof mounted.
5. A zoning lot may utilize a display for a total of 30 days per calendar year (Example: 5 uses at 6 days each.)

6. Fee shall be \$15 per site per calendar year.

(b) *Yard signs, non-residential lot.*

1. Shall be permitted in "B" zoning districts or on lots containing a "B" use.

2. Shall be allowed in yard and/or landscaped areas. Shall not be allowed in right-of-way.

3. Size of yard sign is limited to 4 square feet. Height is limited to 3 feet.

4. A zoning lot may display 2 yard signs per street frontage.

5. A zoning lot may display 1 additional yard sign for each 250 feet of frontage.

6. A zoning lot may utilize yard signs for a total of 30 days per calendar year. (Example: 5 uses at 6 days each.)

7. Fee shall be \$15 per site per calendar year.

(c) *Balloons.* (This item refers to small balloons secured to an item by string or stick-like device, as opposed to large inflatable display as described in division (F)(5)(a) above.)

1. Shall be permitted as attachment device to product which is for sale and is normally displayed out-of-doors.

2. Use of balloons is limited to 120 days in a calendar year.

3. Fee shall be \$15 per site per calendar year.

(d) *Light pole banner.* (This item refers to a piece of fabric secured to a light pole in interior parking lots; does not refer to light poles in the public right-of-way.)

1. Shall be permitted in "B" zoning districts or on lots containing a "B" use.

2. Banner shall be secured at top and bottom and shall be maintained in good repair.

3. Minimum clearance from ground shall be 12 feet.

4. Maximum of 1 banner per light pole.

5. Maximum square footage of banner shall be 25.

6. Fee shall be \$15 per site per calendar year.

7. Length of display shall be unlimited as long as banner is maintained in good repair.

(e) *Inverted B or Inverted T sign.* (This refers to a small sign shaped as described by its name. Example of inverted V sign is an outdoor menu board at a restaurant. Example of inverted T sign is a sign often seen at a gas station or oil change facility.)

1. Shall be subject to Board of Public Works jurisdiction when proposed to be located on a public sidewalk.

2. One sign shall be allowed per zoning lot.

3. Sign shall be taken indoors at close of business each day.

4. Shall be limited in size to 8 square feet.

5. Sign location shall not compromise pedestrian or vehicle traffic.

6. Fee shall be \$15 per site per calendar year.

(f) *Banners.*

1. Banners shall not be permitted on residentially-zoned or used properties.

2. Banners shall be displayed so as not to be mounted in excess of 20 feet in height.

3. Banners shall not be constructed as free-standing signs. A banner may be placed within the signable area of a facade that faces a parking area or right-of-way.

4. Banners shall not be displayed for more than 30 days per calendar year. The use of banners shall be limited to 180 days per calendar year on a zoning lot in all business and manufacturing districts, and 30 days per calendar year for all institutional uses, as defined in division (F)(6)(a) of this section.

5. Banners shall be limited to 1 per zoning lot, with a maximum 40 square feet in sign face area and 7.5 feet in height.

6. Banners shall be maintained as installed and not allowed to droop, sag, flap or become torn and frayed.

7. All banners shall require a zoning clearance permit and a permit fee as shown in §151.292.

(g) *Temporary window signs.* Temporary window signs shall cover no more than 25% of the window (glass) area where it is placed.

(h) *Pennants.* The display of strings of pennants, streamers, pinwheels, balloons and similar objects shall be prohibited except as permitted for carnivals and open-air festivals.

(i) *Other temporary signs.* Real estate, construction and signs for new businesses shall be permitted as temporary signs. Temporary signs for new businesses shall be limited to 90 days, by which time a permanent sign may be installed pursuant to permit requirements identified in this Zoning Ordinance. Temporary construction signs shall not display the name or any other markings identifying a home occupation that is being operated on the property where the construction is taking place. Temporary construction signs shall be limited to no more than 5 square feet in area in R-1, R-2 and R-3 residential zones, and to no more than 32 sq. ft. in area in all other zoning districts. Temporary construction signs shall be removed immediately upon completion of the construction, which completion shall be deemed to have occurred either upon the issuance of a certificate of occupancy for new construction, or upon completion of the last required inspection in cases of other than new construction. Temporary real estate signs shall not display the name or any other markings identifying a home occupation that is being operated on the property that is for sale or lease.

(j) *Award or recognition signs.* Municipal agency award or recognition signs shall be limited to a period of 60 days. Homeowner or business beautification or recognition signs placed by municipal agencies shall qualify for this requirement. The signs must be placed according to freestanding sign location requirements. Signs of this type may not exceed 20 square feet in area or 4 feet in height.

(6) *Portable display signs.*

(a) The use of portable display signs shall be limited to 180 days per calendar year on a zoning lot in all business and manufacturing districts, and 30 days per calendar year for all institutional uses, as defined below, on a zoning lot in any residential district. Institutional uses shall include: churches, schools, libraries, charitable organizations, non-profit organizations, private clubs and lodges and other similar uses approved by the Planning and Zoning Office.

(b) Portable display signs shall be prohibited in all residential zones except as specified in subdivision (a) above.

(c) Double-faced portable signs shall be limited to 1 per zoning lot, with a maximum 40 square feet in sign face area and 7.5 feet in height.

(d) Sign shall be set back a minimum of 5 feet from the street right-of-way lines and 5 feet from any adjacent property line, except if adjacent property is zoned "R", in which case the setback shall be 15 feet.

(e) Sign shall not be located in the intersection visibility area as defined in this chapter.

(f) Permits.

1. All portable display signs shall require a portable sign permit fee (\$15). Permit and fee are valid for any period or periods up to 90 days in a calendar year. Original permit must be amended for each additional sign placement to record days of use in order to be valid. All portable signs shall require a portable sign zoning clearance permit and a permit fee as shown in § 151.292.

2. Signs placed without a valid permit (original or amended) shall be red-tagged and required to pay a \$15 penalty fee in addition to the original permit fee and any fine levied.

3. Any person or business who rents, leases and/or places portable sign(s) within the city (on property other than his or her own), shall post an annual bond of \$1,000.

(g) Additional requirements.

1. Lighting shall be limited to 25 watt bulbs. Flashing lights are prohibited.

2. All electric connections to portable display signs shall comply with the city's electrical ordinance (Ord. 3460, as amended) and the National Electrical Code (NFPA-70, Article 600) as adopted by the city's electrical ordinance.

3. During times that street repairs interrupt the conduct of business, permits may be issued at locations approved by the Planning and Zoning Office for such time as construction hinders visibility and/or access to the business, as determined by the Planning and Zoning Office.

4. No portable sign may be converted to a permanent sign.

(7) *Flags.*

(a) Flags bearing the official design of a nation, state, municipality or organization are permitted within the city according to the following standards:

1. In residential districts, 1 flagpole shall be permitted per lot.

2. In all other districts, 3 flagpole shall be permitted per lot.

(b) Flagpoles shall not be located closer than 10 feet to an adjacent residential lot line.

(c) In residential districts, flagpoles may be no more than 25 feet in height.

(8) *Marquee, canopy or awning signs.*

(a) The signable area of a marquee, canopy or awning shall be limited to 50% of the area of the front or top plane,

and 50% of the side plane of the marquee, canopy or awning. Signage shall be attached directly to the marquee, canopy or awning and shall not extend vertically or horizontally beyond.

(b) Such signs may be located no more than 20 feet above curb level and shall not extend above the window sill of the second story of a multi-story building.

(c) There shall be a minimum clearance of 8 feet between the bottom of the marquee, canopy or awning and the sidewalk or ground.

(9) Each property shall contain a sign identifying the address of the property. This sign shall not count against the permitted sign areas identified in Table 1, but in no case shall the address sign exceed 2 square feet in area.

(10) *Termination of use.*

(a) At the termination of use of any premises, building, structure or lot, the permission to display signs associated with such use shall terminate. All wall signs shall be removed within 365 days from the date of termination of such use. Freestanding signs whose height or size or setback no longer comply with regulations shall be removed in their entirety, including all support structures within 365 days from the date of termination of such use. Freestanding signs whose height, size and setback are in compliance with regulations shall have the sign faces removed within 365 days from the date of termination of such use.

(b) All signs associated with the premises must be kept clean, neatly painted, and free from all hazards, such as, but not limited to faulty wiring or loose fastenings, and must be maintained at all times in such safe condition so as not to be detrimental to the public health or safety.

(G) *Maintenance.*

(1) All signs shall be maintained in a good state of repair, including, but not limited to repair of defective parts, painting and cleaning. The replacement of the structural members of a non-conforming sign for the purpose of extending the life of such non-conforming sign, shall not constitute maintenance as defined in this section, but shall be considered as new construction and must thereby satisfy all requirements of this chapter.

(2) The owner of any property on which a sign is located and those responsible for maintenance of the sign shall be jointly responsible for the maintenance of the area in the vicinity of the sign and shall be required to keep this area mowed in accordance with city standards and maintained in a safe, clean and sanitary condition free of noxious or offensive substances and rubbish.

(3) The Planning and Zoning Office or authorized representative shall have the right of entry in order to inspect all signs for compliance with the provisions of this chapter.

(4) (a) When any sign or adjacent area is not maintained within the provisions of this chapter, or determined otherwise unsafe, the Planning and Zoning Office or the authorized representative shall send written notice to both the owner of the property on which the sign is located and the sign owner.

(b) Notice shall direct the owners to remove, repair or alter the sign or to maintain the property in accordance with city standards.

(c) If the sign is not removed, replaced or altered or the property not properly maintained within 90 days, the city or authorized representative shall cause the sign to be removed, repaired or altered or the property to be maintained at the expense of the property and/or sign owner in accordance with the procedures of this chapter.

(I) *Nonconforming signs.* Any sign lawfully established prior to the effective date of this chapter that does not conform to the regulations herein shall be deemed a nonconforming use and may be continued except under the following conditions:

(1) If there is an increase or decrease in the size of the sign face.

(2) If the sign is removed from its original place of installation.

(J) *Special exceptions/conditional uses.*

(1) Signs accessory to special exceptions or conditional uses may be approved by the Board as a part of the special exception or conditional use.

(2) If not specifically approved as part of the special exception or conditional uses, signs accessory to the uses shall conform to the sign standards of the district in which they are located.

(K) *Permits.*

(1) A zoning clearance permit shall be obtained from the Planning and Zoning Office prior to the issuance of a zoning permit for the signs as permitted herein.

(2) A sign permit shall be obtained from the Building Department prior to the erection of any sign listed in division (D).

(3) A sign permit may, at the sole discretion of the Planning and Zoning Staff, be issued for a new sign face if the existing sign base, pole and frame are located in the primary street setback, provided that:

(a) The new sign face will not exceed the size of the existing sign frame; and

(b) The Planning and Zoning Office may, but shall not be required to, waive the requirement of petitioning and receiving a variance from the Board of Zoning Appeals for the placement of an on-premise sign within a primary street/major thoroughfare setback. Basis for any waiver shall include, but not be limited to the prevailing on-premise sign setback along the primary street/major thoroughfare within 500 feet of the property. Permittee shall sign and record a primary street/major thoroughfare agreement with the city.

(4) An electrical permit shall be obtained from the Building Department for the erection, installation, or replacement of any sign requiring electrical power for lighting, movement or copy change.

(L) *Fees, penalties or appeals.*

(1) *Fees.* The fees for permits to erect or place signs shall be prescribed in the Building and Electrical Codes of the city.

(2) *Penalties.* In addition to any other penalties prescribed herein, signs which are located without valid permit or in violation of this chapter, more than once within any 6-month period may result in revocation of the bond and/or permit and no additional permits may be issued for a period of 12 months to the person or subsequent transferee.

(3) *Appeal.* The decision of the Planning and Zoning Staff shall be final except upon appeal of its decision to the Board of Zoning Appeals pursuant to the requirement of § 151.231 of this chapter.

(M) *Construction standards.* The construction materials and details for all signs erected in the city shall be of the quality and grade as specified for buildings in the Uniform Building Code as adopted by the Administrative Building Council of the State of Indiana.

(1979 Code, §151.194) (Ord. 4370, passed 7-20-1998; Am. Ord. 4431, passed 7-12-1999; Am. Ord. 4462, passed 1-13-2000; Am. Ord. 4542, passed 12-4-2000; Am. Ord. 4592, passed 6-4-2001; Am. Ord. 4683, passed 7-1-2002; Am. Ord. 4762, passed 8-1-2003; Am. Ord. 5044, passed 7-9-2007; Am. Ord. 5175, passed 7-20-2009; Am. Ord. 5196, passed 1-4-2010) Penalty, see § 151.999

WIRELESS COMMUNICATIONS

§ 151.250 GENERAL PROVISIONS.

(A) *Intent.* To encourage the orderly development of wireless communication technologies throughout the city while controlling the proliferation of communication towers. Particular emphasis should be to promote the collocation of wireless communication facilities. This subchapter shall not apply to amateur television or radio towers attached to primary structures or to free-standing amateur television or radio towers that are 35 feet in height or less, as measured from grade to the highest point of the antenna.

(B) *Requirements.* The following requirements apply to all wireless communications facilities regardless of location and are to be supplemented with the specific requirements set forth below.

(1) The location of any wireless communication facility shall comply with other applicable standards of the zoning ordinance not specifically indicated in this subchapter, including but not limited to those for floodplains and wetlands.

(2) All wireless communication facilities, with the exception of television and radio towers, shall be fully automated, shall not require attention on a daily basis and shall be visited only for periodic and necessary maintenance or emergencies.

(1979 Code, § 151.210) (Ord. 4370, passed 7-20-1998; Am. Ord. 4457, passed 12-6-1999)

§ 151.251 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

WIRELESS COMMUNICATIONS. Television and radio towers, as well as any personal wireless service as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist.

WIRELESS COMMUNICATION FACILITY. Any facility for the transmission and/or reception of wireless communications services, usually consisting of an antenna array, connection cables, an equipment facility and a support structure.

WIRELESS COMMUNICATION FACILITY also includes an antenna array attached to an existing building or structure (attachment structure).

ATTACHMENT STRUCTURE. Includes, but is not limited to, utility poles, signs, water towers, rooftops, towers with any accompanying pole or device (attachment device) which attaches the antenna array to the existing building or structure and associated connection cables, and an equipment facility which may be located either inside or outside of the attachment structure.

ANTENNA ARRAY. One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The **ANTENNA ARRAY** does not include the support structure.

TEMPORARY WIRELESS COMMUNICATION FACILITY. A wireless communication facility to be placed in use for 90 or fewer days.

COLLOCATION/SITE SHARING. Use of a common wireless communication facility or common site by more than 1 wireless communication license holder, or by 1 wireless license holder for more than 1 type of communication technology and/or placement of a wireless communication facility on a structure owned or operated by a utility or other public entity.

EQUIPMENT FACILITY. Any structure used to contain ancillary equipment for a wireless communication facility which includes cabinets, shelters, a building built out of an existing structure, pedestals and other similar structures.

FAA. Federal Aviation Administration.

FCC. Federal Communications Commission.

FTA. Federal Telecommunications Act of 1996.

HEIGHT. When referring to a wireless communication facility, **HEIGHT** shall mean the distance measured from ground level to the highest point of the wireless communication facility, excluding the antenna array.

SETBACK. The required distance from the property line of the parcel on which the wireless communication facility is located to the base of the support structure and equipment shelter or cabinet where applicable, or, in the case of guy-wire supports, the guy anchors.

SUPPORT STRUCTURE. A structure designed and constructed specifically to support an antenna array, and may include a monopole, self-supporting (lattice) tower, guy-wire-support tower and other similar structures. Any device (attachment device) which is used to attach an attachment structure shall be excluded from this definition.

(1979 Code, § 151.211) (Ord. 4457, passed 12-6-1999)

§ 151.252 PLAN COMMISSION APPROVAL.

The Plan Commission shall approve or deny applications for wireless communications facilities that exceed 70 feet in height based on consideration of the following factors:

- (A) Whether the facility offers opportunities for collocation/site sharing;
- (B) Whether all applicable developmental standards will be met;
- (C) The previous or existing use of the site and its impact on surrounding properties;
- (D) Compatibility of the proposed use with existing use of the site and existing neighboring uses;
- (E) The extent to which granting the conditional use would substantially serve the public safety and welfare;
- (F) The particular physical suitability of the site for the proposed use;
- (G) Whether conditions may be imposed by the Plan Commission or commitments made by the applicant which are sufficient to mitigate any potential adverse impact on neighboring property; and
- (H) Other factors that the Plan Commission may deem relevant.

(1979 Code, § 151.212) (Ord. 4457, passed 12-6-1999)

§ 151.253 DEVELOPMENT STANDARDS.

Notwithstanding any provision of this chapter to the contrary, the following development standards shall apply to all wireless communication facilities.

(A) *Height standards.* The maximum height of wireless communications facilities shall be less than 200 feet above the surface grade.

(B) *Tower separation.* Towers shall be separated from residentially-zoned or used properties by a minimum distance in feet determined by multiplying the height of the tower (in feet) by a factor of 2.5 (The minimum separation distance is 2-1/2 times the height of the tower).

(C) *Setback standards.*

(1) Wireless communication facilities located on properties zoned B-2 Community Business District, B-3 Service Business District and B-4 Regional Business District, shall be located to the rear of the primary building.

(2) Wireless communication facilities located on properties zoned M-1 Limited Manufacturing District and M-2 General Manufacturing District shall comply with setback requirements for accessory structures, unless attached to the primary structure.

(D) *Fencing and landscaping requirements.*

(1) *Fencing.* An opaque fence, a minimum of 8 feet in height and a maximum of 15 feet in height, constructed of painted

or treated wood, painted or textured block, or brick shall be maintained in good repair around each wireless communication facility. Nothing herein shall prevent fencing that is necessary to meet requirements of state or federal agencies.

(2) *Landscaping.* There shall be a minimum of a 4-foot landscape strip along the perimeter of the fence enclosure. The landscaped strip shall be planted with shrubbery, trees and groundcover, and shall comply with the planting standards as set forth in this chapter.

(E) *Aesthetics, placement, materials and colors.* Wireless communication facilities shall be designed to be compatible with the existing structures and their surroundings to the extent feasible, including placement in a location which is consistent with proper functioning of the wireless communications facility, the use of compatible or neutral colors or camouflage technology.

(F) *Lighting.* Wireless communication facilities shall not be artificially illuminated, directly or indirectly, except for security and safety lighting and other illumination as may be required by the FAA or other applicable authority. All lighting shall be installed in a manner that will minimize impacts on adjacent properties.

(G) *Maintenance inspections.* All guyed towers, including those installed prior to December 6, 1999, shall be inspected every 2 years. Self-supporting towers shall be inspected every four years. Each inspection shall be by a qualified professional engineer or other qualified inspector, and any inspector-recommended repairs and/or maintenance should be completed without unnecessary delay. A copy of the final inspection report shall be filed in the Planning and Zoning office. At a minimum, each inspection shall include the following:

- (1) Tower structure: Including bolts, loose or damaged members, signs of unusual stress or vibration.
- (2) Guy wires and fittings: Check for age, strength rust, wear, general condition and any other signs of possible failure.
- (3) Guy anchors and foundations: Assess for cracks in concrete, signs of corrosion, erosion, movement, secure hardware and general site condition.
- (4) Condition of antennas, transmission lines, lighting, painting, insulators, fencing, grounding and elevator, if any.
- (5) For guyed towers: Tower vertical alignment and guy wire tension (both required tension and present tension).

(H) *Radio frequency emissions/sound.* The following radio frequency emissions standards shall apply to all wireless communications facility installations.

(1) *Radio frequency impact.* The FTA gives the FCC jurisdiction over the regulation of radio frequency (RF) emissions, and wireless communications facilities that do not exceed the FCC standards shall not be conditioned nor denied on the basis of RF impact.

(2) *FCC compliance.* In order to provide information to its citizens, copies of ongoing FCC information concerning wireless communications facilities and RF emissions standards may be requested. Applicants for wireless communications facilities shall be required to provide information with the application on the measurement of the effective radiated power of the facility and how this meets the FCC standards.

(3) *Sound prohibited.* No unusual sound emissions such as alarms, bells, buzzers or the like are permitted.

(I) *Structural integrity.* Wireless communications facilities with support structures shall be constructed to the Electronics Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision F Standard titled Structural Standards for Steel Antennas Towers and Antenna Support Structures (or equivalent), as may be updated and amended. Each Support Structure shall be capable of supporting multiple antenna arrays.

(J) *Permitted wireless communication facilities.* Wireless communications facilities attached to attachment structures or monopoles that are 70 feet or less in height and that meet the development standards as set forth in this section, may be administratively approved by the Planning and Zoning Staff in the B-2, B-3, B-4, M-1 and M-2 zoning districts except as hereinafter specified. All others located in the B-2, B-3, B-4, M-1 and M-2, regardless of type or location shall be subject to review in a public hearing by the Plan Commission and may not be approved by the Administrative Review process.

(K) *Historic districts and overlay districts.* Wireless communication facilities to be located within an established Historic District, including single site historic designations shall be subject to review by the Historic and Cultural Preservation Commission (HCPC). Review by the HCPC shall be in accordance with procedures for a Certificate of Appropriateness.

(1979 Code, § 151.213) (Ord. 4370, passed 7-20-1998; Am. Ord. 4457, passed 12-6-1999; Am. Ord. 4683, passed 7-1-2002) Penalty, see § 151.999

§ 151.254 APPLICATION REQUIREMENTS.

(A) *Application submission.* All requests for a zoning clearance regardless of wireless communications facility type, including, but not limited to a temporary wireless communication facility, shall submit an application in accordance with the requirements of this section.

(B) *Application contents.* Each applicant requesting a wireless communication facility or temporary wireless communication facility shall submit a sealed complete set of drawings prepared by a licensed architect and/or engineer that will include a site plan, elevation view and other supporting drawings, calculations and other documentation showing the location and dimensions of the wireless communications facility and all improvements associated therewith, including

information concerning specifications, antenna locations, equipment facility and shelters, landscaping, curb cuts, parking, stormwater retention, screening and landscaping. Applicants proposing to collocate on an existing wireless communication facility shall include a radio frequency intermodulation study with their application.

(C) *Proof of filing FAA Form 7460-1.* A letter of receipt from the Federal Aviation Administration (FAA) providing proof of filing FAA Form 7460-1 and indicating the assigned AGL/File Number must be submitted along with application for all wireless communication facilities within 20,000 feet any airport runway, that exceed 100 feet in height.

(D) *Existing network locations.* If a proposed wireless communication facility is part of a larger network of similar facilities, a geographic and written depiction of all locations in this network shall accompany the petition for a proposed wireless communication facility.

(E) *Affidavits of collocation agreement.* All applicants for wireless communication facilities must sign and provide a city affidavit for wireless communication facility indicating:

(1) That no other collocation opportunities exist on a list of towers within a 1-mile radius provided by the office of Planning and Zoning, including proof that a good faith effort has been made; names, addresses and telephone numbers of all owners of wireless communication facilities to whom inquiries have been made; and

(2) Agreement to allow and reasonably market collocation of other wireless communication facility users at rates that are comparable and competitive to those charged for location at comparable wireless communication facilities. The statement shall include the applicant's policy regarding collocation of other providers and the methodology to be used by the applicant in determining reasonable rates to be charged to other providers. The collocation agreement shall be considered a condition of issuance of a zoning clearance.

(F) *Application fees.* A plan review fee of \$100 and a radio frequency intermodulation study review fee of \$100 (collocation applicants only) shall accompany each application. These fees may be used by the city to engage an engineer(s) or other qualified consultant(s) to review the technical aspects of the application and the radio frequency intermodulation study (if required).

(G) *Technical assistance.* In the course of its consideration of an application, the Planning and Zoning Staff, the Plan Commission or the Board of Zoning Appeals may deem it necessary, in complex situations, to employ an engineer(s) or other consultant(s) qualified in the design and installation of wireless communication facilities to assist the city in the technical aspects of the application. In such cases, any additional reasonable costs incurred by the city not to exceed \$3,000 for the technical review and recommendation shall be reimbursed provided in the form of a cashier's check or money order by the applicant prior to the final hearing on filing a petition for the proposed wireless communication facility.

(1979 Code, § 151.214) (Ord. 4457, passed 12-6-1999; Am. Ord. 4683, passed 7-1-2002)

§ 151.255 COLLOCATION POLICY.

(A) (1) All new wireless communication facilities shall be engineered, designed and constructed to be capable of sharing the facility with other providers, to collocate with other existing wireless communication facilities and to accommodate the future collocation of other wireless communication facilities.

(2) A zoning clearance shall not be issued until the applicant proposing a new wireless communication facility shall demonstrate that it has made a reasonable good-faith attempt to locate its wireless communication facility onto an existing structure.

(3) Competitive conflict and financial burden are not deemed to be adequate reasons against collocation.

(B) (1) All wireless communication facilities with support structures up to a height of 150 feet shall be engineered and constructed to accommodate at least a 3-antenna array.

(2) All wireless communication facilities with support structures up to a height of more than 150 feet shall be engineered and constructed to accommodate at least a 4-antenna array.

(1979 Code, § 151.215) (Ord. 4457, passed 12-6-1999)

§ 151.256 REMOVAL OF ABANDONED WIRELESS COMMUNICATIONS FACILITIES.

Any wireless communication facility that is not operated for a continuous period of 12 months shall be considered abandoned, and the city, at its election, may require the wireless communication facility owner to remove the wireless communication facility within 90 days after notice from the city to remove the wireless communication facility. If the abandoned wireless communication facility is not removed within 90 days, the city may remove it and recover its costs from the wireless communication facility's owner. If there are two or more users of a single wireless communication facility, this provision shall not become effective until all providers cease to use the wireless communication facility. If the owner of an abandoned wireless communication facility cannot be located or is no longer in business, the requirements of this section shall be the responsibility of the landowner on whose property the wireless communication facility is located.

(1979 Code, § 151.216) (Ord. 4457, passed 12-6-1999)

§ 151.257 REVOCATION PROCEDURE.

Any zoning clearance issued for a wireless communication facility pursuant to this subchapter may be revoked after a hearing as provided hereinafter. If the planning and zoning staff finds that any permit holder has violated any provision of this subchapter, or has failed to make good faith reasonable efforts to provide or seek collocation, the planning and zoning staff shall notify the permit holder in writing that the zoning clearance is revocable due to the permit holder's noncompliance with the conditions of the permit. The Planning and Zoning Staff may recommend to the Plan Commission that the zoning clearance be revoked. After the appropriate public hearing, the Plan Commission may revoke the zoning clearance upon such terms and conditions, if any, that they may determine. Prior to the initiation of revocation proceedings, the Planning and Zoning Staff shall notify the permit holder, in writing, of the specific areas of noncompliance and specify the date by which such deficiencies must be corrected. The time for correction of deficiencies shall not exceed 60 days. The permit holder shall provide the city with evidence that the required corrective action has been taken. Should the permit holder fail to correct any deficiencies in the time required, the Plan Commission shall convene a public hearing to consider revocation of the zoning clearance. The hearing shall be conducted pursuant to notice by publication in a newspaper with general circulation in the city not less than 10 days prior to the hearing and by written notice to the permit holder. The public hearing shall be conducted pursuant to the Plan Rules of Procedure.

(1979 Code, § 151.217) (Ord. 4457, passed 12-6-1999; Am. Ord. 4683, passed 7-1-2002)

ADMINISTRATION AND ENFORCEMENT

§ 151.280 PLANNING AND ZONING STAFF.

The Planning and Zoning staff shall enforce this chapter, and in addition thereto and in furtherance of the authority, they shall:

- (A) Issue all zoning clearance permits and keep permanent records thereof;
- (B) Conduct such inspections of buildings, structures and uses of land as are necessary to determine compliance with the terms of this chapter;
- (C) Maintain permanent and current records of this chapter, including all maps, amendments, special exceptions, variances and conditional uses, and records of hearings thereon;
- (D) Provide and maintain a public information bureau relative to all matters arising under this chapter;
- (E) Provide interpretation of this chapter when necessary and such technical and clerical assistance as the Board of Zoning Appeals and Plan Commission may require;
- (F) Review all proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law; and
- (G) Review all applications for zoning clearance permits for new construction to ascertain whether the proposed construction or addition lies in a flood hazard area as defined by this chapter. If the proposed construction or addition is found to lie in either a floodway or floodplain the Planning staff shall forward all pertinent materials to the I.D.N.R. for appropriate review and action. Upon receiving the proper permit or letter of recommendations from I.D.N.R., the Planning staff may require such modifications to the design as he or she may deem appropriate to prevent flotation, collapse or lateral movement of the structure and minimize potential future flood damages.

(1979 Code, § 151.230) (Ord. 4370, passed 7-20-1998)

§ 151.281 BOARD OF ZONING APPEALS.

(A) *Creation and membership.* A Board of Zoning Appeals is hereby established, which shall consist of 5 members all of whom shall be residents of the city, of which three citizen members shall be appointed by the Mayor of whom 1 must be a member of the Plan Commission and 2 must not be members of the Plan Commission, 1 citizen member appointed by the Common Council who must not be a member of the Plan Commission, and 1 citizen member appointed by the Plan Commission, who must be a member of the Plan Commission other than the Plan Commission member appointed by the Mayor.

(B) *Terms of office.* The members of the Board of Zoning Appeals shall be appointed for terms of 4 years. The terms shall expire on January 1. The terms of the members representing the Plan Commission shall be coextensive with their term of office on the Commission. If a vacancy occurs, the appropriate appointing authority shall appoint a member for the unexpired term of the vacating member.

(C) *Offices.* At the first meeting of each year, the Board of Zoning Appeals shall elect a Chairperson and Vice-Chairperson from its members. The Vice-Chairperson shall have authority to act as Chairperson during the absence or disability of the Chairperson.

(D) *Quorum and official action.* A majority of members of the Board of Zoning Appeals shall constitute a quorum. No action shall be official, however, unless authorized by a majority of the Board of Zoning Appeals.

(E) *Rules and procedures.* The Board of Zoning Appeals shall adopt such rules as shall be necessary to carry out its duties as defined herein. The Board of Zoning Appeals shall keep minutes of its proceedings, keep records of its

examinations and other official acts and shall record and vote on all actions taken. All minutes and records shall be filed in the Planning and Zoning Office and shall be a public record.

(F) *Powers and duties.* The Board of Zoning Appeals shall have the power and duty to:

- (1) Hear and determine appeals from and review any order, requirement, decision or determination made by the Planning and Zoning staff charged with the enforcement of this chapter; (In exercising its power, the Board of Zoning Appeals may modify the order, requirement, decision or determination of the Planning and Zoning staff.)
- (2) Hear and decide on petitions for special exceptions and conditional uses as provided for in this chapter;
- (3) Hear and decide on petitions for variances from the terms of this chapter;
- (4) Impose conditions on the grant of any special exception, conditional use or variance;
- (5) Permit or require petitioner to make written commitments concerning the use or development of parcel(s) which are the subject of a petition; and
- (6) Consider such other matters and take such further actions as may be permitted by law.

(G) *Judicial review.* Every decision of the Board of Zoning Appeals shall be subject to review by certiorari.

(1979 Code, § 151.231) (Ord. 4370, passed 7-20-1998)

§ 151.282 PLAN COMMISSION.

(A) *Membership.*

- (1) The Plan Commission shall consist of 9 members.
- (2) Four members shall be appointed as follows: 1 member selected by the City Council from its membership; one member selected by the Board of Park Commissioners from its membership; 1 member of or a designated representative selected by the Board of Public Works; and the City Engineer.
- (3) The Mayor shall appoint 5 citizen members, not more than 3 of whom shall be of the same political party.
- (4) The citizen members shall be qualified by knowledge and experience in matters pertaining to the development of the city, shall hold no other office in the city government and shall be residents of the city.

(B) *Terms of office.* The members of the Plan Commission shall be appointed for terms of 4 years. The terms shall expire on January 1. The term of each member representing the City Council, the Board of Park Commissioners or the Board of Public Works shall be coextensive with his or her term of office on such Council or Board unless such Council or Board shall, at its first regular meeting of each year, appoint another person to serve as its representative. The term of the City Engineer shall be coextensive with his or her term of office.

(C) *Officers.* Each year, at its first regular meeting following January 1, the Plan Commission shall elect from its members a President and a Vice-President.

(D) *Quorum.* A majority of the members shall constitute a quorum. No action, however, shall be official unless authorized by a majority of the Plan Commission.

(E) *Powers and duties.* The Plan Commission shall have the power and duties to:

- (1) Review and administer all matters upon which it is required to act under this chapter;
- (2) Prescribe uniform rules of procedure pertaining to petitions, hearings and the issuance of permits;
- (3) Review periodically the effectiveness of this chapter and initiate amendments or make recommendations in conjunction therewith;
- (4) Permit or require petitioner to make written commitments concerning the use or development of parcel(s) which are the subject of a petition;
- (5) Impose conditions on the approval of a development plan or PUD district; and
- (6) Consider such other matters and take such further actions as may be permitted by law.

(1979 Code, § 151.232) (Ord. 4370, passed 7-20-1998)

§ 151.283 ZONING CLEARANCE PERMITS.

(A) No land shall be occupied or used, no excavation or construction shall be started, and no building or other structure hereafter erected, moved, added to or structurally altered shall be occupied or used, in whole or in part, for any purpose without zoning clearance permits issued by the Planning and Zoning Office.

(B) All applications for zoning clearance permits shall be submitted to the planning staff on the prescribed application form and accompanied by a site plan showing the dimensions and shape of the lot to be built upon; the height and bulk of

any existing and proposed buildings; the building lines in relation to lot lines; the use to be made of the building, structure or land; location and size of required landscaping improvements; and such other information as may be required by the planning staff for the proper enforcement of this chapter.

(C) The planning staff may require the relocation of any proposed building, structure, driveway, parking area or other elements or site development indicated or omitted on the site plan before issuing a zoning clearance permit, when the action is necessary to carry out the purpose and intent of this chapter.

(D) The issuance of a zoning clearance permit shall not be construed as waiving any provision of this chapter nor of the necessity to obtain any other permits required by law.

(E) If the work described in any zoning clearance permit has not begun within 1 year from the date of issuance thereof, the permit shall expire.

(F) Any zoning clearance permit issued in violation of any provision in this chapter or any ordinance or statute shall be void.

(G) Any property designated as a single site historic district or located within an established historic district shall obtain approval for all exterior development (buildings and site) from the Elkhart City Historic and Cultural Preservations Commission prior to issuance of a zoning clearance permit.

(1979 Code, § 151.233) (Ord. 4370, passed 7-20-1998)

§ 151.284 CERTIFICATE OF OCCUPANCY.

(A) It shall be unlawful to use or occupy or permit the use or occupancy of any structure or land or both or part thereof for any of the following until a certificate of occupancy has been signed by the Planning and Zoning Office stating that the proposed use complies with the requirements of this chapter:

- (1) Occupancy or use of any structure hereafter erected, changed converted or wholly or partly altered or enlarged;
- (2) Occupancy or use of vacant land;
- (3) Change in the use of an existing structure;
- (4) Change in the use of land;
- (5) Change in the use or character of a nonconforming use.

(B) Every application for a zoning clearance permit shall be deemed to be an application for a certificate of occupancy.

(C) Within 10 days after notification that a structure or land or part thereof is ready for occupancy or use, it shall be the duty of the Planning and Zoning Office to make a final inspection thereof and to sign a certificate of occupancy if the structure or land or part thereof are found to comply with the provisions of this chapter. If the signature is refused, the Planning staff shall state the cause for the refusal in writing.

(D) In the event that a development is not in complete compliance with this chapter, Planning staff may still sign the certificate of occupancy upon receipt of a written and signed statement by the developer or property owner, which to the planning staff's satisfaction, specifies those items still to be completed, the manner in which they will be completed, and a schedule for their completion. Failure to comply with the agreement by the date specified shall constitute a violation of this chapter and may result in the revocation of the certificate of occupancy and/or other penalties.

(1979 Code, § 151.234) (Ord. 4370, passed 7-20-1998)

§ 151.285 COMMITMENTS.

Whenever a commitment may be permitted or allowed under the terms of this chapter the following regulations shall govern the creation, form, recording, enforcement, modification and termination of commitments.

(A) *Creation of commitments.* A commitment shall be executed by the owner of record of the property (property owner) which is the subject of a petition or proposal and any other party necessary to give legal effect to the terms of the commitment. Terms of a proposed commitment shall be reviewed at a public hearing on the petition or proposal. A commitment shall be submitted in a form satisfactory to the body which permits or requires the commitment. The property owner shall be responsible for prompt recording of the commitment and shall submit evidence of recording to the Planning and Zoning Office.

(B) *Enforcement.* A commitment may be enforced by the body which permitted or required the commitment and any specially affected persons designated in the terms of the commitment. Specially affected persons may include, but are not limited to owners of adjacent properties, public service organizations and neighborhood associations. Unless modified or terminated by the body which permitted or required the commitment, a commitment is binding upon the property owner, a subsequent property owner and any person who acquires an interest in the property. If, however, the commitment is not recorded, the commitment is binding only upon the property owner and any party who has actual notice of the commitment.

(C) *Modification and termination.* A commitment may be modified or terminated only by a decision of the body which permitted or required the commitment after notice to interested parties and a public hearing. Written notice of the public

hearing shall be provided to designated specially affected persons with authority to enforce the commitment. The body which permitted or required the commitment may modify or terminate the commitment only upon finding that:

- (1) A change in circumstances has occurred which makes unnecessary the purpose for which the commitment was originally made;
- (2) Due to a change in circumstances, the burden imposed by the commitment constitutes an undue hardship as weighed against the interest the commitment was intended to protect;
- (3) The purpose of the commitment will be better served by modification of the commitment; or
- (4) A change in law or circumstances has rendered performance of the commitment illegal or impossible.

(1979 Code, § 151.235) (Ord. 4370, passed 7-20-1998)

§ 151.286 SPECIAL EXCEPTION.

(A) The Board of Zoning Appeals shall consider applications only for such special exceptions as are specifically enumerated in this chapter and, as to each special exception that is granted, may impose such conditions on the exercise of such special exception as the Board may deem advisable. No special exception shall be granted by the Board unless the Board specifically finds that:

- (1) The special exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected;
- (2) The special exception will not reduce the values of other properties in its immediate vicinity; and
- (3) The special exception shall conform to the regulations of the zoning district in which it is to be located.

(B) An application for a special exception shall be filed with the Planning and Zoning Office in such form as may be prescribed from time to time by the Board.

(C) No application for a special exception shall be considered by the Board until the Plan Commission has considered such application and made a recommendation to the Board based upon land use considerations only. The recommendation by the Plan Commission shall not require a public hearing.

(D) The Board shall hold a public hearing on each application for a special exception. At least 10 days prior to the date set for such hearing, public notice of the time, date and place thereof shall be given by publication in a newspaper of general circulation in the city and, in addition, actual notice of the hearing shall be given to all interested parties.

(E) Special exceptions shall be exercised in strict accordance with the terms of approval thereof by the Board, provided that minor changes in the location or use of proposed and existing structures and usage may be authorized by the Board without a public hearing if such changes are consistent with the purpose and intent of the terms of the original approval. Whether or not any such change constitutes a minor change shall be determined by the Board, in its sole discretion.

(F) Any use existing at the effective date of this chapter as to the land on which such use is exercised and which use is listed as a special exception in a zoning district under the terms of this chapter may be altered or enlarged only if a new special exception is granted by the Board as provided in this chapter.

(G) If no construction has begun or no use established within 12 months from the approval of a special exception, the special exception shall lapse and be of no further effect, and the provisions of this chapter which would govern the land and its usage without regard to the special exception shall thereafter apply, and the Planning and Zoning Office shall remove the special exception from the zoning map.

(1979 Code, § 151.236) (Ord. 4370, passed 7-20-1998)

§ 151.287 CONDITIONAL USES.

(A) *Procedure and requirements for approval of conditional uses.* This section is intended to provide a set of procedures and standards for specific land uses that will allow practical latitude for the developer, but at the same time maintain sound provisions for the protection of the health, safety and general welfare of the residents of the city. In order to provide controllable and reasonable flexibility, this section permits detailed review of certain specified types of land use activities which, because of their particular and unique characteristics, require special consideration in relation to the welfare of adjacent properties and to the community as a whole. Land and structure uses possessing these characteristics may be authorized when defined and permitted within a specific zoning district by the issuance of a conditional use permit. Through this procedure, the Board of Zoning Appeals has the opportunity to impose conditions and safeguards that are deemed necessary for the protection of the public welfare.

(B) *Contents of application for a conditional use permit.* An application for a conditional use permit shall be filed with the Planning and Zoning Office and the Board of Zoning Appeals by at least one owner of the property for which the conditional use is proposed. At minimum, the application shall contain the following information. The Planning staff may request additional information as needed following submission.

- (1) Name, address and phone number of applicant;

- (2) A legal description of the real estate involved;
- (3) Description of existing use;
- (4) Description of proposed conditional use;
- (5) A narrative statement evaluating the effects of such elements as noise, glare, odor, fumes and vibration upon adjoining property; and a discussion of the general compatibility with adjacent and other properties in the district;
- (6) A site plan of the property which shall include:
 - (a) Location and size of all existing and proposed buildings and structures;
 - (b) Location and dimensions of building lines, right-of-way lines, setbacks, regulated drains and public and private easements (existing and proposed);
 - (c) Elevation contours and spot elevations sufficient to determine drainage (existing and proposed), if necessary;
 - (d) Layout of drives and other traffic features on opposite side of street and/or adjacent properties;
 - (e) Statement of availability of city sewer and water, if required for the proposed use; and
 - (f) Locations of parking and loading areas, traffic access and circulation, open space, landscaping, refuse and service areas, signs, turning radii, and proposed vehicle and projected turning paths from turning radius templates.
- (7) Vicinity map showing all existing land uses within a 300 foot radius of the property; and
- (8) Any supplemental information required for conditional use applications specified in the regulations of the zoning district in which the property is located.

(C) *General standards applicable to all conditional uses.* The Board of Zoning Appeals shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

- (1) Is in fact a conditional use as established under the permitted land uses within the zoning district;
- (2) Will be harmonious with and in accordance with the general objectives or with any specific objective of the city's Comprehensive Plan and/or the Zoning Ordinance;
- (3) Will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance and function with the existing or intended character of the general vicinity and will not change the essential character of the area;
- (4) Will not be hazardous or disturbing to existing neighboring uses;
- (5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed uses shall be able to provide adequately any such services;
- (6) Will not create excessive additional requirements at public expense for public facilities and services and will not be detrimental to the economic welfare of the community;
- (7) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- (8) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares; and
- (9) Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

(D) *Conditions and commitments.* In granting any conditional use, the Board of Zoning Appeals may prescribe appropriate conditions or require the property owner to make written commitments regarding the use and development of the property which is the subject of the petition. Conditions or commitments may require special screening and buffering with reference to type, dimensions and character; additional setback distances, yards and open space or other measures necessary to ensure the compatibility of the proposed use and harmony of the proposed development with neighboring properties and other properties within the district. Conditions or commitments may address the following:

- (1) Off-street parking and loading areas;
- (2) Refuse and service areas;
- (3) Proposed signs and exterior lighting;
- (4) Noise, glare, odor, adverse economic effects or traffic hazards resulting from the proposed use; and
- (5) Any other matter requiring particular attention in order to avoid adverse effects of the proposed use on neighboring properties and other properties in the district.

(E) *Notice of public hearing.* Upon receipt of the application for a conditional use permit specified above, the Board of

Zoning Appeals shall hold a public hearing. At least 10 days prior to the date set for such hearing, public notice of the time, date and place thereof shall be given by publication in a newspaper of general circulation in the city, and give written notice to all interested parties.

(F) *Action by the Board of Zoning Appeals.* Following the public hearing, the Board of Zoning Appeals shall either approve, approve with supplementary conditions or disapprove the application as presented. If the application is approved or approved with modifications, the Board of Zoning Appeals shall instruct the Planning and Zoning Office in writing to issue a conditional use permit listing the specific conditions specified by the Board of Zoning Appeals for approval. If the application is disapproved by the Board of Zoning Appeals, it shall notify the applicant in writing listing specific reasons for the denial.

(G) *Expiration of conditional use permit.* A conditional use approval shall be deemed to authorize only 1 particular use, and said approval shall automatically expire if, for any reason, the use has not commenced within 1 year or an implemented use has been discontinued for a period of 1 year.

(H) *Construction requirements.* Any person granted conditional use approval who fails to commence construction within 12 months after the permit is issued or fails to conform to the provisions of the development plan approved by the Board of Zoning Appeals, may be required by the Board of Zoning Appeals upon its own motion and shall be required by the Board of Zoning Appeals upon written petition by any third party, to show cause why the approval should not be withdrawn and the permit revoked.

(I) *Modifications.* The holder of a zoning clearance permit for a conditional use may apply to the Board of Zoning Appeals at any time for an alteration, modification, amendment or extension of the application or development plan upon which the permit was based.

(1) Upon receipt of such application, the Board of Zoning Appeals shall proceed as in the case of original applications for a conditional use.

(2) In the event that the Board of Zoning Appeals shall approve and order such applications or development plans modified, altered, amended or extended, it shall notify the Planning and Zoning Office which shall issue an amended zoning clearance permit accordingly.

(3) Any alteration, change or amendment to a site plan (previously approved by the Board of Zoning Appeals through the conditional use process) and involving a new structure, combination of structures or addition to an existing structure, may be issued a zoning clearance permit by the Planning and Zoning Office without the requirement of a public hearing or Board of Zoning Appeals approval provided that:

(a) The net increase in floor area is less than 1,000 square feet but not to exceed 50% of the gross floor area of structures on the parcel.

(b) The plans for the proposed use are submitted to and approved by the Planning and Zoning Office.

(c) The plans are revised to incorporate any recommendations deemed appropriate by the Planning and Zoning Office.

(d) The property of the proposed use is not located within 100 feet of the property line of any existing residential land use.

(1979 Code, § 151.237) (Ord. 4370, passed 7-20-1998)

§ 151.288 VARIANCE.

(A) *Variance from development standards.* The Board of Zoning Appeals shall consider petitions for variances from the development standards (such as height, bulk or area) of this chapter. As to each variance that is granted, the Board may impose such conditions on the grant of the variance as the Board may deem advisable. No variance shall be granted by the Board unless the Board under this section specifically finds that:

(1) The approval will not be injurious to the public health, safety, morals and general welfare of the community;

(2) The use and value of the area adjacent to the property will not be affected in a substantially adverse manner;

(3) Granting the variance would be consistent with the intent and purpose of this chapter;

(4) Special conditions and circumstances exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district;

(5) The strict application of the terms of this chapter would deprive the applicant of the rights commonly enjoyed by other properties in the same district under the provisions of this chapter;

(6) The special conditions and circumstances do not result from any action or inaction by the applicant; and

(7) In the designated flood hazard areas, the variance will not increase flood heights, create additional threats to public safety, cause additional public expense, create nuisances or conflict with existing laws or ordinances.

(B) *Variance of use.* The Board of Zoning Appeals shall consider applications for variances from the permitted uses of this chapter. As to each variance that is granted, the Board may impose such conditions on the grant of the variance as the Board may deem advisable. Variances shall only be granted by the Board pursuant to this section and § 151.124, when the

Board specifically finds a showing of good and sufficient cause that:

- (1) The approval will not be injurious to the public health, safety, morals and general welfare of the community;
- (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- (3) The need for the variance arises from some condition peculiar to the property involved;
- (4) The strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
- (5) The approval does not interfere substantially with the comprehensive plan.

(C) Application for variances shall be filed with the Planning and Zoning Office in such form as may be prescribed from time to time by the Board.

(D) The Board shall hold a public hearing on each application for a variance. At least 10 days prior to the date set for the hearing, public notice of the time, date and place thereof shall be given by publication in a newspaper of general circulation in the city and, in addition, written notice of the hearing shall be given to all interested parties.

(1979 Code, § 151.238) (Ord. 4370, passed 7-20-1998; Am. Ord. 5263, passed 8-1-2011)

§ 151.289 REVOCATION PROCEDURE.

(A) In addition to the other powers granted to the Board of Zoning Appeals ("BZA"), the BZA is hereby expressly granted the authority to revoke any variance, conditional use or special exception previously issued.

(B) The BZA may revoke a variance, conditional use or special exception whenever 1 or more of the following exist:

- (1) The BZA determines that the variance, conditional use or special exception was obtained by the applicant by fraudulent or misleading statements;
- (2) That there has not been compliance with 1 or more requirement contained in the variance, conditional use or special exception;
- (3) That circumstances have materially changed since a variance, conditional use or special exception was granted so that, if the sanction is not imposed, public health, safety or welfare will be adversely affected.

(C) In order to revoke previously conditional uses, special exceptions, and variances, the Board shall hold a public hearing on each appeal to revoke. Prior to the initiation of revocation proceedings, the Zoning Administrator shall notify the permit holder, in writing, of the specific areas of noncompliance and specify the date by which such deficiencies must be corrected. The permit holder shall provide the city with evidence that the required corrective action has taken place. At least 10 days prior to the date set for such hearing, public notice of the time, date and place thereof shall be given by publication in a newspaper of general circulation in the city, and in addition, written notice of hearing shall be given to all interested parties.

(D) The revocation hearing shall be held in accordance with the rules of procedure of the Board of Zoning Appeals.

(1979 Code, § 151.238.5) (Ord. 4431, passed 7-12-1999; Am. Ord. 4457, passed 12-6-1999)

§ 151.290 APPEAL.

(A) The Board of Zoning Appeals shall consider appeals from any order, requirement, decision or determination made by the Planning and Zoning staff who are charged with the administration and enforcement of this chapter.

(B) Appeals to the Board shall specify the error upon which the appeal is based.

(C) Within 30 days after the alleged error, the appellant shall file the appeal with the Planning and Zoning Office in such form as may be prescribed from time to time by the Board.

(D) The Board shall hold a public hearing on the appeal. At least 10 days prior to the date set for such hearing, public notice of the time, date and place thereof shall be given by publication in a newspaper of general circulation in the city and, in addition, written notice of the hearing shall be given to all parties interested in the hearing.

(E) Immediately following the filing of an appeal, all actions pursuant to the order, requirement, decision or determination from which the appeal is taken shall be stayed unless the Planning and Zoning staff shall certify to the Board that, by reason of facts stated in the certificate, a stay of the action would cause imminent peril to life and property.

(1979 Code, § 151.239) (Ord. 4370, passed 7-20-1998)

§ 151.291 AMENDMENTS.

(A) *General.* In preparing and considering proposals to amend this chapter, the Plan Commission and the City Council shall pay reasonable regard to:

- (1) The comprehensive plan;
- (2) Current conditions and the character of current structures and uses in each district;
- (3) The most desirable use for which the land in each district is adapted;
- (4) The conservation of property values throughout the jurisdiction; and
- (5) Responsible growth and development.

(B) *Map amendments.* The zone maps incorporated by reference into this chapter may be amended only by action of the City Council.

(1) Map amendments may be initiated by the Plan Commission, requested by the City Council to the Plan Commission, or as a petition signed by property owners who own at least 50% of the land involved. The petitions shall be filed in the Planning and Zoning Office on a form prescribed by the Plan Commission.

(2) The Plan Commission shall hold a public hearing on a proposal for a map amendment within 60 days of receiving or initiating the petition or proposal. At least 10 days prior to the date of the public hearing, the Plan Commission shall publish notice of the public hearing in a newspaper of general circulation in the city. The notice shall include the geographic location of the property involved, a description of the proposed change, the time, date and place of the public hearing, the place where a copy of the proposal is on file, that written objections filed with the Secretary of the Plan Commission will be considered, that oral comment concerning the proposal will be heard and that the hearing may be continued from time to time as necessary. The Plan Commission shall also give notice of the public hearing to interested parties as determined under the rules of the Plan Commission.

(3) Following the public hearing, the Plan Commission shall determine its recommendation on the proposed map amendment. Within 10 business days after determining its recommendation, the Plan Commission shall certify the proposal with a favorable, unfavorable or no recommendation.

(4) The City Council shall vote on the proposal within 90 days after certification by the Plan Commission. At the first regular meeting of the City Council following certification of the proposal by the Plan Commission or at any subsequent meeting within the 90 day period, the City Council may adopt or reject the proposal, provided that the City Council has published notice of its intent to consider the proposal at that meeting at least 48 hours prior to the meeting.

(5) If the City Council adopts the proposal as certified it takes effect as other ordinances of the City Council. If the City Council rejects the proposal, it is defeated. If the City Council fails to act on the proposal within 90 days after certification by the Plan Commission and the Plan Commission certified the proposal with a favorable recommendation, the proposal takes effect as if it had been adopted as certified. If the City Council fails to act on the proposal within 90 days after certification by the Plan Commission and the Plan Commission certified the proposal with an unfavorable recommendation or no recommendation, it is defeated.

(6) Neither the Plan Commission nor the City Council shall reconsider a defeated proposal until the expiration of one year after its defeat.

(7) The Plan Commission and City Council may permit or require the property owner to make written commitments regarding the use and development of the property which is the subject of the proposal.

(C) *Text amendments.* The text of this chapter may be amended or partially repealed only by action of the City Council.

(1) Text amendments may be initiated by the Plan Commission or by a request by the City Council to the Plan Commission.

(2) The Plan Commission shall hold a public hearing on a proposal for an amendment to the text of this chapter within 60 days of receiving or initiating the proposal. At least 10 days prior to the date of the public hearing, the Plan Commission shall publish notice of the public hearing in a newspaper of general circulation in the city. The notice shall include the geographic areas to which the proposal would apply, a summary of the subject matter of the proposal, the time, date and place of the public hearing, the place where a copy of the proposal is on file, that written objections filed with the Secretary of the Plan Commission will be considered, that oral comment concerning the proposal will be heard and that the hearing may be continued from time to time as necessary. If the proposal contains or would add or amend any penalty or forfeiture provisions, the entire text of those penalty or forfeiture provisions must also be included in the notice. The Plan Commission shall also give notice of the public hearing to interested parties as determined under the rules of the Plan Commission.

(3) Following the public hearing, the Plan Commission shall determine its recommendation on the proposed text amendment. Within 10 business days after determining its recommendation, the Plan Commission shall certify the proposal to the City Council. The Plan Commission may certify the proposal with a favorable, unfavorable or no recommendation.

(4) The City Council shall vote on the proposal within 90 days after certification by the Plan Commission. At the first regular meeting of the City Council following certification of the proposal by the Plan Commission or at any subsequent meeting within the 90 day period, the City Council may adopt or reject the proposal; provided that, the City Council has published notice of its intent to consider the proposal at that meeting at least 48 hours prior to the meeting.

(5) The following applies if the Plan Commission certified the proposal with a favorable recommendation:

- (a) If the City Council adopts the proposal, it takes effect as other ordinances of the City Council.

(b) If the City Council fails to act on the proposal within 90 days after certification, it takes effect as if it had been adopted as certified.

(c) If the City Council rejects or amends the proposal, it shall be returned to the Plan Commission for its consideration with a written statement of the reasons for the rejection or amendment. The Plan Commission has 45 days in which to consider the rejection or amendment and report to the City Council as follows:

1. If the Plan Commission approves the amendment or fails to act within the 45 day period, the ordinance stands as passed by the City Council as of the date of the filing of the Commission's report of approval with the City Council or the end of the 45 day period.

2. If the Plan Commission disapproves the rejection or amendments, the action of the City Council on the original rejection or amendment stands only if confirmed by another majority vote of the City Council within 45 days after the Plan Commission certifies its disapproval. If the City Council fails to confirm its action under this clause, the ordinance takes effect in the manner provided in subdivision (b) above.

(6) The following applies if the Plan Commission certifies the proposal with an unfavorable or no recommendation:

(a) If the City Council adopts the proposal, it takes effect as other ordinances of the City Council.

(b) If the City Council rejects the proposal or fails to act on it within 90 days after the certification, it is defeated.

(c) If the City Council amends the proposal, it shall be returned to the Plan Commission for its consideration with a written statement of the reasons for the amendment. The Plan Commission has 45 days in which to consider the amendment and report to the City Council as follows:

1. If the Plan Commission approves the amendment or fails to act within the 45 day period, the ordinance stands as passed by the City Council as of the date of filing of the Commission's report of approval with the City Council or at the end of the 45-day period.

2. If the Plan Commission disapproves the amendment, the action of the City Council on the original amendment stands only if confirmed by another majority vote of the City Council within 45 days after the Plan Commission certifies its disapproval. If the City Council fails to confirm its action under this clause, the ordinance is defeated as provided in subdivision (b) above.

(1979 Code, § 151.240) (Ord. 4370, passed 7-20-1998)

§ 151.292 FEE SCHEDULE.

(A) The following fee schedule shall be amended only by action of the City Council.

(B) Until all applicable fees have been paid in full, no action shall be taken on any petition or application. No part of any fee paid pursuant to this section shall be refundable.

(C) Schedule:

<i>Petition of Application</i>	<i>Filing Fee</i>
<i>Petition of Application</i>	<i>Filing Fee</i>
Rezoning	
To Residential	\$200
To Commercial or Other	\$400
Planned Unit Development (PUD)	\$400
Use Variance	
Residential (1- and 2-Family)	\$200
Multi-Family, Business & Manufacturing	\$300
Variance (Development Standards)	
Residential (1- and 2-Family)	\$200
Multi-Family, Business & Manufacturing	\$300
Special Exception Uses	
Residential (1- and 2-Family)	\$200
Multi-Family, Business & Manufacturing	\$300
Conditional Use	
Residential (1- and 2-Family)	\$200
Multi-Family, Business & Manufacturing	\$300
Annexations - Residential	
•Developed: 1 though 4 units	\$100
•Developed: 5 or more units	\$300
•Undeveloped: less than 5 acres	\$200
•Undeveloped: 5 or more acres	\$500

Annexations - Business and Manufacturing	
•Developed: less than 5 acres	\$200
•Developed: 5 or more acres	\$500

<i>Petition of Application</i>	<i>Filing Fee</i>
<i>Petition of Application</i>	<i>Filing Fee</i>
Annexations - Business and Manufacturing	
•Undeveloped: less than 5 acres	\$300
•Undeveloped: 5 or more acres	\$500
Development Plan Review	
•Preliminary (PC)	\$200
•Final (PC with Public Hearing)	\$400
•Amendment (PC) Major	\$200
•Amendment - Minor	\$100
Administrative Appeal	\$200
Text Amendment	\$300
Zoning Clearance	
New Single-Family & 2-Family Dwellings	
Residential addition/detached accessory structure, 120 SF up to 720 SF	\$40
Residential addition/detached accessory structure over 720 SF	\$20
Detached residential/nonresidential structure or addition less than 120 SF	\$40
Commercial	\$20
Fences	\$50
Single-Family & 2-Family	\$50
Multiple-Family, Commercial, Manufacturing	\$1/sf - \$50 min.
Signs	\$2/sf - \$100 min.
Residential, Single-Family & 2-Family	\$15 each
Multi-Family, Commercial, Manufacturing	\$25 min. or \$0.25/sf each
Banners and Portable Signs	
Awning Signs and Panel Changes	
Technical Review (Site Plan Review)	\$200
Wireless Towers	\$300
Subdivisions	
Major	\$500
Minor	\$100
Written Verifications: zoning, floodplain, legal nonconforming, etc. - research No	\$10 per prop.
Written Verifications: zoning, floodplain, legal nonconforming, etc. - research Yes	\$50 per prop.

(D) The Plan Commission, City Council and any other local governmental agencies shall be exempt from such fees.

(1979 Code, § 151.241) (Ord. 4370, passed 7-20-1998; Am. Ord. 5001, passed 12-4-2006; Am. Ord. 5010, passed 1-22-2007; Am. Ord. 5015, passed 2-12-2007; Am. Ord. 5044, passed 7-9-2007)

§ 151.293 VIOLATIONS.

(A) *Investigation and enforcement.*

(1) The Zoning Administrator, on receipt of information of a possible violation of the Zoning Ordinance, shall make investigation to establish reasonable belief that a violation has occurred.

(2) The Zoning Administrator, any Code Enforcement or police officer may issue a citation for violation of this chapter.

(3) The City Attorney may file a complaint against the person(s) and prosecute the alleged violation.

(B) *Violations.*

(1) Buildings erected, razed or converted, or land or premises used in violation of any provision of this chapter are hereby declared to be a common nuisance, and the owner of the building, land, or premises, shall be liable for maintaining a common nuisance, a Class C infraction; and upon conviction responsible parties will be liable for maintaining a common nuisance.

(2) Any use of a building, structure and/or land not permitted in the applicable zoning district and any act or omission contrary to the provisions of this chapter shall constitute a violation of this chapter. The record owner(s), contract purchaser(s), tenant(s) and/or other occupant(s) of any structure, land or part thereof, and other person(s) who commit, participate in, assist in, and/or maintain and/or allow a violation to continue shall each be considered responsible parties and may be found liable for separate violations.

(3) The following actions may be instituted when violations of this chapter occur:

(a) The Plan Commission or Board of Zoning Appeals may institute a suit for injunction to restrain any individual or governmental unit from violating the provisions of this chapter.

(b) The Plan Commission or Board of Zoning Appeals may institute a suit for mandatory injunction directing any individual or governmental unit to cease an illegal use, or remove a structure erected in violation of the provisions of this chapter.

(4) Violation of a condition imposed by the Board of Zoning Appeals, Plan Commission or City Council as a condition of approval of any special exception, variance, conditional use, development plan or PUD, as applicable, shall result in revocation of the approval and any use or development instituted pursuant to the approval shall be deemed in violation of this chapter.

(5) In the event of a violation of a written commitment made under this chapter, the body (Board of Zoning Appeals, Plan Commission or City Council) which permitted or required the property owner to make the commitment, may institute an action to enforce the commitment.

(6) In the event a condition constituting a violation of this chapter exists on real property, the Zoning Administrator or his or her designee may enter onto the property and take action to bring the property into compliance with this chapter if all persons with a substantial interest in the property have been given notice of the violation and have failed to bring the property into compliance after being provided with a reasonable opportunity to do so. The property owner of record shall be liable for the costs of the action and the costs may be made a lien on the property.

(7) Nothing herein contained shall prevent the city from taking other lawful action necessary to prevent, remedy or issue a fine for any violation.

(1979 Code, § 151.242) (Ord. 4370, passed 7-20-1998)

§ 151.999 PENALTY.

The penalty for violation of this chapter shall be not less than \$100, nor more than \$2,500, and each day that a violation exists or continues shall constitute a separate violation. Any person found to be in violation of this chapter shall be required to compensate the city for costs incurred in enforcement of this chapter.

(1979 Code, § 151.999) (Ord. 4370, passed 7-20-1998; Am. Ord. 5551, passed 2-6-2017; Am. Ord. 5995, passed 7-1-2024)

CHAPTER 152: SUBDIVISION REGULATIONS

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GENERAL PROVISIONS

§ 152.001 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALLEY. A strip of land, not less than 20 nor more than 40 feet in width, along the side or rear lot lines of properties, intended to provide access to these properties, and dedicated to public use.

BUILDING SETBACK LINE. A line within a lot or other parcel of land designated on the proposed subdivision plat, which indicates the area between it and the adjacent boundary of the street right-of-way upon which the lot abuts, where the erection of an enclosed structure or portion thereof is prohibited.

CROSS-WALKWAY. A strip of land dedicated to public use, which is reserved across a block to provide pedestrian access to adjacent areas.

CUL-DE-SAC. See **PUBLIC STREETS**.

EASEMENT. A grant by a property owner for the use of a strip of land by the general public, a corporation or a certain person for a specific purpose.

FRONTAGE ROAD. See **PUBLIC STREETS, MARGINAL ACCESS STREET**.

INDUSTRIAL SUBDIVISION. A subdivision of property for industrial or business uses permitted when located on land zoned M-1, M-2 or M-3.

INTERESTED PARTY. A property owner of record whose property's boundary is within 300 feet of the proposed subdivision.

LOT. A portion of a subdivision or other parcel of land intended for transfer of ownership or for building development.

MINOR SUBDIVISION. A subdivision consisting of no more than 3 lots, sites or parcels which does not:

- (1) Establish any new street or easement of access; or
- (2) Substantially affect existing drainage systems.

PLAT. A document showing the division of a parcel of land, which is to be recorded after approval under this chapter.

PLAT COMMITTEE. A committee appointed by the Plan Commission to act on its behalf in accordance with the authority vested in it by the Plan Commission.

PRIMARY APPROVAL/DISAPPROVAL. A decision by the Plan Commission or Plat Committee to accept or reject a subdivision based on:

- (1) The standards of this chapter; or
- (2) Conditions set by the Plan Commission or Plat Committee for secondary approval.

PUBLIC STREETS. All primary, secondary, cul-de-sac and minor streets shown on the subdivision plat to be dedicated for public use. All such public streets must comply with the city's Engineering Department design and construction standards.

- (1) **CUL-DE-SAC.** A street having one open end and being permanently terminated by a vehicle turnaround.
- (2) **MARGINAL ACCESS STREET (FRONTAGE ROAD).** A minor street, parallel and adjacent to primary streets and highways, which provides access to abutting properties and protection to local traffic from through-traffic on primary streets.
- (3) **MINOR STREET.** A street intended primarily as access to abutting properties.
- (4) **PRIMARY (MAJOR) STREET.** A street of considerable continuity which serves or is intended to serve as a major traffic artery connecting large areas.
- (5) **SECONDARY (COLLECTOR) STREET.** A street which carries traffic from minor streets to the primary street system, including the principal entrance streets of residential developments and streets for circulation within those developments.

(6) **STREET.** An area which serves or is intended to serve as a vehicular and pedestrian access to abutting lands or to other streets and dedicated to public use.

REPLAT. A document showing the division or modification of an existing platted subdivision or portion of it, and which is to be recorded after approval under this chapter.

SECONDARY APPROVAL. A determination by the Plan Commission or Plat Committee that a subdivision plat meets all standards and conditions set by this chapter and the primary approval. The final step prior to recording a plat.

STREET WIDTH (RIGHT-OF-WAY). The shortest distance between lines of lots delineating the area to be used as a public street or alley.

SUBDIVIDER. The person(s) responsible for preparing and recording the plat of a subdivision and for carrying out all appropriate requirements of this subdivision chapter.

SUBDIVISION.

- (1) For the purpose of this chapter a subdivision is any of the following:
 - (a) The division of land into 2 or more lots, sites or parcels any one of which is 3 acres or less in area.
 - (b) Establishment or dedication of a road, highway, street or alley through a tract of land regardless of its area.
 - (c) The redivision of existing divided or platted land resulting in an increase in the number of lots, sites or parcels.
- (2) A division or redivision of land is not a subdivision if:

- (a) The sale, exchange or reconfiguration of parcels of land does not result in the creation of additional lots. These newly created lots must meet all dimensional and area requirements as prescribed in this chapter and Chapter 151 of this code of ordinances.
- (b) A court orders the division of land.

(1979 Code, § 152.01) (Ord. 3909, passed 4-3-1989)

§ 152.002 SUBDIVISIONS AS A PERMITTED USE.

The City Council, through the Zoning Chapter, shall designate those zoning districts in which subdivisions are allowed. No subdivision shall be approved in any zone in which it is prohibited by Chapter 151 of this code of ordinances.

(1979 Code, § 152.02) (Ord. 3909, passed 4-3-1989)

§ 152.003 COMPLIANCE.

Any subdivision of land made after shall be in full compliance with the provisions of this chapter.

(1979 Code, § 152.03) (Ord. 3909, passed 4-3-1989) Penalty, see § 152.999

§ 152.004 ZONING CLEARANCE PERMIT.

No zoning clearance permit as defined byChapter 151 of this code shall be issued for the construction of any building, structure or improvement to the land or any lot within a subdivision as defined in this chapter, which has been approved for platting or replatting, until all requirements of this chapter have been met.

(1979 Code, § 152.04) (Ord. 3909, passed 4-3-1989)

§ 152.005 OCCUPANCY PERMIT.

No occupancy permit as defined byChapter 151 of this code shall be granted for the use of any structure within an approved subdivision until the required improvements have been bonded or constructed, inspected and approved for service by the responsible city agencies.

(1979 Code, § 152.05) (Ord. 3909, passed 4-3-1989)

§ 152.006 FEES.

The following fees shall cover the cost of filing the application only. Fees for building and other required permits must be paid separately.

Appeal of plat committee decision	\$25
Minor subdivision (residential and industrial)	25
Subdivision (residential)	25, plus \$0.50 per lot to a max. of 100
Subdivision (industrial)	100

(1979 Code, § 152.06) (Ord. 3909, passed 4-3-1989)

ADMINISTRATION AND JURISDICTION

§ 152.020 CITY JURISDICTION.

No plat, replat or any division of land located within the legal jurisdictional area of the city’s Plan Commission, as now or hereafter established, is permitted until such plat or division, the proposed improvements and all procedures relating to it, shall fully comply with the provisions of this chapter.

(1979 Code, § 152.15) (Ord. 3909, passed 4-3-1989)

§ 152.021 PUBLIC LANDS.

All lands offered to the city for use as streets, highways, alleys, parks and other public use, shall be referred to the city's Plan Commission for review and recommendation before being accepted or rejected by the Council or by any other appropriate city governing authority.

(1979 Code, § 152.16) (Ord. 3909, passed 4-3-1989)

§ 152.022 PLAN COMMISSION.

(A) The city's Plan Commission shall have exclusive control over the primary and secondary approval of subdivision plats and the vacation of plats or parts of plats within its jurisdiction, except where its power has been delegated, through the Subdivision Chapter, to the Plat Committee.

(B) The Plan Commission shall have jurisdiction over and may grant variances to this chapter in instances where there is sufficient evidence, in its opinion, of hardship caused by topographic conditions or other reasonable deterrents.

(C) No lot, tract or parcel of land within any subdivision or plat shall be offered for sale nor shall any sale, contract for sale or option be made or given until such subdivision plans have been properly reviewed and officially approved by the city's Plan Commission. No improvements, such as sidewalks, water mains, storm or sanitary sewer lines, gas or electric service, lighting, or grading, paving or surfacing of streets, shall be made within any such subdivision until the plans for the subdivision and improvements have been officially approved by the city's Plan Commission.

(1979 Code, § 152.17) (Ord. 3909, passed 4-3-1989)

§ 152.023 JURISDICTION OF PLAT COMMITTEE.

The Plat Committee shall have jurisdiction over the primary and secondary approval of minor subdivision plats and other subdivisions of three lots or less. It may also grant final plat approval for all subdivisions.

(1979 Code, § 152.18) (Ord. 3909, passed 4-3-1989)

§ 152.024 INTERPRETATION OF RULES AND REGULATIONS.

All interpretations of the subdivision rules and regulations are reserved to the administrative bodies referred to herein.

(1979 Code, § 152.19) (Ord. 3909, passed 4-3-1989)

§ 152.025 CERTIFICATES.

(A) *Certificate of approval (all subdivisions).*

Under the authority provided by P.L. 309, Acts 1981 and P.L. 211, Acts 1982, enacted by the General Assembly of the State of Indiana, and all acts supplemental and amendatory thereof, and by Ordinance adopted by the Common Council of the City of Elkhart, Indiana, this plat was given secondary approval by the City of Elkhart as follows:

Approved by the Plat Committee at a meeting held_____.

Chairman

Approved by the Board of Public Works and Safety at a meeting held_____.

President

Member

Member

(B) *Land surveyor's certificate.* Each final plat submitted for secondary approval shall carry a certificate signed by a Registered Professional Land Surveyor in substantially the following form:

I, (Name), hereby certify that I am a Registered Professional Land Surveyor, licensed in compliance with the laws of the State of Indiana; that this plat correctly represents a survey completed by me on (Date); that all the monuments shown thereon actually exist; and that their location, size, type and material are accurately shown.

(SEAL)

Signature

(C) *Dedication certificate.* Each final plat submitted for secondary approval shall carry a deed of dedication in substantially the following form:

We, the undersigned, (Name), owners of the real estate shown and described herein, do hereby lay off, plat and subdivide said real estate in accordance with the herein plat.

This subdivision shall be known and designated as (Name), an addition to the City of Elkhart, Elkhart County, State of Indiana. All streets and alleys and public open spaces shown and not heretofore dedicated, are hereby dedicated to the public. No permanent or other structures are to be erected or maintained upon the easements as shown on the plat, but owners of lots of this subdivision shall take their titles subject to the rights of the public utilities, and to the rights of the owners of other lots in this subdivision.

(Additional dedications and protective covenants, or private restrictions, would be inserted here upon the subdivider's initiative or the recommendation of the Commission; important provisions are those specifying the use to be made of the property and, in the case of residential use, the minimum habitable floor area.)

WITNESS OUR HANDS AND SEALS THIS ____ DAY OF ____, 20__

(D) *Other forms.* Other certificates, affidavits, endorsements or exceptions may be required by the Plan Commission or Plat Committee.

(1979 Code, § 152.20) (Ord. 3909, passed 4-3-1989)

PLAT COMMITTEE

§ 152.035 ESTABLISHED.

(A) The Plan Commission shall establish a Plat Committee consisting of 3 persons appointed by the Commission as follows:

(1) One member of the Plan Commission (customarily the City Engineer) or the Engineer's designee (must be a member of the Plan Commission), who shall serve as Chairperson of the Plat Committee;

(2) One member from the city's Engineering Department; and

(3) One member from the city's Planning and Development Department.

(B) Two members shall constitute a quorum and two votes shall be required for a decision.

(1979 Code, § 152.30) (Ord. 3909, passed 4-3-1989)

§ 152.036 TERM.

Members of the Plat Committee shall be appointed by the Plan Commission for a term of 1 year, beginning on January 1.

(1979 Code, § 152.36) (Ord. 3909, passed 4-3-1989)

§ 152.037 POWERS OF COMMITTEE.

The Plat Committee may:

(A) Grant primary approval, conditional approval or disapproval of all minor subdivisions;

(B) Grant primary approval, conditional approval or disapproval of all other subdivisions of three lots or less; and

(C) Grant secondary (final plat) approval for all subdivisions.

(1979 Code, § 152.32) (Ord. 3909, passed 4-3-1989)

§ 152.038 FINDINGS AND DECISIONS.

The Plat Committee shall make written findings of its decisions which shall be signed by the Plat Committee Chairperson. Copies of these findings shall be mailed to the applicant and all interested parties.

(1979 Code, § 152.33) (Ord. 3909, passed 4-3-1989)

§ 152.039 APPEALS.

(A) Any person may appeal the decision of the Plat Committee to the Plan Commission within 10 days of the mailing of the findings to the applicant and interested parties by making a written request to the Plan Commission staff and by

tendering the fee set forth in § 152.006.

(B) Any person wishing to appeal shall give the same notice as required under § 152.053.

(C) An appeal to the Plan Commission shall be a prerequisite to court review by certiorari.

(1979 Code, § 152.34) (Ord. 3909, passed 4-3-1989)

PRELIMINARY PLAN APPROVAL PROCESS

§ 152.050 FILING PROCEDURES.

(A) Any owner or subdivider of land within the corporate limits of the city desiring to divide the land, or to dedicate streets, alleys or other lands for public use shall submit a subdivision application to the Plan Commission staff at least 30 days prior to the Plan Commission meeting.

(B) Applications are available in the City Planning and Development Department.

(C) The application requirements are:

(1) An application form signed by the owner(s) of record of the land to be subdivided specifying the intent of land use, drainage, sewage disposal, water supply, street improvements, restrictions existing or to be placed on the property and the expected date of its development;

(2) Application fee in accordance with § 152.006;

(3) List of names and addresses of all interested parties; and

(4) A site plan of the proposed subdivision indicating that all standards of this chapter have been met. The site plan shall contain the following elements:

(a) Proposed name of subdivision;

(b) Location by section, township and range or other legal description and by a general location map;

(c) Names and addresses of developer and plan designer;

(d) Scale 1 inch to 100 feet or larger (shown graphically), date and north point;

(e) Boundary line of proposed subdivision and total acreage encompassed;

(f) Location, widths and names of all existing or prior platted streets or other public ways, railroad and utility rights-of-way, parks and other public open spaces, permanent buildings and structures, permanent easements, and section and corporation lines within or adjacent to the tract;

(g) Location of existing and proposed sewers, water mains, culverts and other underground facilities within and adjacent to the tract indicating pipe sizes and manholes;

(h) Boundary lines of adjacent tracts indicating ownership of interested parties;

(i) Existing and proposed zoning of the proposed subdivision and adjacent tracts;

(j) Contours at two-foot intervals, except where topography requires one-foot intervals;

(k) Location, width and name of all proposed streets, rights-of-way, cross-walkways and easements;

(l) Layout, numbers and dimensions of lots with building setback lines, except for industrial subdivisions;

(m) Parcels of land to be dedicated or temporarily reserved for public use or set aside for use by the property owners of the subdivision;

(n) Location, name and characteristics of soils within the proposed subdivision;

(o) Any protective covenants regulating the use and development of the lots within the subdivision;

(p) General drainage plan of the area in and around the proposed subdivision, indicating retention areas, swales, ditches, storm sewers and catch basins.

(q) Location of the 100-year flood plain boundary for lands identified as flood prone.

(r) Boundary delineation of any wetlands located in the subdivision. (See § 152.051, flood plain and wetlands regulations and the wetlands regulations set forth in § 151.096.)

(1979 Code, § 152.40) (Ord. 3909, passed 4-3-1989; Am. Ord. 4110, passed 6-21-1993)

§ 152.051 FLOOD PLAIN AND WETLANDS REGULATIONS.

All proposed subdivisions shall be reviewed to determine if the subdivision lies within either a Flood Plain or Wetlands

District as defined in the Zoning Chapter. Plans and supporting documentation of a subdivision located within either a Flood Plain or Wetlands District shall be forwarded to the Indiana Department of Natural Resources and/or U.S. Army Corps of Engineers for review and comment. The Plan Commission may require appropriate changes, modifications and incorporation of comments made by the Department of Natural Resources and/or the Corps of Engineers to insure the subdivision is consistent with the need to minimize or eliminate flood damages and to minimize adverse impacts on wetlands; all public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage and to minimize adverse impacts on wetlands; adequate drainage is provided so as to reduce exposure to flood hazards and potential damage to wetlands; and that on-site waste disposal systems, if provided, shall be located to avoid impairment of them or contamination from them during any regulatory flood, and in the case of wetlands to be located in compliance with the wetland regulations in § 151.096.

(1979 Code, § 152.41) (Ord. 3909, passed 4-3-1989; Am. Ord. 4110, passed 6-21-1993)

§ 152.052 TECHNICAL REVIEW.

(A) Appropriate city departments will review the proposed subdivision for technical conformity with the requirements of this chapter and other city regulations and request necessary changes.

(B) The Plan Commission staff shall prepare a report for the Plan Commission or Plat Committee based upon the above mentioned review listing what conditions, if any are recommended for primary approval.

(1979 Code, § 152.42) (Ord. 3909, passed 4-3-1989)

§ 152.053 PUBLIC HEARING.

(A) (1) For all subdivision proposals, except minor subdivisions, the Plan Commission shall conduct a public hearing prior to taking any action.

(2) At least 10 days prior to the hearing, the Plan Commission staff shall have a legal notice of the hearing published in the local newspaper and send notice by regular mail to the applicant(s) and all interested parties.

(B) (1) Following the hearing the Plan Commission may decide on primary approval, approval with conditions or disapproval.

(2) The Secretary of the Plan Commission shall sign the decision and findings and the staff shall mail a copy to the applicant.

(C) The decision and findings of the Plan Commission are subject to certiorari review by the courts.

(1979 Code, § 152.43) (Ord. 3909, passed 4-3-1989)

§ 152.054 PRIMARY APPROVAL QUALIFICATIONS.

The following qualifications shall govern primary approval of a preliminary subdivision plan:

(A) The subdivision plan must comply with the purpose statement and all applicable regulatory sections of the city's Zoning Chapter.

(B) A subdivision bordering on or containing a regulated county drain must obtain necessary approvals from the county's Drainage Board.

(C) The Plan Commission may require changes or revisions as deemed necessary to meet the requirements or intent of this chapter.

(D) Subsequent approvals will be required from the appropriate city departments of engineering plans for water supply, storm drainage, sewage disposal, grading, roadway construction and other infrastructure prior to final plat approval.

(E) (1) Approval is tentative and shall be valid for a maximum period of 12 months.

(2) The city's Plan Commission may grant an extension upon written request.

(3) If the final plat has not been recorded within the time limit, the primary approval is null and void and the preliminary subdivision plan must be resubmitted for approval.

(1979 Code, § 152.44) (Ord. 3909, passed 4-3-1989)

FINAL PLAT APPROVAL PROCESS

§ 152.065 APPROVAL PROCEDURES.

Following the expiration of the statutory time for appeal of the primary approval, a request for final plat approval may be granted by the Plat Committee.

(A) A drawing, in a form approved by the County Recorder, shall be submitted to the Plan Commission staff. (See § 152.066 for drawing requirements.)

(B) (1) The Plat Committee shall act on the final plat request within 30 days of receipt.

(2) If in compliance with all requirements of this chapter and all conditions attached at the time of primary approval, the Plat Committee shall approve the plat and the Plat Committee Chairperson shall sign the plat.

(C) An approved plat shall be recorded with the County Recorder within 3 months. If not recorded within this time, the approval is null and void. All recording costs are the responsibility of the subdivider.

(D) Following recording, 2 copies of the plat shall be filed and retained in the city's Engineering Department and one copy in the city's Planning and Development Department.

(E) In the event the plat is not in compliance, the Plan Commission staff shall notify the applicant in writing the reasons for noncompliance and the requirements necessary for final plat approval.

(1979 Code, § 152.50) (Ord. 3909, passed 4-3-1989)

§ 152.066 FINAL PLAT DRAWING.

(A) The final plat drawing shall contain the following:

(1) Name of the subdivision;

(2) Location by section, township and range or other legal description;

(3) Names of owners;

(4) Scale 1 inch to 100 feet or larger (shown graphically), date and northpoint;

(5) Boundary of the plat, based on an accurate traverse, with angular and linear dimensions;

(6) Exact location, width and name of streets (including right-of-way) within and adjacent to the plat; (Proposed names shall be approved by the appropriate city departments.)

(7) True angles and distances to the nearest established street lines or official monuments, which shall be accurately described;

(8) Corporate, township, county and section lines and previously platted land accurately tied to the lines of the subdivision;

(9) Radii of intersection, tangent length, curve length, points of curvature and tangent, curve radii, internal angles, tangent bearings and curve lengths for all streets within the plat;

(10) All public service and utility easements;

(11) All lot numbers and lines, with accurate dimensions, except for industrial subdivisions;

(12) Accurate location of all monuments and markers, including lot corners, points of curvature and points of tangent;

(13) Location of the 100-year flood plain boundary for lands identified as flood prone;

(14) Boundary delineation of all wetlands, as defined in the city zoning code, located in the subdivision;

(15) Location, legal description and purpose of all areas to be dedicated or reserved for public use, and of any areas to be reserved by deed covenant for common use of all property owners within the subdivision;

(16) Protective covenants regulating the use and development of the lots, as approved by the Plan Commission during primary approval, shall be included on the final plat or attached as a separate exhibit;

(17) Certification by a registered surveyor or engineer that the plat represents a survey made by him or her and that all monuments and markers shown exist as located and all dimensional and geodetic details are correct;

(18) Notarized certification by owner(s) and any mortgage holder on record of the adoption of the plat and the dedication of streets and other public areas;

(19) Proper form for the approval of the Plat Committee and Board of Works with required signatures;

(20) All required agreements as described in § 152.067 below as attachments to the final plat.

(B) (1) Industrial subdivisions platted under the regulations of this chapter prior to its amendment may be re-subdivided with only the approval of the Planning Department staff.

(2) The re-subdivision must be recorded in accordance with § 152.065(C) and (D).

(1979 Code, § 152.51) (Ord. 3909, passed 4-3-1989; Am. 4032, passed 7-22-1991; Am. Ord. 4110, passed 6-21-1993)

§ 152.067 AGREEMENTS.

The final plat to be recorded shall be accompanied by the following agreements signed by the owner and subdivider:

(A) That plans and specifications for the improvements previously approved by the City Engineer or other appropriate city departments are incorporated as part of the final subdivision plat;

(B) That said improvements have been or will be installed in accordance with the plans and specifications;

(C) In the event the required improvements have not been completed prior to approval of the final plat the following bonds shall be included:

(1) Construction bond in an amount and time frame established by the Board of Public Works and Safety for the installation of the improvements with good and sufficient surety, conditioned upon the installation of the required improvements within 2 years of the approval of the final plat; and

(2) Maintenance bond to be supplied by the contractor within 10 days after award of contract, in an amount at least equal to 30% of the contract price, guaranteeing for a period of 3 years after the date of acceptance of work by the city, that all workmanship and materials are in accordance with the plans and specifications.

(1979 Code, § 152.52) (Ord. 3909, passed 4-3-1989)

MINOR SUBDIVISIONS

§ 152.080 POWER TO GRANT.

The Plat Committee has the authority to grant primary approval, primary approval with conditions or disapproval of a minor subdivision.

(1979 Code, § 152.60) (Ord. 3909, passed 4-3-1989)

§ 152.081 NO NOTICE OF PUBLIC HEARING.

A minor subdivision may be considered by the Plat Committee without public notice or hearing.

(1979 Code, § 152.61) (Ord. 3909, passed 4-3-1989)

§ 152.082 DECISION NOTIFICATION.

The Plan Commission staff shall mail a copy of the decision and findings, signed by the Chairperson of the Plat Committee, to the applicant and all interested parties.

(1979 Code, § 152.62) (Ord. 3909, passed 4-3-1989)

§ 152.083 STANDARDS.

All minor subdivisions shall comply with all applicable procedures and standards of §§ 152.050 *et seq.*

(1979 Code, § 152.63) (Ord. 3909, passed 4-3-1989)

§ 152.084 APPEALS.

Any decision or finding of the Plat Committee may be appealed by any interested party before the Plan Commission in accordance with §§ 152.035 *et seq.*

(1979 Code, § 152.64) (Ord. 3909, passed 4-3-1989)

SUBDIVISION DESIGN STANDARDS

§ 152.095 STREET PLAN.

The design of the street system of any subdivision shall be reviewed by the Plan Commission in relation to existing and planned streets; topographical conditions; public convenience and safety; and the proposed uses of the land to be served by the street network.

(1979 Code, § 152.70) (Ord. 3909, passed 4-3-1989)

§ 152.096 MINIMUM STREET DESIGN STANDARDS.

All dedicated rights-of-way shall conform to the following minimum standards:

	<i>Residential</i>	<i>Industrial</i>
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Primary Street	80'–100'	100'–120'
Secondary or Collector Street	60'	80'
Minor Street	50'	60'
Cul-de-sac	50'	60'
Utility and/or Public Easement	10'	10'
Cross-Walkway	10'	10'

(B) Minor residential streets shall be laid out to discourage use by through-traffic.

(C) Street jogs with center line offsets of less than 125 feet shall be avoided.

(D) Clear visibility, measured along the center line of the street, shall be at least 300 feet for primary streets, 200 feet for secondary streets and 100 feet for all other streets.

(E) Street intersections and confluences must encourage safe traffic flow.

(F) Alleys shall not be permitted, except where deemed necessary, by the Plan Commission.

(G) The maximum length for a cul-de-sac shall be 500 feet measured along the center from the intersection at origin through center of circle to the end of the right-of-way. Each cul-de-sac shall have a terminus of nearly circular shape with a minimum diameter of 100 feet for residential use and 110 feet for industrial use.

(H) Where a subdivision borders on or contains an existing or planned street, the Plan Commission may require a frontage road or reverse frontage with a screen planting contained in a non-access easement with a minimum width of 10 feet along the rear property line; or such other treatment as may be required for the safety of the residential properties.

(I) Half streets shall be prohibited.

(J) No street names may be used which will duplicate, or be confused with, the names of existing streets. Existing street names must be projected wherever possible. Approval of street names is subject to review by the city's Fire Department.

(1979 Code, § 152.71) (Ord. 3909, passed 4-3-1989)

§ 152.097 EASEMENT STANDARDS.

(A) Easements across lots or centered on rear or side lot lines shall be provided for utilities where necessary and shall be at least 10 feet in width, or five feet on both sides of the property lines.

(B) For a subdivision traversed by a water course, drainage way, channel or stream, a storm water easement or drainage right-of-way shall be provided which substantially conforms with the lines of the water course and is of sufficient width to protect the drainage capacity of the water course. If the water course is classified as a county regulated drain, approval by the county's Drainage Board is required.

(1979 Code, § 152.72) (Ord. 3909, passed 4-3-1989)

§ 152.098 BLOCK STANDARDS.

(A) (1) The maximum length of a block shall be 1,800 feet.

(2) When designated by the Plan Commission, blocks over 800 feet shall have cross-walkways at the approximate center.

(3) The use of additional cross-walkways, in any instance, to provide safe and convenient access to schools, parks or other similar destinations may be specified by the Commission.

(B) Blocks shall fit easily into the overall plan of the subdivision and their design shall take into consideration traffic flow and public areas.

(1979 Code, § 152.73) (Ord. 3909, passed 4-3-1989)

§ 152.099 LOT STANDARDS.

(A) All lots within the subdivision shall conform to the minimum lot requirements for width and area, as provided in the city's Zoning Chapter, for the zoning district in which the subdivision lies. Lots without city water or sanitary sewer shall be no less than 80 feet in width, 120 feet in average depth and be no less than 10,000 square feet in area.

(B) Corner lots shall be sufficiently larger than interior lots to allow for the maintenance of building setback (required front yard) lines on both streets.

(C) All lots shall abut on a publicly dedicated street.

(D) Side lines shall be approximately perpendicular or radial to the street line.

(E) Double frontage lots are prohibited, except where lots back up to a primary street. In such instances, vehicular access between the lots and the primary street shall be prohibited. The lots shall have an additional depth of at least 10 feet to allow for a protective screen planting.

(F) Lots abutting a water course, drainage way, channel or stream shall have additional minimum width or depth as required to provide an adequate building site and afford the minimum usable area required in the city's Zoning Chapter for front, rear and side yards.

(G) The Plan Commission may increase lot area and dimension requirements in instances of documented unusual soil conditions or other physical factors which may affect the health and welfare of the neighborhood in which the subdivision is located.

(1979 Code, § 152.74) (Ord. 3909, passed 4-3-1989)

§ 152.100 PARKS, SCHOOLS AND PUBLIC AREAS.

(A) The Plan Commission may require, if deemed necessary, that a subdivider dedicate to the city or reserve for use of the residents of the subdivision a reasonable area for park, open space or school sites.

(B) The dedicated or reserved area shall not exceed 10% of the total area of the subdivision excluding public rights-of-way.

(1979 Code, § 152.75) (Ord. 3909, passed 4-3-1989)

CONSTRUCTION STANDARDS FOR LAND IMPROVEMENTS

§ 152.115 STATEMENT FROM CITY ENGINEER REQUIRED.

No subdivision of land shall be approved without a statement from the City Engineer certifying that all improvements indicated in the subdivision plans, specifications and accompanying agreements meet the minimum requirements of this chapter and all other applicable city ordinances and regulations.

(1979 Code, § 152.85) (Ord. 3909, passed 4-3-1989)

§ 152.116 SANITARY AND STORM SEWERS.

(A) All subdivisions shall be connected to the city sewage disposal system if reasonably accessible or required by other governing authorities. Sanitary sewer lines shall be installed in accordance with specifications established by the City Engineer. In the event that access to the city sewer system is not reasonably accessible, private septic systems or sewage disposal plant may be utilized as approved by the appropriate governmental agencies.

(B) When required by the city, storm sewers shall be constructed throughout the subdivision, separate and independent of the sanitary sewer system, providing an outlet to an approved natural drainage way or connection to the city storm sewer system.

(1979 Code, § 152.86) (Ord. 3909, passed 4-3-1989)

§ 152.117 STREET STANDARDS.

(A) Street grades shall not be in excess of 3% on primary and secondary streets, nor 5% on other streets.

(B) All streets within the corporate limits of the city shall be paved and bounded by concrete curb and gutter.

(C) The following required street related improvements shall be located, designed and constructed in conformance with City Engineering Department standards as adopted by the Board of Public Works and Safety:

- (1) Pavement widths and profiles;
- (2) Concrete curb and gutter;
- (3) Storm water inlets and catch basins; and
- (4) Any other utility appurtenances within the public right-of-way.

(1979 Code, § 152.87) (Ord. 3909, passed 4-3-1989)

§ 152.118 SIDEWALKS.

(A) All subdivisions shall contain sidewalks with the following minimum dimensions:

- (1) Width: 4 feet.
- (2) Thickness: 4 inches.

(B) The Plan Commission may require increased minimums from those listed in division (A) when, in its opinion, site conditions warrant them.

(1979 Code, § 152.88) (Ord. 3909, passed 4-3-1989)

§ 152.119 LANDSCAPING.

(A) All parkways and tree lawns within a dedicated right-of-way and lawn areas within other dedicated public open spaces shall be graded and seeded in an approved manner.

(B) Trees shall be planted in all parkways and tree lawns or on the property of the subdivision within five feet of the right-of-way of the street(s) within and abutting the subdivision, as mutually agreed upon by the Plan Commission and the subdivider. The trees shall be planted at a maximum 75 foot spacing. Public open spaces shall be planted with a minimum of 4 trees per 10,000 square feet. Trees shall be a minimum 2 to 2-1/2 inch caliper (measured 12 inches above ground level). Species shall be approved by the city.

(C) A waiver of division (B) above may be granted when, in the opinion of the Plan Commission, the proposed plan includes either the retention of a sufficient amount of existing on-site trees or adequate individual lot landscaping to meet the intent of the requirement.

(1979 Code, § 152.89) (Ord. 3909, passed 4-3-1989)

§ 152.120 PUBLIC UTILITIES.

All public utilities and services within the subdivision shall be placed underground in the designated easements as provided for on the plat; except in the case of electrical and telephone service which may be placed above ground upon proof of unusual soil or topographical conditions.

(1979 Code, § 152.90) (Ord. 3909, passed 4-3-1989)

§ 152.121 INSPECTION.

All public improvements proposed under this subchapter shall be inspected during the course of construction by the city's Engineering Department or its designee.

(1979 Code, § 152.91) (Ord. 3909, passed 4-3-1989)

§ 152.999 PENALTY.

Any person who violates any provision of this chapter shall, upon conviction, be fined not less than \$100, nor more than \$1,000, for each offense; with each day a violation occurs or continues deemed a separate offense.

(1979 Code, § 152.99) (Ord. 3909, passed 4-3-1989)

CHAPTER 153: BUILDING CODE

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GENERAL PROVISIONS

§ 153.01 TITLE.

This code, and all ordinances supplemental or amendatory hereto, shall be known as the "Elkhart City Building Code," may be cited as such, and will be referred to herein as "this code."

(1979 Code, § 153.001) (Ord. 3648, passed 9-26-1985; Am. Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-

2002)

§ 153.02 PURPOSE.

The purpose of this code is to provide minimum standards for the protection of life, health, environment, public safety and general welfare and for the conservation of energy in the design and construction of buildings and structures.

(1979 Code, § 153.002) (Ord. 3648, passed 9-26-1985; Am. Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002)

§ 153.03 AUTHORITY.

(A) This code shall be administered and enforced by the Building Commissioner, who shall be appointed by the Mayor.

(B) Wherever they appear in this code, the phrases "Building Official," "Building Commissioner" and "Commissioner of Buildings" shall be synonymous.

(C) The Building Commissioner is hereby authorized to administer and enforce the provisions of this code, the adopted code of building laws and orders issued under I.C. 22-13-2-11 and I.C. 22-12-7. Any variance from adopted building rules are subject to approval under I.C. 22-13-2-7(b).

(1979 Code, § 153.003) (Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002; Am. Ord. 4922, passed 9-16-2005)

§ 153.04 SCOPE.

The provisions of this code apply to the construction, alteration, repair, use, occupancy and addition to all buildings and structures, other than industrialized building systems or mobile structures certified under I.C. 22-15-4, in the city of Elkhart, Indiana.

(1979 Code, § 153.004) (Ord. 3648, passed 9-26-1985; Am. Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002)

§ 153.05 ADOPTION OF RULES BY REFERENCE.

(A) Building rules of the Indiana Fire Prevention and Building Safety Commission as set out in the following articles of I.A.C. Title 675 are hereby incorporated by reference in this code and shall include later amendments to those articles as the same are published in the Indiana Register or the Indiana Administrative Code with effective dates as fixed therein:

- (1) Article 13 - Indiana Building Codes: Fire and Building Safety Standards;
- (2) Article 14 - Indiana One and Two Family Dwelling Code;
- (3) Article 16 - Indiana Plumbing Code;
- (4) Article 17 - Indiana Electrical Codes;
- (5) Article 18 - Indiana Mechanical Code;
- (6) Article 19 - Indiana Energy Conservation Codes;
- (7) Article 20 - Indiana Swimming Pool Code; and
- (8) Article 22 - Indiana Fire Code.

(B) Copies of adopted building rules, codes and standards are on file in the office of the Building Commissioner, Municipal Building, First Floor, 229 South Second Street, Elkhart, Indiana 46516.

(1979 Code, § 153.005) (Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002)

PERMIT

§ 153.15 PERMIT REQUIRED.

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish or reroof any building or structure regulated by this code without first obtaining a permit from the Building Commissioner. Permits shall be applied for using forms furnished by the Building Commissioner, and all fees required by this code shall be paid to the city. A permit is not required for a residential storage shed, gazebo, deck or other accessory structure 120 square feet or less in area, and not more than 30 inches above grade. No permit shall be issued to a person that would cause a violation of I.C. 22-15-3-7.

(1979 Code, § 153.015) (Ord. 3648, passed 9-26-1985; Am. Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002) Penalty, see § 153.99

§ 153.16 APPLICATION FOR PERMIT.

(A) No building permit shall be issued unless the application for a permit is accompanied by a plat or sketch of the proposed location showing lot boundaries, and by plans and specifications showing the work to be done. In cases where the work is limited to minor alterations the Building Commissioner may waive this requirement. In addition, a copy of a Construction Design Release, issued by the state's Building Commissioner and the state's Fire Marshal pursuant to I.C. 22-15-3-1 shall be provided to the Building Commissioner before issuance of a permit for construction covered by the design release.

(B) Permits shall expire if the construction work, on all work within the scope of the permit, is not commenced within 1 year of the issuance date of the permit. However, the permittee who is unable to commence construction work within 1 year of the issuance of the permit for good and satisfactory reasons may apply for an extension of time within which he or she may commence work under that permit. The Building Commissioner may extend the permit 1 time for a period not exceeding 180 days if:

- (1) No changes have been made in the plans and specifications filed with the original application for permit;
- (2) A construction design release issued by the State Building Commissioner's office for such construction has not expired;
- (3) The extension is requested in writing by the applicant verifying the above; and
- (4) A permit extension fee of \$25 has been paid.

(C) Permits shall expire if the construction work, authorized by the permit is suspended or abandoned, at any time after construction work is commenced for a period of 180 days. The construction work may be recommenced only after the issuance of a permit reinstatement by the Building Department. Work in which substantial progress has not been made for a period of 180 days shall be deemed abandoned. The Building Commissioner may reinstate the permit for a period not exceeding 1 year if:

- (1) The construction work has been suspended or abandoned for more than 180 days, but less than 1 year;
- (2) No changes have been made in the plans and specifications filed with the original application for permit;
- (3) A construction design release issued by the state's Building Commissioner's office for such construction has not expired;
- (4) No changes to the rules of the Fire Prevention and Building Safety Commission or ordinances of the city have been made;
- (5) The reinstatement is requested in writing by the applicant verifying the above; and
- (6) A permit reinstatement fee of \$25 has been paid.

(1979 Code, § 153.016) (Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002)

§ 153.17 OTHER ORDINANCES.

All work done under any permit shall be in full compliance with all other ordinances pertaining thereto, and in addition to the fees for permits, there shall be paid the fees prescribed in such ordinances.

(1979 Code, § 153.017) (Ord. 3648, passed 9-26-1985; Am. Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002) Penalty, see § 153.99

§ 153.18 FEES.

(A) *Title.* This section shall be known, designated and referred to as "The Permit Fee Ordinance".

(B) *Permit fee schedule and application.*

(1) The fee schedule for the city is hereby established in accordance with the terms and provisions of this section. Unless otherwise indicated herein, all fees shall be due and payable at the time of application, when the service is performed, or when the fee is imposed, whichever first occurs.

(2) All permits that are issued shall be posted in a place visible from the public way until all final inspections have been made.

(3) All permits issued shall have a minimum permit fee of no less than \$40. All permits are to be rounded up to the nearest whole dollar.

(4) It shall be the joint obligation of the property owner and the contractor to obtain all necessary permits. Failure to obtain a permit when required will subject both the property owner and the contractor to the penalties established by the Building, Electrical, Mechanical and Plumbing Codes.

(5) *Building permit fees.*

(a) *Residential.*

1. One and 2-family dwelling, manufactured housing on permanent foundations, and detached residential accessory structures shall be charged \$0.10 per square foot.

2. Manufactured housing sited in mobile home parks or other such developments and not placed on permanent foundations shall be \$40 each.

(b) *Commercial.*

1. All commercial structures shall be charged \$0.15 per square foot for the first 10,000 square feet and \$0.05 per square foot over 10,000 square feet.

2. Commercial warehouses used for storage only shall be charged \$0.10 per square foot for the first 10,000 square feet and \$0.02 per square foot over 10,000 square feet.

(c) *Alterations, remodeling, repairs.* Permit fees for alterations, remodeling or repair shall be charged \$1 per \$1,000 of the estimated value of the alteration, remodeling or repair stated by the permit applicant under oath, but no less than the minimum fee stated.

1. *Storage tanks.* Permit fees for the installation and/or the removal of storage tanks in excess of 100 gallons shall be charged \$50 per tank. Permit applications for installing and/or removing tanks for use of flammable liquids either above or below ground shall have approvals as required by the rules of the Indiana Fire Prevention and Building Safety Commission.

2. *Temporary membrane structures and tents.* Permit fees to install and/or operate an air-supported temporary membrane structure or tent having an area in excess of 750 square feet or a canopy in excess of 1,500 square feet except for structures used exclusively for private functions accessory to single-family dwellings, or for camping shall be charged \$40 for each structure.

3. *Demolition of buildings.* Fees for demolition permits shall be:

- a. Single- family dwellings and/or accessory structures: \$40.
- b. Commercial/industrial structures up to 10,000 square feet: \$40 per story.
- c. Commercial/industrial structures over 10,000 square feet: \$80 per story.

4. *Moving of buildings.* The permit fee for the moving of a building or structure from one location to another shall be \$40. In addition to the moving permit, a building permit shall be required when the structure is relocated within the city limits.

5. *Marquees, awnings and permanent canopies.* Permit fees for the installation of marquees, awnings and canopies shall be \$40 for each such structure. In addition, when any such marquee, awning, or canopy, is used as signage a sign permit shall be required.

6. *Fire suppression systems.* Permit fees for the installation or alteration of fire suppression systems are as follows:

- a. 1 - 25 sprinkler heads: \$40.
- b. 26 - 250 sprinkler heads: \$80.
- c. Over 250 sprinkler heads: \$120.

7. *Swimming pools.* Permit fees for the installation or construction of swimming pools, either above ground or in ground are as follows:

- a. Private residential pools: \$50.
- b. Public pools: \$100.

(6) *Electrical permit fees.*

(a) Electrical service entrance equipment, single phase or 3 phase.

- 1. 0 - 100 amperes: \$50.
- 2. 101 - 200 amperes: \$60.
- 3. 201 - 400 amperes: \$70.
- 4. 401 - 800 amperes: \$100.
- 5. 801 - 2000 amperes: \$200.
- 6. 2001 and over: \$400.

(b) *Temporary service.*

- 1. Any size temporary service: \$40.

(c) *Manufactured housing service connection.*

1. Manufactured home connection sited in a mobile home park up to and including 200 ampere service: \$40 each.

(d) *Feeders and sub-feeders.*

1. 100 amperes or less: \$30 each.
2. Over 100 amperes: \$60 each.

(7) *Heating, ventilation, air conditioning and refrigeration permit fees.*

(a) *Furnace, unit heater and similar appliances.*

1. Thru 200,000 BTUs: \$40 each.
2. 200,001 - 1,000,000 BTUs: \$65 each.
3. Over 1,000,000 BTUs: \$100 each.

(b) *Air conditioner.*

1. Thru 10 HP: \$40 each.
2. Over 10 thru 100 HP: \$65 each.
3. Over 100 HP: \$100 each.

(c) *Cooling towers.*

1. Cooling tower: \$40 each.

(d) *Boilers.*

1. Thru 200,000 BTUs: \$40 each.
2. 200,001 - 1,000,000 BTUs: \$65 each.
3. Over 1,000,000 BTUs: \$100 each.
4. Hydronic fan coils: \$10 each.

(e) *Air handler, ducted fan.*

1. Under 200 CFM: No fee.
2. 200 - 10,000 CFM: \$40 each.
3. Over 10,000 - 100,000 CFM: \$65 each.
4. Over 100,000 CFM: \$100 each.

(f) *Refrigeration unit, walk-in cooler, etc.*

1. 0 - 10 HP: \$40 each.
2. Over 10 - 100 HP: \$65 each.
3. Over 100 HP: \$100 each.

(g) *Heat pump.*

1. 0 - 5 HP: \$40 each.
2. Over 5 HP: \$65 each.

(h) *Incinerators.*

1. 0 - 10 bushels: \$40 each.
2. Over 10 bushels: \$65 each.

(i) *Ductwork only installation.*

1. 1 - 20 outlets: \$40.
2. 21 - 50 outlets: \$65.
3. 51 and over outlets: \$100.

(j) *Gas piping only installation.*

1. 1 - 20 outlets: \$40.

2. 21 - 50 outlets: \$65.
3. 51 and over outlets: \$100.

(k) *Hydronic piping only installation.*

1. 1 - 20 outlets: \$40.
2. 21 - 50 outlets: \$65.
3. 51 and over outlets: \$100.

(l) *Other permit fees.*

1. Commercial kitchen exhaust system: \$50 each.
2. Vent/flue replacement: \$40 each.
3. Gas - oil conversion: \$40.

(8) *Plumbing permit fees.*

(a) *Plumbing fixtures.*

1. First drainage fixture: \$40.
2. Each additional fixture: \$5 each.
3. Public swimming pool: \$60 each.
4. Private swimming pool: \$40 each.
5. Water softener: \$15 each.
6. First private sewer fee: \$50.
7. Each additional sewer connection: \$5 each.

(b) *Fuel gas piping.*

1. 1 - 20 outlets: \$40.
2. 21 - 100 outlets: \$65.
3. 101 and over outlets: \$100.

(9) *Permit extension fees.* All permits are valid for a period of 1 year from the date of issue. A 1 time extension of the permit for 1 more year may be granted at the discretion of the Building Commissioner or their designee. The fee for the permit extension shall be \$30.

(10) *Duplicate or lost permit replacement fee.* In the event a permit becomes lost or missing a replacement permit may be issued. The fee for the replacement permit shall be \$10. The replacement permit shall contain the same information as the original with no time extension.

(11) *Re-inspection or special inspection fees.* The re-inspection fees set forth below will be assessed for each inspection required due to code violations, the failure to correct violations, lock-outs when inspections have been requested, or any special inspections. Re-inspection fees are to be paid in the Permit Center prior to the re-inspection.

- (a) First re-inspection: \$30.
- (b) Second re-inspection: \$60.
- (c) Third and each subsequent re-inspection: \$80.

(12) *Late or no-permit fee.*

(a) Any person, firm or corporation who shall start and/or proceed with any work, where a permit is required pursuant to Chapter 153: Building Code, Chapter 155: Heating, Ventilation, Air Conditioning and Refrigeration Code, Chapter 156: Plumbing Code, Chapter 157: Electrical Code, without first having applied for the necessary permit, shall be charged a fee double the amount specified for the appropriate permit fee in this code, but, no less than \$200.

(b) In cases of emergency, when the Building Commissioner or his or her designated representative is unavailable or the Permit Center is closed, the permit shall be obtained within 72 hours from the time that the installation, alteration or related work was stalled or the next business day the Permit Center is open.

(c) In no way does this section relieve any person, firm or corporation from any other penalties, fines or civil penalties that may be imposed under any other ordinance in full effect.

(13) *Penalty for failure to post permit.*

- (a) Any person, firm or corporation who fails to properly post all permits required for a project or job within the city is

subject to a fine of no less than \$100 and no more than \$2,500. Each day in violation constitutes a separate offense and may result in daily fines.

(b) Any person, firm or corporation who fails comply with this section may also experience a stop work order being issued until such a time that the permits are properly posted as stated in this section.

(1979 Code, § 153.018) (Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002; Am. Ord. 4718, passed 12-2-2002; Am. Ord. 4922, passed 9-16-2005; Am. Ord. 5438, passed 5-4-2015)

§ 153.19 REVIEW OF APPLICATION.

Prior to the issuance of any building permit, the Building Commissioner shall review all building permit applications, plans and specifications to determine compliance with the provisions of this code, and shall ascertain that other required city clearances and permit have been obtained.

(1979 Code, § 153.019) (Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002; Am. Ord. 4922, passed 9-16-2005)

ENFORCEMENT

§ 153.30 REQUIRED INSPECTIONS.

(A) After the issuance of any building permit, the Building Commissioner shall, upon written notification by the permittee, make or shall cause to be made, inspections of the work being done as are necessary to insure full compliance with the provisions of this code and the terms of the permit. Re-inspections of work found to be incomplete or not ready for inspection are subject to assessment of reinspection fees as prescribed in this code.

(B) All construction work for which a permit is required shall be subject to inspection by the Building Commissioner and all such construction work shall remain accessible and exposed for inspection purposed until approved by the Commissioner. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for reinspection purposes. Neither the city nor its representatives shall be liable for the expense entailed in removal or replacement of any material required to allow inspection.

(C) It shall be the duty of the person doing the work authorized by the permit to notify the Building Commissioner that the work is ready for inspection. Such notification shall be given not less than 24 hours before the work is to be inspected. It shall be unlawful for any person, firm or corporation to lathe over, plaster or cover up any work covered by this code before the work has been inspected. Upon notification it shall be the duty of the Inspector to inspect the work within 48 hours, Saturdays, Sundays and holidays excluded, of the time said work is ready for inspection. The method of notification shall be determined by the Building Commissioner. The Building Commissioner shall in all cases designate the stage of construction when inspections shall be required.

(1979 Code, § 153.030) (Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002; Am. Ord. 4922, passed 9-16-2005)

§ 153.31 INSPECTION ASSISTANCE.

(A) The Chief of the Fire Department, or his or her designated representative, shall assist the Building Commissioner, when requested.

(B) In the event that, in the estimation of the Building Commissioner, special inspections by third- party experts are necessary, the Building Commissioner may require additional special inspections to ascertain compliance with the provision of this code and any other ordinance enforced by the Building Department. The owner, permit holder or any other person acting as the owner's agent shall employ one or more special inspectors to perform said inspections and to report to the building commissioner the results of the inspections. The special inspector shall be a qualified person who shall demonstrate competence to the satisfaction of the Building Commissioner. The inspections shall be made at the expense of the permittee.

(C) Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of any other ordinances of the city.

(1979 Code, § 153.031) (Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002; Am. Ord. 4922, passed 9-16-2005)

§ 153.32 ENTRY.

Upon presentation of proper credentials, the Building Commissioner, or his or her duly authorized representatives, may enter at reasonable times any building, structure or premises in the city to perform any duty imposed upon him or her by this code.

(1979 Code, § 153.032) (Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002)

§ 153.33 STOP WORK ORDER.

Whenever any work is being done contrary to the provisions of this code, the Building Commissioner may order the work stopped by notice in writing served on any persons engaged in the doing or causing the work to be done, or by posting notice at the site where the work is being performed, and any such persons shall forthwith stop the work until authorized by the Building Commissioner to proceed with the work.

(1979 Code, § 153.033) (Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002)

§ 153.34 CERTIFICATE OF OCCUPANCY.

(A) No building or structure, or addition, shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the Commissioner has issued a certificate of occupancy as provided herein.

(B) Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the city. Certificates presuming to give authority to violate or cancel the provisions of this or other ordinances shall not be valid.

(C) After final inspection, when it is found that the building or structure contains no violations of the provisions of this code and any other applicable laws, ordinances and regulations, the Building Commissioner shall issue a certificate of occupancy, which shall contain the following:

- (1) The building permit number;
- (2) The address of the building;
- (3) The name of the owner;
- (4) A description of that portion of the building for which the certificate is issued.
- (5) A statement that the described portion of the building has been inspected for compliance with the requirements of this code for the group and division of occupancy and the use for which the proposed occupancy is classified;
- (6) The signature of the Building Commissioner, and of an authorized representative of the Planning and Zoning Department; and
- (7) Any restrictions which may affect usage of the structure.

(D) The certificate of occupancy shall be permanently posted in a conspicuous place on the premises and shall not be removed except by the authority of the Building Commissioner, except that the certificate need not be posted in residential occupancies.

(E) The Building Commissioner may, in writing, suspend or revoke a certificate of occupancy issued under the provisions of this code whenever the certificate is issued in error, or on the basis of incorrect information supplied, or when it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

(F) In cases where the issuance of a certificate of occupancy is not required, such as the remodeling of a part of a building or structure, the portion of the building or structure shall not be occupied until it has passed the final inspection required under this code.

(G) Use or occupancy of any building or structure prior to issuance of a certificate of occupancy shall constitute a violation of this section and shall subject the violator(s) to the penalties in § 153.99.

(H) (1) A permittee may request, in writing, temporary occupancy of a building or structure.

(2) Upon such request, the Building Commissioner shall determine that no substantial hazard will result from occupancy of any building or portion thereof before the same is completed.

(3) If the Commissioner finds that no substantial hazard will result from the occupancy, the Commissioner may grant temporary occupancy for the use of a portion or portions of a building or structure prior to the completion of the entire building or structure.

(4) The temporary occupancy shall be subject to any conditions imposed by the Commissioner.

(5) However, no such temporary occupancy may be granted if it is found that requirements of the city have not been met.

(1979 Code, § 153.034) (Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002; Am. Ord. 4922, passed 9-16-2005)

§ 153.35 VACANT BUILDINGS.

When a building or structure, or portion thereof appears to the Building Commissioner to have been vacant for a

substantial period of time, the building may be posted by the Building Commissioner not to be occupied until the intended use of the building is known and a certificate of occupancy is procured from the Building Commissioner.

(1979 Code, § 153.035) (Ord. 4704, passed 9-23-2002)

§ 153.36 WORKMANSHIP.

All work on the construction, alteration and repair of buildings and other structures shall be performed in a good and workmanlike manner according to accepted standards and practices in the trade.

(1979 Code, § 153.036) (Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002)

§ 153.37 VIOLATIONS.

It shall be unlawful for any person, firm or corporation, whether as owner, lessee, sub-lessee or occupant, to erect, construct, enlarge, alter, repair, improve, remove, convert, demolish, equip, use, occupy or maintain any building or structure, in the city, or cause or permit the same to be done, contrary to or in violation of the provisions of this code.

(1979 Code, § 153.037) (Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002)

§ 153.38 RIGHT OF APPEAL.

All persons shall have the right to appeal any order of the Building Commissioner first through the Hearing Authority of the city, as such hearing authority is designated by the Board of Public Safety, and then to the Fire Prevention and Building Safety Commission of Indiana in accordance with the provisions of I.C. 22-13-2-7 and I.C. 4-21.5-3-7.

(1979 Code, § 153.038) (Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002)

UNSAFE BUILDINGS

§ 153.50 ESTABLISHMENT OF CODE.

Under the provisions of I.C. 36-7-9, there is hereby established the Unsafe Building Code.

(1979 Code, § 153.080) (Ord. 3897, passed 12-12-1988)

§ 153.51 SHORT TITLE.

This subchapter may be cited and referred to as the "Unsafe Building Code."

(1979 Code, § 153.081) (Ord. 3897, passed 12-12-1988)

§ 153.52 ADOPTION OF STATUTE.

I.C. 36-7-9-1 through 36-7-9-28 now enacted and as hereinafter amended are hereby incorporated by reference in the Unsafe Building Code. All proceedings within the city for the inspection, repair and removal of unsafe buildings shall be governed by said law and the provisions of this subchapter. In the event the provisions of this subchapter conflict with the provisions of I.C. 36-7-9-1 through 36-7-9-28, then the provisions of the state statute shall control.

(1979 Code, § 153.082) (Ord. 3897, passed 12-12-1988)

§ 153.53 SPECIFICATION OF DEPARTMENT.

The Building Department of the city is hereby designated the executive department authorized to administer this subchapter.

(1979 Code, § 153.083) (Ord. 3897, passed 12-12-1988)

§ 153.54 ENFORCEMENT AUTHORITY.

(A) The Building Commissioner, as chief administrative officer of the Building Department shall be authorized to administer and to proceed under the provisions of the law in ordering the repair or removal of any buildings found to be unsafe as specified therein or as specified hereafter.

(B) Wherever in the building regulations of the state or this Unsafe Building Code it is provided that anything must be done to the approval of or subject to the direction of the Building Commissioner or any other officer of the city, this shall be construed to give the officer only the discretion of determining whether the rules and standards established by ordinance have been complied with; and no such provisions shall be construed as giving any officer discretionary powers as to what such regulations or standard shall be, power to require conditions not prescribed by ordinance, or to enforce ordinance provisions in an arbitrary or discretionary manner.

(1979 Code, § 153.084) (Ord. 3897, passed 12-12-1988)

§ 153.55 HEARING AUTHORITY.

The Board of Public Works and Safety of the city, or its designee, is hereby designated the Hearing Authority under this subchapter.

(1979 Code, § 153.085) (Ord. 3897, passed 12-12-1988)

§ 153.56 SUBSTANTIAL PROPERTY INTEREST.

The definition of substantial property interest set forth in I.C. 36-7-9-2 is hereby incorporated herein by reference as though fully set forth herein.

(1979 Code, § 153.086) (Ord. 3897, passed 12-12-1988)

§ 153.57 DEFINITION OF UNSAFE BUILDING.

The description of an unsafe building contained in I.C. 36-7-9-4 and as hereinafter amended is hereby supplemented to provide minimum standards for building condition or maintenance in the city by adding the following definition:

UNSAFE BUILDING. Any building or structure which has any or all of the conditions or defects hereinafter described, provided that such conditions or defects exist to the extent that life, health, property or safety of the public or its occupants are endangered:

(A) Whenever any door, aisle, passageway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic;

(B) Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic;

(C) Whenever the stress in any materials, member, or portion thereof, due to all dead and live loads, is more than 1-1/2 times the working stress or stresses allowed for new buildings of similar structure, purpose or location;

(D) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before the catastrophe and is less than the minimum requirements for new buildings of similar structure, purpose or location;

(E) Whenever any portion, member or appurtenance thereof is likely to fail, to become detached or dislodged, or to collapse and thereby injure persons or damage property;

(F) Whenever any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified for new buildings of similar structure, purpose or location without exceeding the working stresses permitted for the buildings;

(G) Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction;

(H) Whenever the building or structure, or any portion thereof, because of dilapidation, deterioration or decay; faulty construction; the removal, movement or instability of any portion of the ground necessary for the purpose of supporting the building; the deterioration, decay or inadequacy of its foundation; or any other cause, is likely to partially or completely collapse;

(I) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used;

(J) Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base;

(K) Whenever the building or structure, exclusive of the foundation, shows 33% or more damage or deterioration of its supporting member or members, or 50% damage or deterioration of its non-supporting members, enclosing or outside walls or coverings;

(L) Whenever the building or structure has been so damaged by fire, wind, earthquake or flood or has become so dilapidated or deteriorated so as to become an attractive nuisance to children; or freely accessible to persons for the purpose of committing unlawful acts;

(M) Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to the building or structure provided by the building regulations of the city, or of any law or ordinance of the state or city relating to the condition, location or structure of buildings;

(N) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances has in any non-supporting part, member or portion less than 50%, or in any supporting part, member or portion

less than 66% of the strength; fire-resisting qualities or characteristics; or weather-resisting qualities or characteristics required by law in the case of a newly-constructed building of like area, height and occupancy in the same location;

(O) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the Code Enforcement Officer to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease;

(P) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits or lack of sufficient fire-resistive construction is determined by the Fire Chief or state's Fire Marshal to be a fire hazard; and

(Q) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of 6 months so as to constitute the building or portion thereof an attractive nuisance or hazard to the public.

(1979 Code, § 153.087) (Ord. 3897, passed 12-12-1988; Am. Ord. 4217, passed 9-11-1995)

§ 153.58 DECLARATION AS NUISANCE; ABATEMENT.

All buildings or portions thereof within the city which are determined after inspection by the Building Commissioner to be unsafe as defined in this subchapter are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal.

(1979 Code, § 153.088) (Ord. 3897, passed 12-12-1988)

§ 153.59 RECONSTRUCTION, REPAIR OR DEMOLITION.

All work for the reconstruction, repair or demolition of buildings and other structures shall be performed in a good workmanlike manner according to the accepted standards and practices in the trade. The provisions of the building laws, as defined in I.C. 22-12-1-3, adopted as rules of the Fire Prevention and Building Safety Commission, shall be considered standard and acceptable practice for all matters covered by this subchapter or orders issued pursuant to this subchapter by the Building Commissioner of the city.

(1979 Code, § 153.089) (Ord. 3897, passed 12-12-1988)

§ 153.60 EMERGENCY ACTION TO SEAL BUILDINGS.

(A) Any building whose doors and windows have been so damaged by fire that they cannot be closed and secured from unauthorized entry by normal locks immediately upon the expiration of the fire, is hereby declared to be an immediate and eminent threat to the public welfare and safety. The buildings are hereinafter referred to as "burned structures."

(B) Upon the extinguishment of any fire, all burned structures shall be immediately sealed with such materials as shall render the property enterable only through a single locked entrance.

(C) Burned structures shall be sealed by qualified contractors or individuals as approved by the enforcement authority. Upon approval, each contractor shall be placed on a rotating list which shall be on file at the Communications Center.

(D) Upon receipt of a request from the enforcement authority or the City Fire Department, the Communications Center will contact the approved contractors, in proper order of rotation, to seal the burned structure until a contractor is located who can immediately commence work on the building.

(E) Qualified contractors must be headquartered within the city or within the townships of Baugo, Cleveland, Concord or Osolo within Elkhart County. The contractors must be approved by the Building Department and approved contractors will be called by rotation. The list of approved contractors will be kept at the Communications Center, the Fire Department and the Building Department.

(F) The contractors will supply all labor and materials necessary to seal the burned building. The materials must meet all specifications required by the enforcement authority, and shall meet the following minimum requirements: All broken windows, doors, and openings shall be covered with fitted 3/8 inch plywood, particle board or chip board, which shall be fastened to the building with 1-1/2 inch cluth head or square head screws. One entrance way of at least 1/2 inch thickness shall be installed with hinges and a hasp, shall be padlocked, and the key shall be delivered to the City Fire Department.

(G) The contractors shall be compensated in the manner set forth in I.C. 36-7-9*et seq.* and shall have no claim against the city for reimbursement for labor or materials furnished hereunder.

(H) Construction, repair or demolition must start within 90 days of this order except in extenuating circumstances and on an appeal made to the Hearing Authority for an extension.

(1979 Code, § 153.090) (Ord. 3897, passed 12-12-1988)

§ 153.61 UNSAFE BUILDING FUND.

An Unsafe Building Fund is hereby established in the operating budget of the city in accordance with the provisions of I.C. 36-7-9-14.

(1979 Code, § 153.091) (Ord. 3897, passed 12-12-1988)

§ 153.62 VIOLATIONS.

No person, firm or corporation, whether as owner, lessee, sublessee or occupant, shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy or maintain any building or premises, or cause or permit the same to be done, contrary to or in violation of any of the provisions of this subchapter or any order issued by the Building Commissioner. Any person violating the provisions of this subchapter or I.C. 36-7-9-28 shall commit a Class C infraction for each day such violation continues.

(1979 Code, § 153.092) (Ord. 3897, passed 12-12-1988)

CLEAN AIR STANDARDS FOR WORKPLACES AND PUBLIC PLACES

§ 153.70 DEFINITIONS.

For purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BAR. Any establishment used primarily for the sale of alcoholic beverages for consumption by patrons on the premises and which holds a retailer's permit under the laws of the State of Indiana. The term includes, but is not limited to, taverns, nightclubs, and cocktail lounges.

CHILD CARE FACILITY. Any licensed nursery, day care center, preschool, or other facility engaged in the practice of providing care for children. A private residence is not a child care facility.

ENCLOSED FACILITY. Areas enclosed on all sides by walls or windows (exclusive of door or passage ways) which extend from floor to ceiling.

HEALTH CARE FACILITY. Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all area waiting rooms, hallways, private rooms, semiprivate rooms, and wards.

PERSON. Any individual, partnership, cooperative association, private cooperation, personal representative, receiver, trustee, assignee, or any other legal entity.

PRIVATE CLUB. A facility owned or operated by an association or corporation, which shall:

- (1) Not be operated for profit; and
- (2) Consist of a membership:
 - (a) Formed as lodge, union or local chapter, or corresponding unit of fraternal order recognized on a national basis; or
 - (b) Comprised of persons who have served in the armed forces of the United States; or
 - (c) Formed as a recognized, exclusive association of persons organized for a joint or common purpose for which application for membership, the payment of dues, and self governance by the membership are distinguishing characteristics; and
 - (d) Where entry into, and use of the facility is restricted to members and guests of members.

PLACE OF EMPLOYMENT. Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways.

PUBLIC PLACE. Any enclosed area to which the public is invited or in which the public is permitted, including but not limited to financial institutions, beauty and barber shops, educational facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments and other commercial establishments, retail stores, theaters and waiting rooms, regardless of whether a fee is charged for admission to the place. A private residence is not **PUBLIC PLACE**.

RESTAURANT. An eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, private and public school cafeterias, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term **RESTAURANT** shall include a bar area within a restaurant.

RETAIL STORE. Any sole proprietorship, partnership, joint venture, corporation or other business entity where goods or services are sold or offered for sale.

RETAIL TOBACCO STORE. Any retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

SERVICE LINE. Any indoor line at which one or more persons are waiting for or receiving services of any kind, whether or not such service involves the exchange of money.

SHOPPING MALL. An enclosed public walkway or hall that serves to connect retail or professional establishments.

SMOKING. The inhaling, exhaling, burning or carrying of any lighted cigar, cigarette, pipe or other combustible tobacco product in any manner or in any form.

SPORTS ARENA. Any enclosed or unenclosed sports pavilion, gymnasium, health spa, swimming pool, roller or ice rink, bowling alley and other similar public place where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

THEATER. Any indoor facility primarily used for the exhibition of any motion picture, stage drama, musical recital, dance, lecture or other similar performance.

(Ord. 5102, passed 4-3-2008)

§ 153.71 APPLICABILITY TO CITY FACILITIES.

All enclosed facilities and vehicles owned or leased by the City of Elkhart shall be subject to the provisions of this subchapter.

(Ord. 5102, passed 4-3-2008)

§ 153.72 PROHIBITION OF SMOKING IN PUBLIC PLACES AND CERTAIN PLACES OF EMPLOYMENT.

Smoking shall be prohibited in any portion of buildings or enclosed facilities, whether publicly or privately owned that are open for public accommodation, including but not limited to, the following areas:

(A) Auditoriums, convention centers, lecture halls, sports or entertainment arenas, including enclosed places in outdoor arenas or venues and in grandstands or other places of public gathering;

(B) Aquariums, galleries, libraries and museums, or other places of public display or collection;

(C) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers, or other sales or retail establishments;

(D) A bar;

(E) Bed and breakfast facilities, inns, and hotels, motels and other places of lodging;

(F) Bingo facilities;

(G) Day care centers, senior citizen centers, homeless shelters, food banks, adoptions agencies or other social service center establishments;

(H) Elevators;

(I) Gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation;

(J) Health care facilities;

(K) Laundromats, dry-cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas stations, professional offices, and pharmacies;

(L) Lobbies, hallways, and other common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and multiple-unit residential facilities;

(M) Motion picture houses, theaters, and similar facilities used for exhibiting motion pictures, musical recitals and other similar performances;

(N) Nurseries, elementary, secondary, undergraduate or postgraduate school, or other place of education;

(O) Parks, zoos, amusement parks, playgrounds, or other similar places of recreation;

(P) Public transportation facilities, including buses and taxicabs, and ticketing, boarding, and waiting areas of public transit depots;

(Q) Restaurants, including any outside eating or drinking areas provided by a restaurant to its patrons;

(R) Restrooms, lobbies, reception areas, hallways and other common-use areas;

(S) Service lines;

(T) Shopping malls.

(Ord. 5102, passed 4-3-2008) Penalty, see § 153.99

§ 153.73 PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT.

(A) Smoking shall be prohibited in all enclosed areas within places of employment. This includes, but is not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms and all other enclosed facilities.

(B) Every employer having a building or enclosed facility where smoking is prohibited by this subchapter shall adopt, maintain and enforce a written smoking policy consistent with this subchapter.

(Ord. 5102, passed 4-3-2008) Penalty, see § 153.99

§ 153.74 REASONABLE DISTANCE.

Smoking shall be prohibited out of doors within a reasonable distance from an enclosed area where smoking is prohibited by this subchapter, but in no event any closer than 15 feet, so as to insure that tobacco smoke does not enter into establishments designated as smoke free under this subchapter through public entrances, windows, ventilation intakes or other means.

(Ord. 5102, passed 4-3-2008) Penalty, see § 153.99

§ 153.75 EXEMPTIONS.

(A) Notwithstanding the smoking prohibitions in § 153.72, smoking will be permitted in the following locations:

(1) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited under the provisions of this subchapter. The status of rooms as smoking or non-smoking shall not be changed, except to add additional nonsmoking rooms and in any case may not exceed 20% of available rooms;

(2) Retail tobacco stores;

(3) Private clubs;

(4) Halls, rooms or assembly areas owned or operated by a church, synagogue, or other place of worship if smoking is part of a religious ceremony or an essential part of the religious tenets;

(5) Outdoor areas of a golf course, not to include miniature golf courses;

(6) Private motor vehicles;

(7) Private residences except when used as a child care, adult day care or health care facility;

(8) Outdoor areas of employment.

(9) *Cigar bars*. An establishment that is owned or leased by a business that meets the following requirements:

(a) The business prohibits entry by an individual who is less than 21 years of age.

(b) The owner or operator of the business holds a beer, liquor, or wine retailer's permit.

(c) The business limits smoking in the establishment to cigar smoking.

(d) During the preceding calendar year, at least 10% of the business's annual gross income was from the sale of cigars and the rental of onsite humidors.

(e) The person in charge of the business posts in the establishment conspicuous signs that display the message that cigarette smoking is prohibited.

(f) The sale of prepared foods for on-premises consumption is prohibited.

(B) This subchapter shall allow a one-time, 12-month extension for compliance for those bars that only admit patrons aged 21 years and older. No establishments with separate family dining facilities will be eligible for this extension. In order to qualify for this extension, the bar must file an application for a certificate of extension with the enforcement authority not later than 30 days after the effective date of this subchapter. The extension shall be for a period of one calendar year from the effective date of this subchapter. Any establishment granted such an extension must clearly post notices of that the extension is in effect at all public entrances to the establishment. Only establishments currently in operation as of the effective date of this subchapter are eligible for this extension.

(C) Notwithstanding any other provision herein, smoking shall not be allowed in any area if the smoke from smoking is allowed to enter, either directly or indirectly, any other area where smoking is prohibited under this subchapter.

(D) No person or entity shall discharge, refuse to hire or retaliate in any manner against an employee, applicant for

employment, or customer because of any attempt to enforce the provisions of this subchapter by such employee, applicant or customer.

(Ord. 5102, passed 4-3-2008; Am. Ord. 5878, passed 11-1-2021)

§ 153.76 SIGNS.

Every place of public accommodation, building or enclosed facility and every place of employment where smoking is allowed under the provisions of this subchapter must post a conspicuous and clearly legible sign at each entrance that warns that tobacco smoke may be present.

(Ord. 5102, passed 4-3-2008)

§ 153.77 DECLARATION OF ESTABLISHMENT AS NONSMOKING.

Notwithstanding any other provision of this subchapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place.

(Ord. 5102, passed 4-3-2008)

§ 153.78 ENFORCEMENT.

(A) This subchapter shall be enforced by the Building and Code Enforcement Department or its authorized designee (hereafter the "Enforcement Authority"). Any person who desires to register a complaint under this subchapter may report a violation to the Enforcement Authority. The Enforcement Authority shall, in connection with other routine inspections, inspect for compliance with this subchapter.

(B) The record owner(s), manager(s), operator(s), tenant(s), employee(s) and/or other occupant(s) of any structure, land or part thereof, and other person(s) who commit, participate in, assist in, and/or maintain and/or allow a violation to continue shall each be considered responsible parties and may be found liable for separate violations.

(Ord. 5102, passed 4-3-2008)

§ 153.99 PENALTY.

(A) The Building Commissioner shall, in the name of the city, bring actions in any court of competent jurisdiction for mandatory and injunctive relief in the enforcement of, and to secure compliance with, any order or orders made by the Building Commissioner, and any such action for mandatory or injunctive relief may be joined with an action to recover the penalties provided for in this code.

(1979 Code, § 153.998)

(B) If any person, firm or corporation shall violate any of the provisions of this code, or shall do any act prohibited herein, or shall fail to perform any duty lawfully enjoined, within the time prescribed by the Building Commissioner, or shall fail, neglect or refuse to obey any lawful order given by the Building Commissioner in connection with the provisions of this code, for each such violation, failure or refusal, such person, firm or corporation shall be fined in any sum not less than \$25, nor more than \$2,500. Each day of such unlawful activity as prohibited by this section shall constitute a separate offense.

(C) (1) Any person found to be in violation of §§153.70 through 153.78 shall, upon conviction, be fined as follows:

- (a) The issuance of a verbal warning for the first violation;
- (b) The issuance of a written warning for the second violation within the same calendar year;
- (c) A fine of not less than \$100 for a third violation within the same calendar year;
- (d) A fine of not less than \$200 for a fourth violation within the same calendar year; and
- (e) A fine not to exceed \$500 for each additional violation occurring within the same calendar year.

(2) Each day of violation shall constitute a separate and distinct offense.

(1979 Code, § 153.999)

(Ord. 3648, passed 9-26-1985; Am. Ord. 4608, passed 8-20-2001; Am. Ord. 4704, passed 9-23-2002; Am. Ord. 5102, passed 4-3-2008)

CHAPTER 154: MINIMUM HOUSING REQUIREMENTS

Section

154.01 Adoption of International Property Maintenance Code

154.02 Amendments

§ 154.01 ADOPTION OF INTERNATIONAL PROPERTY MAINTENANCE CODE.

The International Property Maintenance Code, 2006 Edition, as amended, that is published by the International Code Council, Inc., is hereby adopted as the Property Maintenance Code of the City of Elkhart, as if fully set out in this chapter with the additions, insertions, deletions, and changes, prescribed in § 154.02 of this chapter.

(Ord. 5061, passed 10-15-2007)

§ 154.02 AMENDMENTS.

The International Property Maintenance Code, 2006 Edition, is amended and revised in the following respects:

Amend Section 101.1 Title, to read:

101.1 Title: These regulations shall be known as the Property Maintenance Code of the City of Elkhart, Indiana, hereinafter referred to as "this code".

Amend Section 101.3 Intent, as follows:

Delete the last sentence of Section 101.3.

Amend Section 102.3 Application of other codes, as follows:

102.3 Application of other codes: Repairs, additions, or alterations to a structure, or change of occupancy, shall be done in accordance with the procedures and provisions of the codes and standards listed in Chapter 8.

Delete Section 103 Department of Property Maintenance.

Amend Section 106.3 Prosecution, to read:

106.3 Prosecution: In case of any unlawful acts the code official shall institute an appropriate action of proceeding at law to exact the penalty provided in Section 106.4. Also, the code official may ask the Elkhart City Attorney to proceed at law or in enquiry against the person responsible for the violation for the purpose of ordering that person:

1. To restrain, correct or remove the violation or refrain from any further execution of work;
2. To restrain or correct the erection, installation, maintenance, repair, or alteration of such structure;
3. To require the removal of work in violation; or
4. To prevent the occupancy of the structure that is not in compliance with provisions of this code.

Amend Section 106.4 Violation penalties, to read:

106.4 Violation penalties: Any person who shall violate a provision of this code shall, upon admission to the violation or adjudication thereof by a court, be subject to a fine of not less than twenty-five dollars (\$25.00), and not more than two thousand five hundred dollars (\$2,500.00) for a first violation of this code, and not less than one hundred dollars (\$100.00), nor more than seven thousand five hundred dollars (\$7,500.00) for a second or subsequent violation of this code. A second or subsequent violation is defined as a violation which occurs after a person has paid a fine for a violation of this code, has admitted to a violation of this code or has had a judgment entered against the person for a violation of this code and is not limited to the parcel upon which the first violation occurred. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Amend Section 111.1 Application for appeal, to read:

111.1 Application for appeal: Any person affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the Hearing Authority, provided that a written application for appeal is filed within ten (10) days after the decision, notice, or order was served. This Section shall not affect the right of a code official to issue a citation. If the citation is processed in court, the person shall not have the right to appeal to the Hearing Authority pursuant to this Section 111.

Amend Section 111.2 Membership of board, to read:

111.2 Hearing Authority: The Hearing Authority shall be the authority appointed, pursuant to Section 6 of Ordinance No. 3897, who shall preside over all hearings.

Delete Sections 111.2.1 to 111.2.5.

Amend Section 111.3 Notice of meeting, to read:

111.3 Notice of meeting: The hearing will be scheduled after the filing of the appeal.

Amend Section 111.4 Open hearing, to read:

111.4 Open hearing: All hearings before the Hearing Authority shall be open to the public. The appellant, the appellant's representative, the code official, and any person whose interests are affected shall be given an opportunity to be heard.

Amend Section 111.4.1 Procedure, to read:

111.4.1 Procedure: Each person appearing at the hearing is entitled to present evidence, cross examine opposing witnesses, and present arguments.

Delete Section 111.5 Postponed hearing.

Amend Section 111.6 Board decision, to read:

111.6 Decision: At the conclusion of the hearing, the Hearing Authority may affirm the order or decision, rescind the order or decision, or modify the order or decision.

Amend Section 111.6.1 Records and copies, to read:

111.6.1 Decision in writing: The decision of the Hearing Authority will be reduced to writing and mailed to the appellant and the code official.

Amend Section 111.6.2 Administration, to read:

111.6.2 Administration: The code official shall take action in accordance with the decision of the Hearing Authority.

Amend Section 201.3 Terms defined in other codes, to read:

Where terms are not defined in this code and are defined in the Building Code, Electric Code, Fire Code, Mechanical Code, or the Plumbing Code, such terms shall have the meanings ascribed to them as in those codes.

Amend Section 202, Definitions, as follows:

Add the following definition:

Building Code: The Indiana Building Code, the Indiana Residential Code, the Indiana Energy Conservation Code, or other such codes and ordinances adopted by the State of Indiana and/or the City of Elkhart for the regulation of construction, alteration, addition, repair, removal, demolition, location, occupancy, and maintenance of buildings or structures.

Add the following definition:

Electrical Code: The Indiana Electrical Code or other such electrical codes and ordinances adopted by the State of Indiana and/or the City of Elkhart.

Add the following definition:

Fire Code: The Indiana Fire Code or other such fire codes and ordinances adopted by the State of Indiana and/or the City of Elkhart.

Add the following definition:

Mechanical Code: The Indiana Mechanical Code and the Indiana Fuel Gas Code or other such mechanical codes and ordinances adopted by the State of Indiana and/or the City of Elkhart.

Add the following definition:

Plumbing Code: The Indiana Plumbing Code or other such plumbing codes and ordinances adopted by the State of Indiana and/or the City of Elkhart.

Amend Section 302.4 Weeds, to read:

302.4 Weeds: All premises and exterior property shall be maintained free from weeds or plant growth in accordance with city ordinance.

Delete Section 302.8 Motor Vehicles.

Delete Section 303 Swimming Pools and Hot Tubs.

Amend Section 304.3 Premises identification, to read:

304.3 Premises identification: Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic or alphabet letters. Numbers shall be a minimum of 3 inches high with a minimum stroke of 1/2 inch.

Amend Section 304.14 Insect screens, to read:

304.14 Insect screens: During the period from April 30 to October 15, every door, window and other outside opening utilized or required for ventilation purposes serving any structure containing habitable rooms, food preparation areas, food service areas, or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged, or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch and every

swinging door shall have a self-closing device in good working condition.

Exception: Screen doors shall not be required where other approved means, such as air curtains or insect repellent fans are employed.

Amend Section 401.3 Alternative devices, to read:

401.3 Alternative devices: In lieu of the means for natural light and ventilation herein prescribed, artificial light or mechanical ventilation complying with the Building Code, and Mechanical Code shall be permitted.

Amend the second sentence in Section 402.2 Common halls and stairways, to read:

Means of egress, including exterior stairways shall be illuminated in accordance with the Building Code.

Amend the second sentence in Section 505.1 General, to read:

All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the Plumbing Code.

Amend Section 602.2 Residential occupancies, to read:

602.2 Residential occupancies: Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 70 degrees F. (21 degrees C.) in all habitable rooms, bath-rooms, and toilet rooms in accordance with the Building Code, and the Mechanical Code. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

Amend Section 602.3 Heat supply, to read:

602.3 Heat Supply: Every owner and operator of any building who rents, leases, or lets one or more dwelling unit, rooming unit, dormitory, or guestroom on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 15 to April 30 to maintain the room temperatures of not less than 70 degrees Fahrenheit during the hours between 6:30 a.m. and 10:30 p.m. of each day and not less than 65 degrees F. (16 degrees C.) during other hours.

Add Section 602.3.1 Portable unvented heaters.

602.3.1 Portable unvented heaters. The use of listed portable unvented fuel burning appliances shall be limited to supplemental heating in detached single family residences.

Exception: Upon approval of the Building Commissioner, portable unvented fuel burning appliances may be permitted in any occupancy during the construction process when such is necessary for the construction and the use does not represent a hazard to life or property.

Amend Section 602.3 Heat supply, Exception 1, to read:

Exception: When the outdoor temperature is below the outdoor design temperature required for locality by the Building Code and Mechanical Code, the owner or operator shall not be required to maintain the minimum room temperatures, provided that the heating system is operating at full capacity, with supply valves and dampers in a full open position.

Amend Section 602.3 Heat supply, as follows:

Delete Exception 2.

Delete Section 602.4 Occupiable work spaces.

Amend Section 604.2 Service, to read:

604. 2 Service: The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities in accordance with the Electric Code. Every dwelling shall be served by a main service that is not less than 60 amperes, three wire.

Amend Section 702.4 Emergency escape openings, to read:

702.4 Emergency escape openings: Required emergency escape openings shall be maintained in accordance with the code in effect at the time of construction. Required emergency escape openings shall be operational from the inside of the room without the use of keys or tools. Bars, grilles, grates, or similar devices are permitted to be placed over emergency escape openings, provided the installation complies with the Building Code.

Amend Section 704.1 General, to read:

704.1 General. All systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times in accordance with the Fire Code.

Amend Section 704.2 Smoke alarms, to read:

704.2 Smoke alarms. All systems, devices and equipment to detect smoke, actuate an alarm, or suppress or control the movement of smoke or gases or any combination thereof shall be installed and maintained in an operable condition at all times in accordance with the Building Code and the Fire Code.

Delete Section 704.3 Power source.

Delete Section 704.4 Interconnections.

Add Section 704.3 Tampering, to read:

704.3 Tampering. Anyone tampering or interfering with the effectiveness of any system, device or equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be in violation of this code.

Add Section 705 Accumulations and Storage, to read:

Section 705 ACCUMULATIONS AND STORAGE.

Section 705.1 Accumulations. Rubbish, garbage or other materials shall not be stored or allowed to accumulate in stairways, passageways, doors, windows, fire escapes or other means of egress.

Section 705.2 Hazardous material. Combustible, flammable, explosive or other hazardous materials, such as paints, volatile oils and cleaning fluids, or combustible rubbish, such as wastepaper, boxes, and rags, shall not be accumulated or stored unless such storage complies with the applicable requirements of the Building Code and the Fire Code.

Amend Chapter 8 Referenced Standards as follows:

Delete the referenced standards and insert the following:

The Indiana General Administrative Rules.

The Indiana Building Code.

The Indiana Residential Code.

The Indiana Electric Code.

The Indiana Fire Code.

The Indiana Fuel Gas Code.

The Indiana Mechanical Code.

The Indiana Plumbing Code.

The Indiana Swimming Pool Code.

(Ord. 5061, passed 10-15-2007)

CHAPTER 155: HEATING, VENTILATION, AIR CONDITIONING AND REFRIGERATION

Section

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GENERAL PROVISIONS

§ 155.01 TITLE.

This chapter, and all ordinances supplemental or amendatory hereto, shall be known as the "Heating, Ventilation, Air Conditioning and Refrigeration Chapter of the City of Elkhart, Indiana," may be cited as such and will be referred to herein as "this chapter."

(1979 Code, § 155.01) (Ord. 3943, passed 9-11-1989)

§ 155.02 PURPOSE.

The purpose of this chapter is as follows:

(A) To provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation and maintenance and use of heating, ventilating, cooling, refrigeration and exhaust systems, incinerators and miscellaneous heat-producing appliances within the city;

(B) To create the Mechanical Examining Board and Board of Review and to prescribe their duties;

(C) To provide for the licensing by the Mechanical Examining Board of persons, firms and corporations undertaking the installation of mechanical equipment and making it unlawful to undertake the installation of mechanical equipment without a license except as otherwise provided;

(D) To create the office of Mechanical Inspector;

(E) To prescribe the duties and powers of the Inspector;

(F) To repeal all chapters and regulations inconsistent with any of the provisions of this chapter; and

(G) To provide penalties for the violations of provisions thereof.

(1979 Code, § 155.02) (Ord. 3943, passed 9-11-1989)

§ 155.03 SCOPE.

(A) The provisions of this chapter shall apply to the erection, installation, alteration, repair, relocation, replacement, addition to, use or maintenance of any heating, ventilating, cooling or refrigeration exhaust systems, incinerators or other miscellaneous heat-producing appliances within this jurisdiction.

(B) Where, in any specific case, different sections of this chapter specify different materials, methods of construction or other requirements, the most restrictive shall govern.

(1979 Code, § 155.03) (Ord. 3943, passed 9-11-1989)

§ 155.04 STANDARDS FOR THE INSTALLATION OF MECHANICAL EQUIPMENT.

(A) Any apparatus covered by this chapter and installed in the city shall have been listed by a nationally recognized testing laboratory.

(B) All rules, regulations, and codes adopted in Chapter 153 of this code are hereby adopted by reference as the rules and regulations governing the installation, alteration, maintenance and use of mechanical equipment and systems in the city.

(C) All apparatuses and appurtenances covered by this chapter shall be securely installed in a workmanlike manner, in accordance with the provisions of this chapter, by mechanics experienced in making such installations.

(1979 Code, § 155.04) (Ord. 3943, passed 9-11-1989)

§ 155.05 INSPECTOR OF HEATING AND MECHANICAL REFRIGERATION; QUALIFICATIONS AND DUTIES.

(A) *Creation.* There is hereby created the office of Inspector of Heating and Mechanical Refrigeration, hereinafter referred to as the Inspector.

(B) *Qualifications of Inspector.*

(1) The Inspector shall be recommended by the Examining Board and appointed by the Mayor. No person shall be appointed Inspector unless he or she shall be possessed of such executive ability as is requisite for the performance of his or her duties and shall have a thorough knowledge of the standard materials and methods used in the installation, repair and maintenance of any heating, ventilation, air conditioning or mechanical refrigeration system or appliance covered by this chapter.

(2) The Inspector shall be licensed by the city as a Class A, Class AA or Class AAA contractor before assuming his or her duties, and within 1 year of assuming his or her duties shall apply for certification by a nationally-recognized certification program as a Mechanical Inspector. Before entering upon the discharge of his duties, he or she shall also file a bond for this license in the sum of \$3,000 payable to the city, the bond to be approved by the City Attorney and conditioned upon the faithful performance of his or her duties.

(C) *Duties of Inspector.*

(1) It shall be the duty of the Inspector to enforce the provisions of this chapter. He or she shall grant permits for the installation or alteration of equipment or systems as provided in this chapter. He or she shall also keep on file a list of all permits issued, inspections and re-inspections, and other work performed in accordance with the provisions of this chapter.

(2) The Inspector and his or her authorized assistants are hereby empowered to make or cause to be made such tests and inspections as are deemed necessary for the purpose of safety and health and the enforcement of this chapter.

(3) It shall be the duty of the Inspector upon notification of permit holder to inspect any apparatus covered by this chapter at the time of its installation; and any apparatus which was installed before the enactment of this chapter and which, due to its construction, installation or condition, may present a hazard to persons or property.

(4) Whenever any apparatus or part thereof or any accessory thereto is found to be unsafe or in a condition which constitutes a hazard to life or property, the Inspector is hereby empowered to condemn the unit or the part thereof, and no such unit or part thereof shall thereafter be used until put in a safe and satisfactory condition and approved by the Inspector. The Inspector shall inspect all work in the area covered by this chapter for which permits are required under this chapter and shall see that all such work is performed in accordance with the provisions hereof. He or she shall also stop any work being done in violation of the terms hereof and shall post "stop work" signs to that effect, and he shall order any such work removed or corrected to conform herewith.

(5) The properly accredited Inspector shall, by due process of law, make an inspection where he has reason to believe work is being done, or has been performed, in violation of this chapter, which violation might be a menace to life, health or property or in violation of this chapter.

(1979 Code, § 155.05) (Ord. 3943, passed 9-11-1989)

§ 155.06 RIGHT OF ENTRY.

Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Inspector or his or her authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition or violation which makes such building or premises unsafe, dangerous or hazardous, the Inspector or his or her authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Inspector by this chapter, provided that if the building or premises be occupied he or she shall first present proper credentials and request entry. If the entry is refused, the Inspector or his or her authorized representative shall have recourse to every remedy provided by law to secure entry.

(1979 Code, § 155.06) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.07 UNSAFE EQUIPMENT.

(A) If upon inspection, the equipment covered by this chapter should be found in an unsafe condition, the Building Department shall notify the owner and the permit holder stating a time when repairs must be completed, except that where the work or repair required is in the nature of an emergency whereby human life is endangered, the work or repair may be ordered to be done at once and the equipment sealed out of service. After the service of the notice, it shall be the duty of the owner and holder of the installation permit to proceed within the time allowed to make such repairs or changes as are necessary to place said equipment in a safe condition.

(B) No person, firm or corporation shall so cover or conceal from view any of the work in any building in the city so as to prevent a proper inspection thereof until the same has been inspected by the Inspector and until the Inspector has placed thereon a notice or seal stating that the work has been inspected and approved.

(1979 Code, § 155.07) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.08 SEALING OF EQUIPMENT BY INSPECTOR.

(A) *Authority to seal equipment out of service.* The Inspector shall have the authority to disconnect or cause the disconnection of any or all utilities (gas, water or electric) to any equipment covered by this chapter for the following reasons:

- (1) For failure to obtain a permit to install the equipment;
- (2) When in the opinion of the Inspector any such equipment shall be considered to be unsafe for operation;
- (3) For willful failure to comply with the notice issued by the Building Department for the correction of violations; or
- (4) For willful failure to comply with this chapter.

(B) *Unlawful to remove seal.* Any equipment sealed out of service by the Building Department shall be conspicuously labeled with a condemnation tag indicating the reason for the closing down, and any defacing or removal of the condemnation tag or any tampering with or removal of the seal without the approval of the Building Department shall constitute a violation of this chapter.

(C) *Unlawful to use sealed equipment.* It shall be unlawful for any person having control or management of any apparatus covered by this chapter that is sealed out of service to use or permit to be used such apparatus or part thereof until causes for the condemnation shall have been eliminated and the equipment or part in question has been put in a safe condition and approved by the Inspector.

(1979 Code, § 155.08) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.09 STOP WORK ORDER.

(A) Wherever any work or project governed by the provisions of this chapter is being performed or carried on in violation of any of the provisions of this chapter, it shall be the duty of the Inspector to post a printed notice to "stop work" signed by the Inspector, on the premises where the work is in progress and to notify anyone in charge of the work on the premises of the stop order.

(B) After the posting of such notice as required by division (A) above, it shall be unlawful for any person, firm or corporation to perform any further work on the project until such time as the defects or violations of this chapter have been eliminated, subject to the approval of the Inspector, and the "stop work" sign so posted shall not affect work not governed by this chapter except where the progress of any such work would interfere with the inspection of the work governed by this chapter.

(1979 Code, § 155.09) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.10 MECHANICAL EXAMINING BOARD.

(A) *Creation; composition.* There is hereby created the city's Mechanical Examining Board, hereinafter designated as the Board, which shall consist of the city's Mechanical Inspector and 5 other members appointed by the Mayor, as follows:

- (1) One representative of the natural gas utility company serving the city;
- (2) One representative of the Class A Contractors;
- (3) One representative of the Class AA Contractors;
- (4) One representative of the Class AAA Contractors; and
- (5) One homeowner representing the public.

(B) *Term.* The 5 existing Board members shall continue to serve until their existing terms expire, and thereafter each appointment or re-appointment shall be for a term of 4 years or until a successor is appointed.

(C) *Removal; compensation.* The Mechanical Inspector shall act as Chairperson of the Board. Any appointed member may, for cause and after a hearing, be removed from office by the Mayor. Each appointed member shall receive the sum of \$20 for each day in which he has attended a meeting of the Board.

(D) *Records.* Records of the Board shall be kept open to the public for inspection during normal office hours. The Board shall keep a record of all licenses and certificates issued by it and shall have printed a manual of its rules and regulations for the conduct of examinations.

(E) *Duties and authority of the Mechanical Examining Board.*

(1) The second Wednesday of January, April, July and October of each year are hereby designated as examination dates for the examination of applicants for licenses providing any such applications are pending. No licensing examinations shall be given on any other dates without the approval of a majority of the members of the Mechanical Examining Board.

(2) It shall be the duty of the Board to examine the reports of persons, firms, or corporations who apply for licenses to approve issuance of licenses to qualified applicants who have paid the prescribed fees, and to revoke or suspend any license on the grounds set forth in §§ 155.12 and 155.99.

(3) Regular meetings of the Board shall be held on the fourth Wednesday of January, April, July and October of each year at 4:00 p.m. Special meetings of the Board may be called at the discretion of the Chairperson or by a majority of the members of the Mechanical Examining Board upon notification of all members. Board meetings may be conducted by telephone conference.

(4) Three members of the Board present at any meeting shall constitute a quorum for the transaction of business, but any action taken at any meeting shall require the affirmative vote of at least 3 members.

(1979 Code, § 155.10) (Ord. 3943, passed 9-11-1989)

§ 155.11 BOARD OF REVIEW CREATED.

(A) There is created a Board of Review which shall consist of the Building Commissioner or his or her designee, who shall be the Chairperson; and 5 members of the Mechanical Examining Board other than the Inspector. Each member of the Board shall serve until he or she has been removed from office by the Mayor and his or her successor has been appointed.

(B) Any person, firm or corporation may register an appeal with the Board of Review for a review of any decision of the Mechanical Inspector provided that the appeal is made in writing within 10 days after that person, firm or corporation has been notified of the decision by the Mechanical Inspector. Upon receipt of the appeal, the Board shall proceed to determine whether the action of the Mechanical Inspector complies with this chapter and within 30 days shall make a decision in accordance with its findings.

(C) Three members of the Board of Review present at any meeting shall constitute a quorum for the transaction of business, and any action taken at any meeting shall require the affirmative vote of the majority present. Further, appeal may be sought as provided in I.C. 22-13-2-7 in accordance with I.C. 4-21.5-3-7.

(1979 Code, § 155.11) (Ord. 3943, passed 9-11-1989)

§ 155.12 RESPONSIBILITY OF CONTRACTORS.

(A) It shall be the responsibility of the individual contractor to leave any installation, alteration or repair in a safe condition. If a contractor finds equipment in an unsafe condition and does not correct that condition, he or she must notify the owner or occupant and the Inspector of the unsafe condition.

(B) If a contractor finds equipment that is unsafe and the owner refuses to make repairs, the contractor shall notify the Inspector immediately.

(C) Any person, duly licensed as required by this chapter to supervise or perform any installation of work governed by this chapter, who shall, as such licensee, take out or secure a permit such as is required by this chapter, for work to be done by any person not in the employ of the licensed person or not working under the direct supervision of the license holder or his or her employee, or who shall allow his or her name to be used by any other person for the purpose either of doing any such work or obtaining permit therefor, shall by such act, have his or her license suspended, and the Inspector shall thereafter refuse to issue any further permits to construct, install, alter or repair any equipment under that license until the Board has lifted the suspension.

(1979 Code, § 155.12) (Ord. 3943, passed 9-11-1989)

§ 155.13 HUMIDIFIERS.

Humidifiers shall be installed according to manufacturer's instructions. Humidifiers that are connected directly to a water supply shall comply with the following regulations:

- (A) Humidifier components which require cleaning or replacement shall be readily accessible.
- (B) Humidifier designs shall be such as to provide and maintain sufficient air gap between the water supply inlet opening and the maximum water overflow level as to entirely eliminate the possibility of back siphonage.
- (C) In no case shall the air gap be less than 2-1/4 times the O.D. of the round pipe or its equivalent at the point of entrance to the humidifier casing.
- (D) Humidifiers shall be so connected to the water supply as to comply with all local plumbing regulations and codes.
- (E) Humidifiers shall be located on or in the equipment or systems as to avoid the wetting of controls or devices caused by functional moisture, water overflow, leakage or malfunction of the humidifiers or drainage duct.
- (F) Electrical connections shall be such as to comply with local electrical regulations and codes.

(1979 Code, § 155.13) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.14 NONLIABILITY OF ADMINISTRATIVE AUTHORITY.

No provision of this chapter shall be construed as imposing upon the administrative authority or the political jurisdiction by whom he or she is employed any liability or responsibility for damages to any property or person who suffers injury or loss of life as a result of defects in any equipment or the installation thereof, nor shall the political jurisdiction or any official or any employee thereof be held as assuming any such liability or responsibility by reason of the inspection authorized hereunder or certificate of inspection issued by the administrative authority nor shall the political jurisdiction or any official or employee thereof be held as assuming any liability or responsibility for property damage from any cause whatsoever resulting from or during the operation of the equipment.

(1979 Code, § 155.14) (Ord. 3943, passed 9-11-1989)

§ 155.15 LIABILITY FOR DAMAGE.

This chapter shall not be construed as relieving from or lessening the responsibility or liability of any party owning, operating, controlling or installing any equipment or appurtenances covered by this chapter for damage to persons or property, or by any defect therein, nor shall the city be held as assuming any such liability by reason of the examination authorized, or of the license issued as provided, or of the inspection contemplated in this chapter.

(1979 Code, § 155.15) (Ord. 3943, passed 9-11-1989)

LICENSING PROVISIONS

§ 155.25 LICENSES REQUIRED; EXCEPTIONS.

(A) *Licenses required.* Except as otherwise provided in this section, no person, firm or corporation shall in any manner undertake to execute or perform any work of installing, maintaining, altering or repairing any heating, cooling, ventilation or refrigeration systems or equipment unless the work is performed or supervised by a holder of a Class A, Class AA or Class AAA Mechanical Contractor's license, and has a certificate therefor as provided in this chapter; nor shall any person, firm or corporation execute or perform such work otherwise than as specifically permitted under the class of license held by such person performing or supervising the work for a firm or corporation.

(B) *Exceptions.* The provisions of division (A) above shall not apply to any person employed by and working under the direction of a holder of a Class A, Class AA, or Class AAA Mechanical Contractor's license, and no license shall be required in order to execute or perform any of the following mechanical work:

- (1) The installation, alteration or repair of a fireplace, wood-burning stove or wood-burning stove appliance, unless the equipment is connected to a heating, cooling or ventilation system;
- (2) The installation, alteration or repair of residential exhaust fans when installed in a 1- or 2-family dwelling;
- (3) The installation, alteration or repair of portable heating, cooling and refrigeration equipment to suitable, permanently-installed electrical receptacles; and
- (4) The owner of a single-family dwelling including the usual accessory buildings, may do mechanical work in the dwelling or accessory buildings provided that:
 - (a) The owner satisfies the Mechanical Inspector by examination that he or she is qualified to perform the work;

- (b) The dwelling is, or is to be, occupied by the owner;
- (c) The dwelling is a detached building containing no other dwelling unit or other occupancy;
- (d) There are no buildings other than the dwelling and accessory buildings located on the premises;
- (e) The owner applies for and secures the required permit or permits;
- (f) No more than 1 permit has been issued to the same person in the preceding 24 calendar months;
- (g) All work shall be done by the owner;
- (h) The owner files with the Mechanical Inspector an affidavit stating all of the foregoing facts; and
- (i) The owner requests all inspections and tests as provided for in this chapter.

(1979 Code, § 155.25) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.26 CLASSES OF LICENSES.

Except as provided in divisions (D) and (E) below, 3 classes of licenses and certificates shall be issued by the Mechanical Examining Board which shall be known respectively as Class A Heating, Ventilation and Air Conditioning Contractor; Class AA Hydronic Systems Contractor; and Class AAA Refrigeration Contractor.

(A) A Class A license shall entitle the holder to undertake, execute or perform any work to install, repair, alter, or extend any forced-air system of air conditioning, warm-air heating, ventilation and exhaust systems, including any and all duct systems necessary to make a complete system.

(B) A Class AA license shall entitle the holder to undertake, execute or perform any work to install, repair and service boilers and hydronic piping, including the boiler auxiliary equipment, air handlers and controls.

(C) A Class AAA license shall entitle the holder to undertake, execute or perform any work to install, repair or alter any system of refrigeration, provided that such refrigeration is intended to be used for the purpose of food and product preservation or processing and is not to be used for comfort systems.

(D) Persons holding valid heating and refrigeration licenses issued in accordance with previous chapters shall be issued licenses as described above subject to procedures and guidelines to be established by the Mechanical Examination Board.

(E) Any previously issued license which is not transferable to a new classification may continue to be renewed as provided in § 155.27 in its old classification. The license shall be subject to its original restrictions and may not be renewed if it becomes delinquent.

(1979 Code, § 155.26) (Ord. 3943, passed 9-11-1989)

§ 155.27 FEES FOR LICENSES; EXPIRATION.

(A) Any person applying for a mechanical license, as required by this chapter, shall, before being granted a license, give, execute and deliver a surety bond to the city in the penal sum of \$5,000 to be approved by the City Attorney and conditioned upon the faithful compliance with the chapters and laws regulating mechanical work.

(B) Upon the approval of the Mechanical Examining Board, the Mechanical Inspector is authorized to issue the license under the provisions of this chapter.

(C) Before a license is granted to any applicant, a license fee of \$50 shall be paid for a Class A, Class AA or Class AAA license, and before any Class A, Class AA or Class AAA license is renewed, a fee of \$25 shall be paid.

(D) Each license and bond shall expire on December 31 following the date of its issue and shall be renewed upon application by the holder of the license and payment of the fee required by division (C) above. All licenses and bonds must be renewed on or before the date of expiration, and any license becoming 30 days delinquent shall be issued as a new license with all requirements of same.

(1979 Code, § 155.27) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.28 APPLICATION.

Each application for a license shall be made in writing to the Mechanical Examining Board at least 30 days prior to the examination date, stating the class of license applied for, the name and place of business of the applicant and the names of the representatives of the applicant responsible for the work to be done under the license. A nonrefundable examination fee as set by the Mechanical Examining Board shall be paid when application is made.

(1979 Code, § 155.28) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.29 ESTABLISHMENT OF MECHANICAL LICENSE EXAMINATION FUND.

The revenues collected under this chapter pursuant to § 155.28 shall be placed in a special nonreverting fund known as

the Mechanical License Examination Fund, and the moneys in this fund shall be used only for the following purposes: Test forms, supplies, proctoring, grading, reviewing and the handling, servicing and processing of tests used by the city to determine eligibility of candidates applying for a license to perform mechanical work in the city. These funds shall be distributed by the Chairperson of the Mechanical Examining Board as needed to provide the license testing service to applicants.

(1979 Code, § 155.29) (Ord. 3943, passed 9-11-1989)

§ 155.30 EXAMINATIONS.

(A) The person designated by the applicant for a license shall be examined by the Mechanical Examining Board to determine his knowledge of the rules and regulations for the installation of mechanical equipment as set forth in this chapter and in the Indiana Mechanical Code as approved by the State of Indiana and to determine the general qualifications and fitness of the applicant for executing the class of work covered by the license applied for, provided that a person now holding a City Contractor's License will be issued a Class A, Class AA or Class AAA license as applicable without further examination.

(B) Each examination shall be conducted by a person duly designated by the Mechanical Examining Board. A complete record of every examination given shall be kept on file until 1 year after the date of the examination. Any person who cheats during any examination given by the Mechanical Examining Board shall be conclusively presumed unqualified and unfit for licensing pursuant to this chapter and, in addition thereto, shall be guilty of a Class's C infraction, punishable as provided under state statutes covering the infractions, and shall be disqualified from holding any license or applying for or taking any future examinations for licensing by the city as a licensed mechanical contractor.

(1979 Code, § 155.30) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.31 FAILURE TO PASS AN EXAMINATION.

Should an applicant fail to pass an examination, obtaining a rating lower than 75, the applicant may be re-examined upon submitting application in writing at least 30 days prior to the next examination date and accompanied by the examination fee.

(1979 Code, § 155.31) (Ord. 3943, passed 9-11-1989)

§ 155.32 HOLDER OF LICENSE.

As used in this chapter, the term "holder of a license" shall be the person to whom the license is issued. A person may not hold more than 1 license of each class issued by the city at one time, nor act as the license holder for more than 1 firm or contractor at the same time.

(1979 Code, § 155.32) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.33 CHANGE OF REPRESENTATIVES.

Any holder of a license who is performing or supervising the installation, maintenance, alteration or repair of mechanical equipment or performing or supervising mechanical work for a firm or corporation whose employment with the firm or corporation shall terminate, shall immediately notify the Mechanical Examining Board of the termination. The firm or corporation shall provide to the Board, within 10 days of the date of the notice, written notice of the same and the address of the license holder replacing the person.

(1979 Code, § 155.33) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.34 LICENSE CERTIFICATES.

(A) Each certificate for a license shall specify the name of the person to whom the license is issued, the name of the firm or corporation he is representing, the class of license and the expiration date.

(B) Every holder of a license shall keep his or her certificate of license displayed in a conspicuous place in his or her principal place of business.

(1979 Code, § 155.34) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

PERMITS

§ 155.45 PERMIT REQUIRED.

No person shall install, repair, alter or make major replacements of any heating, ventilating, cooling or refrigeration systems, incinerators or miscellaneous heat-producing appliances without first securing a permit from the Building Department. This permit shall be placed in a conspicuous place on the building where the mechanical work is being performed, and shall be properly filled out and signed by the Building Department. In cases of emergency, when the Building

Department is closed, the permit shall be obtained within 72 hours from the time that the installation, alteration or related work was started. Permits shall be issued only to persons allowed by this chapter to do the work. Application shall be on forms furnished for such purpose by the Department and shall contain sufficient information for a proper description of the system, equipment and accessories to be installed or altered.

(1979 Code, § 155.45) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.46 EXTRA FEE.

Any person, firm or corporation who shall start or proceed with any work where a permit is required under § 155.45 above without first having applied for the necessary permit shall be charged, in addition to the normal permit fee, a penalty fee, the amount to be equal to the permit fee but not less than \$100. Furthermore, the person, firm or corporation may be subject to additional penalties as specified in § 155.99.

(1979 Code, § 155.46) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.47 DESCRIPTION OF THE WORK TO BE DONE.

(A) A description of the work to be done shall accompany each application for a permit to install or alter the apparatuses or appurtenances, in whole or in part, in an existing structure. A description of the work to be done can be made on the application for permit.

(B) Receipt by the Building Department of such description on or with the application for a permit shall in no way imply assurance or approval by the Department that the work done in accordance with the description will provide the results contracted for.

(C) The contracted work shall be done substantially as indicated on the description of the application for permit.

(1979 Code, § 155.47) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.48 PLANS REQUIRED.

The application for a permit shall, upon demand of the Inspector, be accompanied by all necessary plans for the proposed construction, installation, alteration or repair and with all proper and sufficient information relating thereto before the permit is issued.

(1979 Code, § 155.48) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.49 UNLAWFUL TO USE APPARATUS WITHOUT PERMIT.

It shall be unlawful for any person having control or management of any building or structure to use or permit to be used therein any apparatus or appurtenances covered by this chapter which may have been installed or altered subsequent to the effective date of this chapter without having obtained a permit as provided in this chapter.

(1979 Code, § 155.49) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.50 REVOKING OF PERMIT.

(A) Any permit issued which may have been obtained through any fraud practiced on the Mechanical Examining Board or any permit held by any person having a valid license, whose work is found to be so defective and unsafe as to jeopardize life or property, may be revoked by the Inspector after notice to the person holding the permit and an opportunity for person to be heard by the Board of Review.

(B) It shall be unlawful for any person, firm or corporation to construct or install any apparatus or appurtenance such as are subject to the provisions of this chapter in or for any building or to alter or repair any such existing apparatus or appurtenance as are subject to the provisions of this chapter without the holder of a license first making written application for and securing a permit therefor, setting forth the nature of the work to be performed.

(1979 Code, § 155.50) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.51 INSPECTIONS OF CONCEALED WORK.

(A) In any new building or addition, immediately upon completion of those portions of the installation which are thereafter to be concealed or covered, the mechanical contractor shall notify the Inspector or proper Department, giving the location of the work, that the portions of the installation are ready for inspection. The notification shall be given not less than 24 hours before the work is to be inspected.

(B) It shall be unlawful for any person, firm or corporation to lathe over, plaster or cover up any heating or mechanical refrigeration work or any apparatus covered by this chapter before such work has been inspected.

(C) Upon notification, it shall be the duty of the Inspector to inspect the work within 48 hours, Saturdays, Sundays and

holidays excluded.

(D) Final inspection on new installation is to be made upon completion of the work. It is the responsibility of the contractor to notify the Inspector in a timely manner when the work is ready for final inspection. Inspection of repair, replacement or conversion work is to be made upon completion of the work.

(E) Whenever any work has been so covered or concealed by lathing; plastering, flooring, concrete or otherwise before the Inspector has had ample opportunity to inspect it, then the Inspector shall have the right and authority to order the work to be opened or uncovered in order that a proper inspection can be made.

(1979 Code, § 155.51) (Ord. 3943, passed 9-11-1989) Penalty, see § 155.99

§ 155.52 PERMIT FEES.

(A) No permit shall be required or fee charged on repairs to existing equipment where the price charged to the customer is less than \$200. The minimum fee for any permit shall be not less than \$15. Any time an inspection reveals a poor installation and the Inspector has to make a second inspection, a re-inspection fee of \$15 will be charged. For equipment covered by this chapter whose fees are not shown, fees shall be determined by the Mechanical Inspector.

(B) Mechanical permit fees shall be as follows:

(1) For cooling and refrigeration permits where HP (horsepower) is not shown, fees shall be based on: 1 ton = 1 HP = 12,000 BTU (British Thermal Units). For hydronic permits where HP (horsepower) is not shown, fees shall be based on: 1 HP = 33,500 BTU (British Thermal Units).

(a) Each forced-air or gravity furnace, unit heater, space heater, radiant, infra-red heater or other similarly listed appliance:

Through 200,000 BTU	\$15
Over 200,000 through 1,000,000 BTU	\$30
Over 1,000,000 through 10,000,000 BTU	\$50
Over 10,000,000 BTU	\$100

(2) Each air conditioner regardless of size utilizing any voltage:

Through 10 HP	\$15
Over 10 HP through 50 HP	\$30
Over 50 HP through 100 HP	\$50
Over 100 HP	\$100

(3) Air conditioners (window units only) operating on less than 300 volts shall not require permits.

(4) Each cooling tower: \$15.

(5) Each boiler (steam/hot water):

Through 200,000 BTU	\$15
Over 200,000 through 1,000,000 BTU	\$30
Over 1,000,000 through 10,000,000 BTU	\$50
Over 10,000,000 BTU	\$100

(6) Each hydronic unit heater or fan coil unit: \$10.

(7) Each air-handling unit, ventilation or ducted exhaust fan:

Under 200 CFM (cubic feet per minute)	No Fee
200 CFM through 10,000 CFM	\$15
Over 10,000 CFM through 100,000 CFM	\$30
Over 100,000 CFM	\$50

(8) Each heat pump:

Through 5 HP	\$20
Over 5 HP	\$40

(9) Each refrigeration unit:

Through 10 HP	\$15
Over 10 HP through 50 HP	\$30
Over 50 HP through 100 HP	\$50
Over 100 HP	\$100

(10) No permit fee shall be charged for portable refrigeration equipment as provided herein.

(11) Each commercial kitchen exhaust hood: \$30.

(12) Each gas/oil conversion: \$15.

(13) Replacement vent or flue: \$15.

(14) Repair work: \$15.

(15) Other listed unit (Determined by Mechanical Inspector).

(B) When ductwork is installed in conjunction with the installation of new equipment requiring a permit and installed under that permit, no additional permit shall be required. The permit fee for ductwork not covered by another permit shall be as follows:

1 through 20 outlets	\$15
Over 20 through 100 outlets	\$50
Over 100 outlets	\$100

(C) When gas piping is installed in conjunction with the installation of new equipment requiring a permit and installed under that permit, no additional permit shall be required. The permit fee for gas piping not covered by another permit shall be as follows:

1 through 20 outlets	\$15
Over 20 through 100 outlets	\$50
Over 100 outlets	\$100

(D) When hydronic piping is installed in conjunction with the installation of new equipment requiring a permit and installed under that permit, no additional permit shall be required. The permit fee for hydronic piping not covered by another permit shall be as follows:

1 through 20 outlets	\$15
Over 20 through 100 outlets	\$50
Over 100 outlets	\$100

(E) Incinerators:

Up through 10 bushels	\$15
Over 10 bushels	\$50

(F) Fireplaces, fireplace inserts and wood-burning stoves shall require mechanical permits if connected to heating, cooling or ventilation system.

(1979 Code, § 155.52) (Ord. 3943, passed 9-11-1989; Am. Ord. 4001, passed 9-17-1990) Penalty, see § 155.99

§ 155.99 PENALTY.

(A) Any person who shall install in any building, structure or enclosure any apparatus or equipment which is covered in

this chapter which does not comply with the requirements of this chapter shall be guilty of a violation of this chapter and shall be subject to a penalty as herein provided.

(B) Any person who shall violate any provision of this chapter or who shall fail to comply with any of the regulations thereof shall be, upon conviction, punished by a fine of not less than \$100, nor more than \$1,000, together with court costs. Injunctive relief also shall be available to the city to prevent violations. If the person, firm or corporation is the holder of any license provided for in this chapter, the conviction shall have the effect of suspending the license until the suspension is lifted by the Mechanical Examining Board. Each day that a violation continues shall be deemed a separate offense.

(1979 Code, § 155.99) (Ord. 3943, passed 9-11-1989)

CHAPTER 156: PLUMBING CODE

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GENERAL PROVISIONS

§ 156.001 TITLE.

This chapter shall be known, designated and cited as "The Plumbing Code of the City of Elkhart, Indiana".
(Ord. 5081, passed 12-3-2007)

§ 156.002 INCLUSIONS.

Wherever in this chapter the words **CITY OF ELKHART** or **CITY** appear they shall be construed to mean the City of Elkhart, Indiana. Wherever in this chapter a word appears in the singular, it shall include the plural. Wherever in this chapter the word or words permit, permits, Permit or Permits appears it shall mean **PLUMBING PERMIT**, as defined in §156.006

(Ord. 5081, passed 12-3-2007)

§ 156.003 BUILDING RULES OF THE INDIANA FIRE PREVENTION AND BUILDING SAFETY COMMISSION ADOPTED BY REFERENCE.

(A) Building rules of the Indiana Fire Prevention and Building Safety Commission as set out in the following Articles of Title 675 of the Indiana Administrative Code are hereby incorporated by reference in this chapter and shall include later amendments to those Articles as the same are published in the Indiana Register as a Final Rule or the Indiana Administrative Code with effective date as fixed therein:

- (1) Article 13 - Indiana Building Code.
 - (a) Fire and Building Safety Standards.
- (2) Article 14 - Indiana Residential Code.
- (3) Article 16 - Indiana Plumbing Code.
- (4) Article 17 - Indiana Electrical Code.
- (5) Article 18 - Indiana Mechanical Code.
- (6) Article 19 - Indiana Energy Conservation Code.
- (7) Article 20 - Indiana Swimming Pool Code.
- (8) Article 22 - Indiana Fire Prevention Code.
 - (a) Fire and Building Safety Standards.
- (9) Article 25 – Indiana Fuel Gas Code.

(B) Two copies of the above rules are on file in the office of the City of Elkhart Clerk of Courts and are available for public inspection during regular business hours.

(Ord. 5081, passed 12-3-2007)

§ 156.004 RULES OF THE INDIANA BOARD OF HEALTH ADOPTED BY REFERENCE.

The rules of the Indiana Board of Health, as embodied in 410 IAC 6-6, are hereby adopted by reference. Two copies of the above rules are on file in the office of the City of Elkhart Clerk of Courts and are available for public inspection during regular business hours.

(Ord. 5081, passed 12-3-2007)

§ 156.005 VALIDITY.

If, for any reason, any 1 or more sections, or parts of this chapter are held to be invalid, such judgment shall not affect, impair or invalidate the remaining provisions.

(Ord. 5081, passed 12-3-2007)

§ 156.006 DEFINITIONS.

Whenever any words defined in this section appear in the balance of this chapter, they shall have the definition provided following their entry in this section. Other words or phrases may be defined in the sections of this chapter where they appear. Words or phrases not defined in this section or in the sections of this chapter where they appear shall have their common dictionary meaning.

APPRENTICE PLUMBER. As defined according to I.C. 25-28.5-1-2.

CLASS 1 STRUCTURE. As defined according to I.C. 22-12-1-4.

CLASS 2 STRUCTURE. As defined according to I.C. 22-12-1-5.

CONTRACTOR. The same meaning as **PLUMBING CONTRACTOR**.

CONNECTION TO PRIVATE SEWER. Where a sewer is constructed to provide connection between the public sewer and a building that has waste producing facilities and where there is 1 or more such building connected to such a private sewer

each such building shall count as 1 connection.

CORPORATION STOP. A valve located on the water main.

CURB BOX. An enclosure to provide access to a curb valve. A curb box takes the form of a tube of a length and diameter sufficient to allow a curb key to reach and control a curb valve.

CURB KEY. A device to control a curb valve. A curb key takes the form of a long rod or tube with a cross handle on one end and a suitable receptacle to fit on the top of and provide a means to turn the curb valve.

CURB VALVE. Also known as a curb stop. A valve used to turn off a water supply. The curb valve is the point from which the property owner assumes responsibility for the water service onto his property.

EXCAVATOR. The same meaning as **PRIVATE SEWER CONTRACTOR**.

FLOOR DRAIN. Any device intended to collect or receive any liquid borne matter whether waste, soil, oil, grease, sand or other matter that might be present on a floor.

FROST PROOF SILLCOCK. The same meaning as **SILLCOCK**.

GREASE AND OIL INTERCEPTOR. As defined according to 675 IAC 16 Indiana Plumbing Code and as adopted in § 156.003.

INDUSTRIALIZED BUILDING. As defined according to I.C. 22-12-1-14.

JOURNEYMAN PLUMBER. As defined according to I.C. 25-28.5-1-2.

LICENSE. As defined according to I.C. 25-28.5-1-2.

LIQUID BORNE MATTER. Any matter that might be mixed with, float upon, carried by or otherwise associated with any water or other liquid that might be introduced into a public sewer or private sewage disposal system.

MANUFACTURED HOME. A structure, transportable in 1 or more sections, which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. 5401 et seq. and except that such term shall not include any self-propelled recreational vehicle.

MOBILE HOME. A factory built structure intended as a single family residence that was constructed prior to 1976.

MOBILE STRUCTURE. As defined according to I.C. 22-12-1-17.

PLUMBING APPLIANCE. As defined according to 675 IAC 16 Indiana Plumbing Code or as defined according to 675 IAC 14 Indiana Residential Code.

PLUMBING APPURTENANCE. As defined according to 675 IAC 16 Indiana Plumbing Code or as defined according to 675 IAC: 14 Indiana Residential Code.

PLUMBING FIXTURE. As defined according to 675 IAC 16 Indiana Plumbing Code or as defined according to 675 IAC 14 Indiana Residential Code.

PLUMBING PERMIT. An authorization issued by the city to perform certain actions.

PLUMBING. As defined according to I.C. 25-28.5-1-2.

PLUMBING CONTRACTOR. As defined according to I.C. 25-28.5-1-2.

PLUMBER. As defined according to I.C. 25-28.5-1-2.

PRIVATE SEWAGE DISPOSAL SYSTEM. A sewage disposal system located on private property and under the control of the property owner or other private entity.

PRIVATE SEWER. A sewer located on private property that is used to connect 2 or more structures to the public sewer or to a private sewage disposal system. Such private sewer may extend over several lots, serve multiple dwelling units, serve mobile home parks or other usages where said sewer is on private property and remains under the control of private individuals, or corporations. Private sewers do not extend into a structure.

PRIVATE SEWER CONTRACTOR. A person or company that engages in the business of installing sewer lines, mains and or other sewage and waste lines outside a building.

PROBATION. A limited period of supervised operation by a person, corporation, or other business entity otherwise registered under the provisions of this chapter.

PUBLIC SEWER. Any sewer under the control of the city.

REGISTRATION. The act of presenting a State of Indiana Plumbing License to the City of Elkhart, Building Department

and fulfilling the requirements of § 156.023.

RESIDENTIAL. As defined according to Article 14 - Indiana Residential Code and the Article 13 - Indiana Building Code and as adopted according to § 156.003.

SAND AND GRAVEL INTERCEPTOR. A device intended to separate sand or gravel from other liquid borne matter and prevent sand or gravel from entering into the public sewer system.

SILLCOCK (also known as a **HOSE BIBB**). A device to provide means to connect a hose or otherwise obtain water outside a structure. These devices generally take their supply of water from inside a structure. A frost proof sillcock is a sillcock that is designed to have its means of halting water flow in a heated space.

SOFTENER BY-PASS. A device that is installed in a potable water line and is designed and fabricated to provide a controlled opening to allow the connection of a water softener or other water treatment device and is intended to require the least amount of pipe and fittings to connect between said by-pass and the softener or other water treatment device. For purposes of this definition, **CONTROLLED OPENING** means any valve, stop, stop-cock or other device that allows access to, or the opening into, a potable water supply line without requiring the cutting into or disassembly of the potable water supply line, and where **WATER TREATMENT DEVICE** means any equipment designed to alter the condition of potable water as supplied, by either mechanical or chemical means.

SOIL. As defined according to Article 16 - Indiana Plumbing Code and as adopted in § 156.003.

SUSPEND. The act of denying a privilege granted under this chapter for a period less than 1 calendar year.

UNSANITARY. Its usual and customary meaning.

WASTE. As defined according to Article 16 - Indiana Plumbing Code and as adopted in §156.003.

WATER TREATMENT DEVICE. Any device designed to alter the character of potable water as received at the point of service. This may be by means of mechanical filtration or by chemical treatment.

(Ord. 5081, passed 12-3-2007)

§ 156.007 FLOOR DRAINS PROHIBITED IN RESIDENTIAL GARAGES.

Floor drains in residential garages where automobiles are stored for any purpose shall be prohibited unless connected through a grease and oil interceptor and a sand and gravel interceptor. Combination devices are permitted.

(Ord. 5081, passed 12-3-2007) Penalty, see § 156.999

§ 156.008 PLUMBING INSPECTOR; APPOINTMENT.

A Plumbing Inspector shall be appointed by the Mayor and shall hold office until his successor is appointed and qualified. He shall be a practical plumber licensed by the State of Indiana who has had at least 10 years actual experience either as a plumber or as an inspector of plumbing. The Plumbing Inspector shall obtain inspector's certification from a recognized certification agency, within 2 years of hire. During his term as Plumbing Inspector, he shall not be actively engaged in the plumbing business nor shall he have a financial interest in any plumbing business.

(Ord. 5081, passed 12-3-2007)

§ 156.009 ORDINANCE ADMINISTRATION.

(A) This chapter shall be administered by the Plumbing Inspector who shall take such action as may be reasonable and necessary to secure compliance with it.

(B) Whenever the term **ADMINISTRATIVE AUTHORITY** is used in this chapter, it shall be construed to mean the Plumbing Inspector or an authorized representative. The term Plumbing Inspector includes an authorized representative.

(Ord. 5081, passed 12-3-2007)

§ 156.010 INSPECTOR'S AUTHORITY, POWER AND DUTIES.

The authority, power and duties imposed on the Plumbing Inspector and the provisions of this chapter shall extend to and include any plumbing or house drainage, private sewer to the point of connection to the public sewer main or plumbing work about to be done or being constructed.

(Ord. 5081, passed 12-3-2007)

§ 156.011 PLUMBING INSPECTOR; BOND.

The Plumbing Inspector shall, during the performance of his assigned duties, be covered by the blanket bond as further set forth in § 32.001.

(Ord. 5081, passed 12-3-2007)

§ 156.012 PLUMBING INSPECTOR; AUTHORITY TO ENTER BUILDINGS.

Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Plumbing Inspector has reasonable cause to believe that there exists in any building or upon any premises any condition or violation which makes such building or premises unsanitary, unsafe, dangerous or hazardous, or where the Plumbing Inspector has reason to believe that plumbing work is being done without a plumbing permit, the Plumbing Inspector may enter such building or premises at all reasonable times, and only in accordance with all applicable state and federal laws, to inspect the same or to perform any duty imposed upon the Plumbing Inspector by this chapter, provided that if such building or premises be occupied he shall first present proper credentials and request entry. If entry is refused, the Plumbing Inspector shall have recourse to every process provided by law to secure entry.

(Ord. 5081, passed 12-3-2007)

§ 156.013 PLUMBING INSPECTOR; POWER TO CONDEMN WHERE PLUMBING OR DRAINAGE IS UNSANITARY.

The Plumbing Inspector is hereby authorized and empowered to inspect and condemn, pursuant to §156.016, remove, order the removal of, or order the correction of, any plumbing or house drainage work, including private sewers, now in or about any Class 1 or Class 2 structure, or any other building, if the Plumbing Inspector shall find the same is unsanitary or detrimental to public health. The Plumbing Inspector shall notify, in writing, the owner or occupant of the premises whereon such work is situated, that the same has been condemned, ordered removed, or ordered corrected and that the owner or occupant has been given 5 working days to make the necessary corrections in the work or to contract to have the corrections made. At the end of the 5-day period, if the necessary corrections have not been made, it shall be unlawful for any person thereafter to use or permit the same plumbing or house drainage aforementioned to be used.

(Ord. 5081, passed 12-3-2007)

§ 156.014 NOTICE.

Where an owner or occupant cannot be reasonably reached by U.S. Mail at his/her regular place of business or usual place of abode or other legal residence, the Plumbing Inspector may, in addition to providing notice via U.S. Mail, leave a notice in a conspicuous place at the address where the unsanitary condition or condition detrimental to public health exists. If such posting of notice is elected, the posting of notice at the premises shall be deemed sufficient for proper service. The Plumbing Inspector shall wait 5 consecutive days after posting notice before taking further actions under this chapter, except for those actions authorized by §§ 156.016, 156.017 or 156.018 or where failure to act could endanger the health and safety of a resident.

(Ord. 5081, passed 12-3-2007)

§ 156.015 APPEALS CONCERNING UNSANITARY CONDITIONS.

Any person affected by a notice or order issued by the Plumbing Inspector concerning unsanitary conditions or conditions detrimental to public health shall have the right to appeal first to the Building Commissioner, then in accordance with § 156.056. The initial appeal shall be written and shall be filed with the Building Commissioner of the city within 10 days after the notice or order was served. This section shall not affect the authority of the Plumbing Inspector to issue such fines and penalties for noncompliance as set forth in § 156.999.

(Ord. 5081, passed 12-3-2007)

§ 156.016 PLUMBING INSPECTOR; POWER TO CONDEMN POOR WORKMANSHIP.

(A) The Plumbing Inspector is hereby authorized to condemn poor workmanship and to order the removal of any defective material or any work done other than in accordance with the provisions of this chapter, and thereafter it shall be unlawful for any person or persons to use said material until such material or work is reconstructed in accordance with the provisions of this chapter.

(B) The Plumbing Inspector shall immediately after such condemnation notify the plumber doing such work and the owner of the property that such work has been condemned, and state briefly the grounds of such condemnation and that such person or persons be given 5 working days to make the necessary corrections in the work. Such notice shall be mailed to such person or persons or delivered in person in accordance with § 156.014.

(Ord. 5081, passed 12-3-2007)

§ 156.017 POWER TO DETERMINE CODE COMPLIANCE.

(A) The Plumbing Inspector is hereby authorized and directed to promptly determine if a new or replacement plumbing installation or part of a new or replacement plumbing installation complies with the rules adopted in § 156.003. The Plumbing Inspector shall have the power to order the correction of any plumbing found to be in violation of the rules adopted in §

156.003 and thereafter it shall be unlawful for any person or persons to use said plumbing until such plumbing work is reconstructed in accordance with the provisions of this chapter and with the rules adopted in § 156.003.

(B) The Plumbing Inspector shall immediately after such determination notify the plumber doing such work and/or the owner of the property that such work has been found to be in conflict with the provisions of this chapter, and state briefly the grounds of such determination and that such person or persons be ordered to make such corrections as may be required to bring said plumbing work into compliance with this chapter. Such notice shall be mailed to such person or persons or delivered in person in accordance with § 156.014.

(C) It shall be the burden of the property owners or Plumbing Contractor responsible for the plumbing work in question, to substantiate the age of the plumbing work in question. If such information substantiating the age of the plumbing work in question cannot be obtained, the most recently adopted plumbing code provisions will be presumed to apply.

(D) New plumbing connected to existing plumbing is required to be installed according to those rules and laws in force at the time of the installation of the new plumbing.

(E) Nothing in this section shall prevent the Plumbing Inspector from ordering the correction of unsanitary conditions.

(F) All persons shall have the right to appeal the Plumbing Inspector's rulings as to plumbing code compliance in accordance with § 156.056.

(Ord. 5081, passed 12-3-2007)

§ 156.018 STOP WORK ORDERS.

Whenever any work or project governed by the provisions of this chapter is being performed or carried on in violation of any of the provisions of this chapter. The Plumbing Inspector may elect to post a printed notice to "stop work" signed by the Plumbing Inspector, on the premises where such work is in progress and to notify anyone in charge of such work on the premises of such stop work order. After the posting of such notice, it shall be unlawful for any person, firm, corporation or other business entity to perform any further work on such project until such time as the defects or violations of this chapter have been eliminated, subject to the approval of the Plumbing Inspector. Posting of a "stop work" order shall not affect work not governed by this chapter, except where the progress of any such work would interfere with the inspection of the work governed by this chapter. All persons, corporations or other business entities shall have the right to appeal stop work orders in accordance with § 156.056.

(Ord. 5081, passed 12-3-2007)

§ 156.019 TESTS AND DISCONNECTION OF WATER SUPPLY UNTIL APPROVED.

(A) It shall be unlawful to use any new system of plumbing and drainage in any building before the system has been tested and approved by the Plumbing Inspector, and until an adequate water supply has been provided.

(B) All plumbers making connections to the municipal water supply for new plumbing work or any plumbing alteration or replacement that requires a permit, shall upon completion and testing of said new plumbing or any plumbing alteration or replacement that requires a permit, shut off the water supply at the curb box/curb valve, and request an inspection. No person shall have the curb valve turned on without the approval of the Plumbing Inspector.

(C) Plumbers shall not lend curb keys to any person, nor shall Plumbers turn on curb stops that have been shut off under the provisions of this ordinance or any other city ordinance.

(D) All tests and connections to waste and water systems at the job site shall be performed in accordance with the rules adopted in §§ 156.003, 156.004 and 156.020.

(Ord. 5081, passed 12-3-2007)

§ 156.020 PLUMBING TEST PRESSURES.

(A) All new plumbing shall be tested. The Plumbing Inspector shall have the power to waive pressure tests at his discretion.

(B) Test pressures shall be:

(1) Drainage: 10 foot of water above the highest used portion of the plumbing being tested, or 5 lbs psig air, either to hold for 15 minutes.

(2) Supply: At 50 lbs psig or supply pressure which ever is greater, to hold for 30 minutes.

(Ord. 5081, passed 12-3-2007)

§ 156.021 LICENSE REQUIRED TO DO PLUMBING.

(A) It shall be unlawful for any person to install or alter or make replacement to any plumbing or drainage system inside a structure within the city until such person shall have procured a State of Indiana plumbing contractors license or a State of

Indiana journeyman plumbers license or a State of Indiana apprentice plumbers registration.

(B) Exterior plumbing installations or alteration or replacement between the structure and the property line of the public ways may be performed by either a licensed and registered plumbing contractor or a sewer contractor.

(C) Exceptions:

(1) Owner occupiers are not governed by the requirements of this section.

(2) Softener installers as mentioned in the Indiana Plumbing Commission Statutes and Rules, Title 25, Article 28.5, Plumbers, are not governed by the requirements of this section.

(Ord. 5081, passed 12-3-2007)

§ 156.022 PLUMBING CONTRACTOR DEFINED.

A plumbing contractor, as used in this chapter, means any person who, for compensation, undertakes to, or submits a bid to, or does personally or by others in his employ, construct, alter, remodel, replace components of, add to, subtract from, or improve plumbing and who is responsible for substantially all the plumbing within the entire project, or one who fabricates units or plumbing substantially completed and ready for installation, and as defined according to I.C. 25-28.5-1-2, Definitions (and as it may be amended from time to time).

(Ord. 5081, passed 12-3-2007)

§ 156.023 REGISTRATION REQUIRED.

(A) Persons and corporations acting as plumbing contractors, who are doing plumbing as defined in this chapter or in I.C. 25-28.5, Plumbers or in I.C. 25-1, General Provisions or in IAC 860, Indiana Plumbing Commission, Article 1, General Provisions and journeyman plumbers as defined in I.C. 25-28.5-1-2 and apprentice plumbers as defined in I.C. 25-28.5-1-2, within the corporation limits of the city are required to register their State of Indiana plumbing license with the Building Department of the city.

(B) The following registration information shall be required:

(1) The State of Indiana plumbing license number;

(2) The name and street address of the licensed plumber including a P.O. Box if used for mailing purposes;

(3) A contact person if different than the named plumber; and

(4) A business street address if different than the named plumber's home address including a P.O. Box if used for mailing purposes.

(C) The city Building Department may also require some suitable means of identifying the plumber, company, corporation or other business entity.

(D) A plumbing license registration is only issued to individuals. Companies, corporate entities and other legal business entities shall designate an individual to hold the registration in their name. Any orders, fines, penalties, sanctions, suspensions or other actions taken in regard to any company, corporate entity or other legal business entity shall be taken against the designated individual. Notwithstanding all orders, fines, penalties, sanctions, suspensions or other actions taken against any individual designated as the plumbing registration holder for any company, corporate entity or other legal business entity shall be the same as if they were taken in against the company, corporate entity or other legal business entity.

(E) Exceptions:

(1) Owner/occupiers are not governed by the requirements of this section.

(2) Softener installers, who fall under the Indiana Plumbing Commission Statutes and Rules, Title 25, Article 28.5, Plumbers, are not governed by the requirements of this section.

(Ord. 5081, passed 12-3-2007)

§ 156.024 FEES FOR PLUMBING CONTRACTOR'S REGISTRATION.

Every applicant for a plumbing contractor's registration shall hold a valid State of Indiana plumbing contractors license. The fee for such a registration shall be \$50 payable to the City of Elkhart. Plumbing contractor registration shall be in effect before any permits may be issued. Plumbing contractor registration is for a maximum 1-year term and shall expire at the end of the calendar year in which it was obtained.

(Ord. 5081, passed 12-3-2007) Penalty, see § 156.999

§ 156.025 FINANCIAL RESPONSIBILITY.

Each applicant shall furnish a bond with surety approved by the Controller of the city in the penal sum of \$5,000 conditioned to reimburse said city for expenses arising out of any administrative judgment made in regard to any ordinance violation. Said bond is to be in force from the date of its acceptance and shall expire at the end of the calendar year. Said bond shall be in effect before any permits may be issued. The bond shall expire at the end of the calendar year.

(Ord. 5081, passed 12-3-2007) Penalty, see § 156.999

§ 156.026 JOURNEYMAN PLUMBER; SUPERVISION.

Journeyman plumbers are to be under the supervision, direction and responsibility of a licensed plumbing contractor and the licensed plumbing contractor shall be registered according to the provisions set forth elsewhere in this chapter.

(Ord. 5081, passed 12-3-2007)

§ 156.027 APPRENTICE PLUMBER; SUPERVISION.

Apprentice plumbers are to be under the supervision, direction, and responsibility of a licensed plumbing contractor and the licensed plumbing contractor shall be registered according to the provisions set forth elsewhere in this chapter.

(Ord. 5081, passed 12-3-2007)

§ 156.028 REGISTRATION, USE BY OTHERS.

(A) A duly licensed and registered State of Indiana plumbing contractor may obtain city plumbing permits for others providing the following conditions are met:

- (1) The person or corporation for whom they are obtaining the permit has a plumbing license;
- (2) At least 1 State of Indiana licensed journeyman plumber who is employed by the duly licensed and registered State of Indiana plumbing contractor, must be physically present at the job site while any plumbing work is being done; and
- (3) All the other plumbers on the job site are State of Indiana licensed journeyman plumbers or State of Indiana registered apprentice plumbers.

(B) The plumbing contractor undertakes the same responsibility as he assumes for plumbing work he does by his own hand or by persons in his employ, for all plumbing work done under any permit he obtains for others.

(Ord. 5081, passed 12-3-2007)

§ 156.029 REVOCATION, SUSPENSION OR PROBATION OF REGISTRATION.

(A) The Board of Public Works shall have all power and authority to revoke, suspend or place on probation any registration granted pursuant to this chapter and to hear all cases arising out of allegations of violations of this chapter. The Board of Public Works shall have all authority and power to impose such sanctions as are further set forth in this section.

(B) Where in this section the words **BOARD** or **BOARD OF PUBLIC WORKS** occur they shall mean the City of Elkhart, Indiana Board of Public Works.

(C) The Plumbing Inspector has the power, duty and authority to investigate incidents where violations of this chapter are thought to have occurred. Said Plumbing Inspector may, at his discretion, present evidence of violations of this chapter to the Board of Public Works.

(D) The Board of Public Works shall not issue any order, revoke any registration of, or issue any sanction against, any registered licensed plumbing contractor without first holding a public hearing.

(E) If the Board of Public Works has reason to believe that evidence presented indicates that a registration holder may have violated any of the provisions of this chapter, the Board of Public Works shall give the registration holder written notice in person or by certified mail, return receipt requested, of the intention to hold hearings into allegations made. The notice must contain a statement of the facts on which the Board of Public Works has acted in determining that a hearing is warranted. Such hearings shall be held within 30 days of the date of the notice. Such hearings are to determine the facts of the case and whether or not the registration should be revoked, suspended or the registration holder should be placed on probation.

(F) At the hearing, the registration holder, and any other interested person shall have the right to present evidence and arguments showing why the registration should not be revoked, suspended or placed on probation by the Board of Public Works.

(G) The Board of Public Works shall at the end of the hearing determine if a violation of this chapter has occurred.

(H) Upon the determination that an ordinance violation has occurred, the Board of Public Works may at its discretion, determine whether to place the registration holder on probation or to suspend or revoke said registration. Upon determining the type of sanction to be imposed the Board of Public Works shall send the registration holder, within 5 days after the hearing, a written statement of the facts on which it bases its findings and stating the type of sanction to be imposed.

(I) The Board of Public Works shall have power and authority to revoke a registration, suspend a registration or place the registration holder on probation.

(J) The Board of Public Works shall have power and authority to set the terms of any suspension or probation that it may impose.

(K) If the registration issued to a plumbing contractor is revoked pursuant to this section, the plumbing contractor and his direct affiliates shall be disqualified from consideration for further permits for a period of not less than 2 years from the date of revocation.

(L) If the registration issued to a plumbing contractor is suspended pursuant to this section, the plumbing contractor and his direct affiliates may be disqualified from consideration for further permits for a period of up to 1 year from the date of suspension.

(M) If the registration issued to a plumbing contractor is placed on probation pursuant to this section, the plumbing contractor may be issued permits provided he is abiding by the terms of his probation.

(N) If, after the hearing, the Board of Public Works finds that the provisions of this chapter have not been violated, it shall send the registration holder, within 5 days after the hearing, a written statement stating that no violations of this chapter have occurred.

(Ord. 5081, passed 12-3-2007)

§ 156.030 LIABILITY FOR DAMAGES.

This chapter shall not be construed to relieve from or lessen the responsibility or liability of any party owning, operating, controlling, or installing any plumbing equipment or plumbing installation for damages to persons or property, caused by any defect therein, nor shall the city be held as assuming any such liability by reason of the registration required herein.

(Ord. 5081, passed 12-3-2007)

§ 156.031 PLUMBING PERMIT REQUIRED

(A) A plumbing contractor or owner/occupier wishing to do plumbing work must obtain a permit. The replacement of existing hot water heaters shall require a permit. Exterior plumbing work shall require an excavation permit from the Department of Public Works and Utilities.

(B) Prior to the issuance of any plumbing permit, the Plumbing Inspector shall review the plumbing permit application to determine compliance with the provisions of this chapter, and shall ascertain that the required clearances and permits issued by other Department have been obtained.

(C) Exceptions. The following shall not require a plumbing permit:

(1) The maintenance of any plumbing fixture.

(2) The replacement of a plumbing fixture, when the replacement is of the same type and does not involve a change of location.

(3) The replacement of drainage or supply pipe or fittings, when such replacement does not involve changing the location of the pipe.

(4) The maintenance, alteration or replacement of exterior plumbing installations between the structure and the property line of the public ways.

(Ord. 5081, passed 12-3-2007; Am. Ord. 5578, passed 4-17-2017)

§ 156.032 WATER SOFTENER PERMITS.

(A) A water treatment device installer shall obtain a permit to install water treatment devices. A State of Indiana Plumbing License and registration are not required where such installation does not require the making of opening into water supply piping or into drain piping as set forth in § 156.035.

(B) If no connections have been provided by a plumbing contractor, the water softener company must obtain a plumbing permit. For a water softener company ("company") to be eligible to obtain a plumbing permit, the company must do the following:

(1) Have at least one, but not more than two employees take and pass the city's plumbing exam;

(2) Register the employee(s) and the company with the Building Department each calendar year;

(3) Pay a \$25 registration fee for each individual and the company per calendar year;

(4) Provide a bond to the city in an amount deemed appropriate by the Building Commissioner.

The company can only obtain a plumbing permit for the installation of water treatment devices.

(C) If the registered person leaves the company, he or she is not allowed to obtain a plumbing permit as an individual, nor is the company allowed to continue to obtain any plumbing permits in the individual's name.

(D) A person must answer correctly at least 75% of the questions on the city's plumbing exam in order to pass the exam. If a person does not achieve a score of 75% or greater, the person is eligible to take the test three additional times in the same calendar year. The wait time for failing to pass the exam is three months after each failed attempt. A maximum of four failed tests is allowed in any five calendar year. After the fourth failure, the person must wait until the next calendar year to attempt to pass the test. All exam questions shall come from the current Indiana Plumbing Code Book.

(Ord. 5081, passed 12-3-2007; Am. Ord. 5578, passed 4-17-2017)

§ 156.033 APPLICATION FOR PLUMBING PERMIT.

(A) Application for a permit for plumbing work shall be made on suitable forms provided by the Building Department. The application shall be accompanied by all required fees.

(B) No journeyman plumber licensed by the State of Indiana and no apprentice plumber registered with the State of Indiana shall be issued a permit to do any plumbing work.

(C) The Plumbing Inspector shall have the power and authority approve or deny applications for permits. Appeals to denial of applications for permits by the Plumbing Inspector shall be according to § 156.056.

(D) Exception.

(1) Journeyman plumber and apprentice plumbers may obtain permits if they qualify as an owner occupier.

(2) Softener installers who fall under the Indiana Plumbing Commission Statutes and Rules, Title 25, Article 28.5, Plumbers, are not governed by the requirements of this section.

(Ord. 5081, passed 12-3-2007)

§ 156.034 (RESERVED)

§ 156.035 WATER TREATMENT DEVICES; INSPECTION REQUIRED.

The installation of any water treatment device shall require an inspection. Such inspection is required even where a connection to a potable water supply (known in the trade as a softener by-pass) or a connection to sewer lines was previously present.

(Ord. 5081, passed 12-3-2007) Penalty, see § 156.999

§ 156.036 EXPIRATION AND EXTENSION OF PERMITS.

(A) Permits shall expire if the plumbing work within the scope of the permit is not commenced within 1 year of the issuance date of such permit. However, if a permit holder is unable to commence plumbing work within 1 year of the issuance of the permit for good and satisfactory reasons, he or she may apply for an extension of time within which he or she may commence work under that permit. The Building Commissioner may extend the permit 1 time for a period not exceeding 180 days if:

- (1) No changes have been made in the plans and specifications filed with the original application for permit;
- (2) The extension is requested in writing by the applicant verifying the above; and
- (3) A permit extension fee has been paid.

(B) Permits shall expire if the plumbing work, authorized by the permit is suspended or abandoned, at any time after plumbing work is commenced, for a period of 180 days. Such plumbing work may be recommenced only after the issuance of a permit reinstatement by the Building Department. Plumbing work in which substantial progress has not been made for a period of 180 days shall be deemed abandoned and the permit issued for said work shall automatically expire. The Building Commissioner may reinstate the permit for a period not exceeding 1 year if:

- (1) The plumbing work has been suspended or abandoned for more than 180 days but less than 1 year;
- (2) No changes have been made in the plans and specifications filed with the original application for permit;
- (3) The reinstatement is requested in writing by the applicant verifying the above; and
- (4) A permit reinstatement fee has been paid.

(C) Plumbing work abandoned for longer than the provisions of this section shall require a new permit.

(Ord. 5081, passed 12-3-2007)

§ 156.037 FEES REQUIRED.

(A) A fee shall be charged for each permit issued and shall be paid to the office of the Building Department. In determining the amount to be paid, the following shall count as 1 fixture each: water closet, bidet, bath tub, shower stall, hot tub, lavatory, sink, urinal, laundry tub, dishwasher, disposer, water heater, water softener, drinking fountain, open site drain, floor drain, water pump, washing machine connection, sewage ejector, sump pump, interceptor, backflow preventer, or any trap or opening into a soil or waste pipe roughed in for the future installation of any of the aforementioned fixtures. Other equipment or devices connected to either a supply of potable water or to a drain pipe, waste pipe, sewer or other means of waste removal, not otherwise named in this chapter shall have the permit fee based on the number of connections to a waste pipe. Yard hydrants and sillcocks are to be counted as 1 fixture for each instance in a given installation.

(B) Exception. Fees are waived for plumbing work done on city-owned properties.

(Ord. 5081, passed 12-3-2007)

§ 156.038 OWNER/OCCUPIER PLUMBING PERMITS.

(A) An owner/occupier who wants to do plumbing work in his own residence shall apply for a permit for plumbing work. The owner/occupier shall personally do said work. The owner/occupier shall obtain the necessary permits from the Building Department.

(B) All plumbing done by an owner/occupier must meet the rules adopted in §156.003. The owner/ occupier is responsible for obtaining all inspections.

(Ord. 5081, passed 12-3-2007)

§ 156.039 OWNER/OCCUPIER AFFIDAVIT.

The Plumbing Inspector shall, upon the request for a plumbing permit by an owner/occupier, require the owner/occupier to complete an affidavit affirming that said owner/occupier is indeed an owner/occupier or intends to become an owner/occupier.

(Ord. 5081, passed 12-3-2007)

§ 156.040 OWNER/OCCUPIER DEFINED.

An owner/occupier means a person who owns the 1- or 2-family dwelling (Class 2 structure) place where he or she resides, or a person who is the owner of record of a parcel located within the city limits of the city and who undertakes to live in a new 1- or 2-family dwelling (Class 2 structure) under construction or planned for construction, or a person who is the owner of record of a parcel located within the city limits of the city and who undertakes to live in a currently empty house (Class 2 structure) located on that parcel where the 1- or 2-family dwelling (Class 2 structure) is being remodeled. This definition includes persons that have a recorded land contract purchase agreement and who otherwise comply with the provisions of this section.

(Ord. 5081, passed 12-3-2007)

§ 156.041 OWNER/OCCUPIER PERMITS LIMITED.

An owner/occupier may only obtain 1 permit every 4 years, and only for 1 address. A permit issued to an owner/occupier shall be subject to the expiration and extension limitations in § 156.036.

(Ord. 5081, passed 12-3-2007)

§ 156.042 OWNER/OCCUPIER TEST.

The Plumbing Inspector shall administer a plumbing test to any owner/occupier who applies for a permit.

(Ord. 5081, passed 12-3-2007)

§ 156.043 REPORTING AND INSPECTION OF PRIVATE WELLS.

(A) Licensed plumbers and property owners shall report private wells used for potable water and for irrigation to the city Public Works and Utilities Department.

(B) Licensed plumbers and property owners shall provide verification to the Public Works and Utilities Department of disconnection of private wells when making connection to city water.

(Ord. 5081, passed 12-3-2007) Penalty, see § 156.999

§ 156.044 PREFABRICATED DWELLINGS.

Industrialized buildings or mobile structure to be placed on permanent foundations in the city must be inspected in compliance with this chapter and installation and connection permits secured accordingly. Piping systems used to connect

between plumbing piping furnished with Industrialized buildings or mobile structures and on-site sewer connections must be in compliance with the rules adopted in § 156.003.

(Ord. 5081, passed 12-3-2007)

§ 156.045 CONNECTIONS BETWEEN FACTORY INSTALLED PLUMBING AND ON- SITE SEWERS; PERMITS REQUIRED.

(A) Permits shall be obtained for any connection(s) made between any plumbing installed in industrialized buildings or mobile structures, travel trailers, motor homes and other structures not built on site and not set on a permanent foundation and any on-site sewer.

(B) Exception: travel trailers and motor homes parked on a lot that is part of a facility that is designed for travel trailer and motor home temporary parking. Temporary parking of a travel trailer or motor home is defined as the parking of a travel trailer or motor home on the same site for not more than 90 days.

(Ord. 5081, passed 12-3-2007) Penalty, see § 156.999

§ 156.046 CONNECTIONS BETWEEN FACTORY INSTALLED PLUMBING AND ON- SITE SEWERS; INSPECTION REQUIRED.

(A) Plumbing inspections shall be performed on any connection(s) made between any plumbing installed in industrialized buildings or mobile structures, travel trailers and other structures not built on site and not set on a permanent foundation and any on site sewer. All such connections shall conform to the rules adopted in § 156.003.

(B) Exception: travel trailers and motor homes parked on a lot that is part of a facility that is designed for travel trailer and motor home temporary parking. Temporarily parking of a travel trailer or motor home is defined in § 156.045.

(Ord. 5081, passed 12-3-2007)

§ 156.047 PRIVATE SEWERS; RULES OF THE INDIANA DEPARTMENT OF HEALTH.

Private sewers shall conform to the rules of the Indiana Department of Health as set forth in 410 IAC 6-6.

(Ord. 5081, passed 12-3-2007)

§ 156.048 PRIVATE SEWERS; PERMIT REQUIRED.

All persons installing private sewers shall obtain a permit from the city Building Department. Applications for said permits shall be made on forms provided by the city Building Department.

(Ord. 5081, passed 12-3-2007) Penalty, see § 156.999

§ 156.049 PRIVATE SEWER; PERMIT FEES.

The fee for a permit to install a private sewer shall be charged for each connection to a private sewer.

(Ord. 5081, passed 12-34-2007)

§ 156.050 PERMIT TO BE DISPLAYED WHERE WORK IS PERFORMED.

The plumbing contractor shall, before starting any work contemplated under this chapter, obtain a permit, which said permit shall be placed in a conspicuous place on the building where the plumbing is being performed and which said permit shall be properly signed and filled out by the plumbing contractor in whose name the permit is issued.

(Ord. 5081, passed 12-3-2007) Penalty, see § 156.999

§ 156.051 REQUIREMENTS OF PLUMBING PERMITS; PLANS AND SPECIFICATIONS.

No permit shall be issued until plans and specifications showing the proposed work in necessary detail have been submitted to the Plumbing Inspector when requested and he has determined from examination of such plans and specifications that they give assurance that the work will conform to the provisions of this chapter. If, in the course of the work, it becomes necessary to make any change to the plans and specifications on which a permit has been issued, amended plans and specifications shall be submitted and a supplementary permit, subject to the same conditions applicable to the original application for permit, shall be issued to cover the change.

(Ord. 5081, passed 12-3-2007)

§ 156.052 INSPECTIONS REQUIRED.

All plumbing work that requires a permit requires inspections. Inspections are required before any plumbing is buried or concealed behind any permanent building construction. Inspections are also required when all plumbing projects are finished, whether or not the city Building Code requires a certificate of occupancy for a given building project. In the trade, the construction stages that correspond to the provisions of this section are known as underground, rough and final. The permit holder is responsible for requesting all inspections. Exterior work that requires a permit shall be inspected under an excavation permit.

(Ord. 5081, passed 12-3-2007)

§ 156.053 NOTICE WHEN WORK READY FOR INSPECTION; REQUEST FOR INSPECTION.

The Plumbing Inspector must be notified by the plumbing contractor in charge of the work when the work is ready for inspection. All work must be left uncovered and convenient for examination until inspected and approved. No notice or request shall be sent for any inspection until the work is entirely ready for thorough inspection. Requests for inspection shall be made 1 business day in advance. The Plumbing Inspector shall make every reasonable effort to perform requested inspections by the next business day after the request for inspection is received. Failure of the Plumbing Inspector to make requested inspections does not relieve plumbers of responsibility for said plumbing. If for reasons of schedule or other impediment, the allowed next business day has elapsed and no inspection has been performed, the Plumbing Contractor may cover such plumbing as was requested to be inspected, provided that such inspection request is made in writing.

(Ord. 5081, passed 12-3-2007)

§ 156.054 INSPECTION SCHEDULE.

Inspections are performed between 8:00 a.m. and 5:00 p.m., Monday through Friday.

(Ord. 5081, passed 12-3-2007)

§ 156.055 RE-INSPECTION FEE.

The Plumbing Inspector may impose a re-inspection fee.

(Ord. 5081, passed 12-3-2007)

§ 156.056 RIGHT OF APPEAL.

All persons shall have the right to appeal orders and actions arising out of the enforcement of this chapter first through the Board of Public Works and then to the Fire Prevention and Building Safety Commission of Indiana in accordance with the provisions of I.C. 22-13-2-7.

(Ord. 5081, passed 12-3-2007)

SEWER CONTRACTORS

§ 156.110 DEFINITION.

For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

SEWER CONTRACTOR. Any person who, for compensation, undertakes to, or submits a bid to, or does himself or herself or by others, construct, repair, alter, remodel, add to, subtract from or improve sewers, sewage disposal systems, water distribution or drainage lines (hereinafter collectively referred to as sewer work) and who is responsible for substantially all the sewer work within the entire project, or one who fabricates units or sewer lines substantially completed and ready for installation.

(1979 Code, § 156.090) (Ord. 3756, passed 10-6-1986)

§ 156.111 REGISTRATION REQUIRED.

(A) It shall be unlawful for any person to install or repair any sewer, sewage disposal system or water distribution or drainage lines within the city until the person shall be registered with the Building Department as provided in accordance with the requirements of this subchapter.

(B) No person shall act as agent for any company, corporation or any other person who has not been registered in the city as herein required.

(1979 Code, § 156.091) (Ord. 3756, passed 10-6-1986) Penalty, see § 156.999

§ 156.112 FEE FOR REGISTRATION; BOND.

Every applicant for a sewer contractor's registration shall pay a fee of \$50 for such a registration and the renewal fee shall be \$25 payable to the city. Each applicant shall furnish a bond with surety approved by the Controller of the city in the penal sum of \$3,000, conditioned to reimburse the city for all damages caused by any act or omission by the sewer contractor or any of his or her agents, to any property which the city may own or for which it may be responsible, and to hold the city free and harmless from claims for damages on account of the negligence or misfeasance of the plumber and from all costs and expenses growing out of the defense of such claims. The bond is to be in force from the date of its acceptance and shall expire at the end of the calendar year. Both registration and bond must be renewed on or before January 10 of each successive year and shall expire at the end of the calendar year. No other bond shall be required of the plumber by any other department of the city.

(1979 Code, § 156.092) (Ord. 3756, passed 10-6-1986)

§ 156.113 REGISTRATION TO BE NONTRANSFERABLE; DISPLAY OF REGISTRATION.

(A) Any registration secured by any sewer contractor under this subchapter is not transferable, and it shall be unlawful to loan or transfer such a registration or to allow anyone to work under a registration held by another.

(B) Any person, firm or corporation granted a registration or a renewal thereof, in accordance with the provisions of this subchapter, shall display the registration in a conspicuous place in the place of business of the person, firm or corporation engaged in the business of sewer installation.

(1979 Code, § 156.093) (Ord. 3756, passed 10-6-1986) Penalty, see § 156.999

§ 156.114 REVOCATION OR SUSPENSION OF REGISTRATION.

Any registration granted pursuant to this subchapter may be revoked or suspended by the Board of Public Works and Safety upon a showing that the registration holder has violated any of the terms or conditions of this subchapter.

(1979 Code, § 156.094) (Ord. 3756, passed 10-6-1986)

§ 156.115 APPLICATION FOR PERMIT; FEE.

(A) Application for a permit for sewer work shall be made on suitable forms provided by the Building Department. The application shall be accompanied by fees in accordance with the schedule of fees set forth.

(B) An owner or occupier who applies for a permit for sewer work may personally do the work if the owner or occupier shall obtain the necessary permits from the Building Department.

(C) A fee shall be charged for each permit issued. This fee shall be \$15 and shall be paid to the office of the Building Department.

(1979 Code, § 156.095) (Ord. 3756, passed 10-6-1986)

§ 156.116 PERMIT TO BE DISPLAYED.

The sewer contractor shall, before starting any work contemplated under this subchapter, obtain a permit, which shall be placed in a conspicuous place on the project where the sewer work is being performed. The permit shall be properly signed and filled out by the sewer contractor in whose name the permit is issued.

(1979 Code, § 156.096) (Ord. 3756, passed 10-6-1986)

§ 156.999 PENALTY.

(A) Any person who shall violate any provision of this chapter or who shall fail to comply with any of the regulations thereof shall, upon admission to the violation or adjudication thereof by a court, be subject to a fine of not less than \$100, and not more than \$2,500 for a first violation of this chapter, and not less than \$100, nor more than \$7,500 for a second or subsequent violation of this chapter. A second or subsequent violation is defined as a violation which occurs after a person has paid a fine for a violation of this chapter, has admitted to a violation of this chapter or has had a judgment entered against the person for a violation of this chapter and is not limited to the parcel upon which the first violation occurred. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

(B) Injunctive relief also shall be available to the city to prevent violations.

(C) *Penalty fees.* Any person, firm or corporation who shall start or proceed with any work where a permit is required under this chapter without first having applied for the necessary permit shall be charged, in addition to the normal permit fee, a penalty fee, the amount to be equal to the permit fee but not less than \$100. Appeals of penalty fees imposed under this section shall be covered by § 156.056.

(1979 Code, § 156.999) (Ord. 5081, passed 12-3-2007)

CHAPTER 157: ELECTRICAL CODE

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GENERAL PROVISIONS

§ 157.001 APPLICATION OF CHAPTER.

(A) The provisions of this chapter shall apply to all installations of electrical conductors, fittings, devices, appliances and fixtures, hereinafter referred to as "electrical equipment," within or on private and public buildings and premises. However, the following general exceptions shall apply: the provisions of this chapter shall not apply to electrical wiring expressly declared to be exempt from the provisions of this chapter by any sections hereof or by any other provisions of the rules

adopted in § 157.003.

(B) As used in this chapter, **REASONABLY SAFE TO PERSONS AND PROPERTY**, as applied to electrical installations and electrical equipment, means safe to use in the service for which the installation or equipment is intended without unnecessary hazard to life, limb or property.

(1979 Code, § 157.01) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983)

Statutory reference:

Regulation of electrical contractors and construction industry, see I.C. 36-7-4-701 through 18-7-4-803

§ 157.002 LIABILITY FOR DAMAGES.

This chapter shall not be construed to relieve from or lessen the responsibility or liability of any party owning, operating, controlling or installing any electrical equipment for damages to persons or property, caused by any defect therein, nor shall the city be held as assuming any such liability by reason of the examination authorized herein or by the license and certificate issued as herein provided.

(1979 Code, § 157.02) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983)

§ 157.003 STANDARDS FOR INSTALLATION OF ELECTRICAL EQUIPMENT.

(A) (1) All installations of electrical equipment shall be reasonably safe to persons and property and in conformity with the provisions of this chapter and the applicable regulations of the state and all orders, rules and regulations issued by authority thereof.

(2) Unless specifically stated otherwise herein, all electrical installations covered by this chapter shall be in compliance with the Indiana Electrical Code, Title 675 I.A.C. Article 17, as the same are amended and adopted from time to time by the Indiana Fire Prevention and Building Safety Commission pursuant to I.C. 22-13-2-2, except as otherwise provided for in this chapter.

(B) Conformity of installations of electrical equipment with the applicable regulations set forth in Title 675 I.A.C. 17, as the same are amended and adopted from time to time, shall be prima facie evidence that such installations are reasonably safe to persons and property.

(C) The Electrical Inspector shall permit trial installations of new methods of installing electrical equipment after the permits for such installations have been approved by the Board of Review and the Indiana Fire Prevention and Building Safety Commission.

(D) Service equipment for buildings located in the 100-year flood plain area as determined by the Department of Zoning and Planning shall be located a minimum of 4 feet above finished grade level.

(E) The minimum size of electrical service that may be installed in a 1-family dwelling shall be of 100 amp capacity.

(1979 Code, § 157.03) (Ord. 1453, passed 6-1-1949; Am. Ord. 3622, passed 4-15-1985; Am. Ord. 3789, passed 4-6-1987; Am. Ord. 3999, passed 9-10-1990; Am. Ord. 4159, passed 4-18-1994; Am. Ord. 4717, passed 12-2-2002)

§ 157.004 STANDARDS FOR ELECTRICAL EQUIPMENT.

(A) All electric equipment installed or used shall be reasonably safe to persons and property and in conformity with the provision of this chapter, and any orders, rules or regulations issued by authority thereof.

(B) Conformity of electrical equipment with applicable standards of Underwriters Laboratories, Inc. or other nationally recognized testing laboratory or service shall be prima facie evidence that the equipment is reasonably safe to persons and property.

(1979 Code, § 157.04) (Ord. 1453, passed 6-1-1949; Am. Ord. 3460, passed 6-6-1983)

§ 157.005 ESTABLISHMENT OF ELECTRICAL LICENSE EXAMINATION FUND.

The revenues collected under this chapter pursuant to § 157.013, shall be placed in a special non-reverting fund, known as the Electrical License Examination Fund, and the moneys in this fund shall be used only for the following purposes: test forms, supplies, proctoring, grading, reviewing and the handling, servicing and processing of tests used by the city to determine eligibility of candidates applying for a license to perform electrical work in the city. These funds shall be distributed by the chairman of the Electrical Examining Board as needed to provide the license testing service to applicants.

(1979 Code, § 157.05) (Ord. 3581, passed 10-1-1984)

LICENSING

§ 157.015 LICENSE REQUIRED.

(A) Except as otherwise provided in §157.001, no person, firm or corporation shall in any manner undertake to execute or perform any work of installing, maintaining, altering or repairing any electrical equipment unless the work is performed or supervised by a holder of a Class A Electrical Contractor's License, as defined, and has a certificate as provided for in § 157.016. Nor shall any person, firm or corporation execute or perform any work other than as specifically permitted under the license held by that person performing or supervising the work for a firm or corporation.

(B) However, this provision shall not apply to any person employed by and working under the direction of a holder of a Class A Electrical Contractor's License or a Class B Industrial Electrical License and no license shall be required in order to execute or perform any of the following electrical work:

(1) The replacement of switches, receptacles and lamps, or the connection of portable electrical equipment to suitable permanently installed receptacles;

(2) Electric wiring expressly declared to be not covered by the provisions of this electrical code by any other sections hereof or by any other provisions of the rules adopted in § 157.003;

(3) The installation, alteration or repair of electrical equipment for the operation of signals or the transmission of intelligence by wire;

(4) Any work involved in the manufacturing, testing, servicing, altering or repairing of electrical equipment or apparatus; (This exemption shall not include any permanent wiring other than that required for testing purposes.)

(5) The assembly, erection and connection of electrical equipment by the manufacturer of the equipment, but not including any electric wiring other than that involved in making electrical connections on the equipment itself or between 2 or more parts of this equipment;

(6) All work involved in the repairing and maintenance of elevators, dumbwaiters and escalators; and

(7) The owner of a single-family dwelling including the usual accessory buildings may do electrical work in such dwelling or accessory buildings provided:

(a) The owner proves to the satisfaction of the Electrical Inspector, by examination, that the owner is qualified to perform the work;

(b) The dwelling is, or is to be, occupied by the owner;

(c) The dwelling is a detached building containing no other dwelling unit or other occupancy;

(d) There are no other buildings, other than the dwelling and accessory buildings located on the premises;

(e) No more than one such permit has been issued to the same person in the preceding 48 calendar months;

(f) All work shall be done by the owner; and

(g) The owner files with the Electrical Inspector an affidavit stating all of the foregoing facts.

(1979 Code, § 157.10) (Ord. 1453, passed 6-1-1949; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983; Am. Ord. 3999, passed 9-10-1990; Am. Ord. 5070, passed 12-3-2007)

§ 157.016 CLASSES OF LICENSES.

The license and certificates therefor shall be issued by the Board, which shall be known as a Class A, Electrical Contractor's or Master Electrician's License.

(1979 Code, § 157.11) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983; Am. Ord. 5070, passed 12-3-2007) Penalty, see § 157.999

§ 157.017 FEES FOR LICENSES; EXPIRATION.

(A) Upon the approval of the Examining Board, the Electrical Inspector is authorized to issue this license under the provisions of this chapter.

(B) Before a license is granted to any applicant, a fee of \$100 shall be paid for a Class A license, and before any Class A license is renewed, a fee of \$100 shall be paid.

(C) (1) Each license shall expire on December 31 following the date of its issuance and shall be renewed upon application of the holder of the license and payment of the required fee.

(2) All licenses must be renewed on or before the date of expiration, and any license becoming 30 days delinquent shall be suspended and remain suspended until all renewal fees and any late fees, if applicable, are paid in full.

(1979 Code, § 157.12) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983; Am. Ord. 5070, passed 12-3-2007) Penalty, see § 157.999

§ 157.018 APPLICATION FOR LICENSE.

(A) Each application for a license shall be made in writing to the Board at least 30 days before the examination date, stating the name of the applicant, the address of the applicant and any other information about the applicant as required by the Board.

(B) A non-refundable application fee as set by the Electrical Examining Board shall be paid when application is made.

(1979 Code, § 157.13) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983; Am. Ord. 3581, passed 10-1-1984; Am. Ord. 5070, passed 12-3-2007) Penalty, see § 157.999

§ 157.019 EXAMINATIONS.

(A) The person designated by the applicant for a license shall be examined by the Electrical Examining Board to determine his knowledge of the rules and regulations for the installation of electrical equipment as set forth in this chapter and in the National Electric Code as approved by the American National Standards Institute. The Board shall determine the general qualifications and fitness of the applicant for executing the class of work covered by the license applied for, provided that a person now holding an Elkhart Master Electrician Contractor's License will be issued a Class A license without further examination.

(B) (1) Each examination shall be conducted by a person designated by the Electrical Examining Board.

(2) A record of every examination given shall be kept on file until 1 year after the date of the examination.

(3) Any person who cheats during any examination given by the Electrical Examining Board shall be conclusively presumed unqualified and unfit for licensing pursuant to this chapter, and in addition thereto shall be guilty of a Class C infraction, punishable as provided under state statutes covering the infractions, and shall be disqualified from holding any license or applying for or taking any future examinations for licensing by the city as a licensed electrical contractor.

(C) Should an applicant fail to pass an examination at the rate established by the Electrical Examining Board for such purposes, the applicant may be reexamined upon submitting an application in writing with the requisite examination fee, if any, no less than 10 days prior to the examination date established by the Electrical Examining Board.

(1979 Code, § 157.14) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983; Am. Ord. 3581, passed 10-1-1984; Am. Ord. 5070, passed 12-3-2007; Am. Ord. 5888, passed 2-7-2022) Penalty, see § 157.999

§ 157.020 HOLDER OF LICENSE.

The holder of the license shall be the person to whom the license is issued. A person shall not hold more than 1 license issued by the city at one time, nor act as the license holder for more than 1 firm or contractor under § 157.015 at the same time.

(1979 Code, § 157.15) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983) Penalty, see § 157.999

§ 157.021 CHANGE OF REPRESENTATIVE.

Any holder of a license who is performing or supervising the installation, maintenance, alteration or repair of electrical equipment, or performing or supervising electrical work for a firm or corporation under § 157.015, whose employment with the firm or corporation shall terminate, shall immediately notify the Electrical Examining Board of that termination and the firm or corporation shall provide to the Board, within 10 days of the date of the notice, written notice of the name and address of the license holder replacing that person.

(1979 Code, § 157.18) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983) Penalty, see § 157.999

§ 157.022 CERTIFICATE OF LICENSE.

(A) Each certificate for a license shall specify the name of the person to whom the license is issued, the name of the firm or corporation he or she is representing under § 157.015, the name of the person or persons designated as the factory representative, and the expiration date.

(B) Every holder of a license shall keep the certificate of license displayed in a conspicuous place in his or her principal place of business.

(1979 Code, § 157.17) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983) Penalty, see § 157.999

§ 157.023 REVOCATION AND SUSPENSION OF LICENSES AND CERTIFICATES.

(A) No license and certificate issued in accordance with the provisions of this chapter shall be assignable or transferable. In addition to the provisions of this chapter, any license may after a hearing be suspended for a definite length of time, or revoked by the Board of Review or Examining Board if the person holding a license willfully or negligently violates any ordinance of the city or any statute of the state relating to the installation, maintenance, alteration or repair of electrical equipment, or any orders, rules or regulations issued by authority thereof.

(B) Any license that has been revoked shall be reissued as a new license with all requirements of the same, upon the applicant's successful completion of the licensing requirements.

(1979 Code, § 157.18) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983; Am. Ord. 5070, passed 12-3-2007) Penalty, see § 157.999

PERMITS

§ 157.035 PERMIT REQUIRED.

(A) No electrical wiring or equipment shall be installed within or on any building structure or premises publicly or privately owned, nor shall any alteration or addition be made in any such existing equipment without securing a permit from the Electrical Inspector. A permit must be applied for before the start of work or within 72 hours after the start of work if the permit-issuing office is closed at the time work begins.

(B) An application for a permit describing the work to be done shall be made in writing to the Electrical Inspector by the person, firm or corporation installing the work. However, the following exceptions shall apply:

(1) Permits shall not be required for electrical work specifically exempted in §§ 157.001 and 157.015.

(2) A permit shall not be required for a license holder to connect, alter or install electrical equipment on the load side of a branch circuit provided that the work complies with the electrical rules and codes recognized by this chapter.

(1979 Code, § 157.25) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983; Am. Ord. 5070, passed 12-3-2007)

§ 157.036 FEES FOR PERMITS AND INSPECTIONS.

Before any permit is granted for the installation or alteration of electrical equipment, the person, firm or corporation making application for the permit shall pay a fee of \$25, hereafter referred to as a minimum permit fee, or an amount derived from the following fee schedule, whichever is the higher amount.

(A) Electric service entrance equipment, single phase or 3 phase:

- (1) Up to and including 100 amperes: \$35.
- (2) Over 100 amperes, up to and including 200 amperes: \$40.
- (3) Over 200 amperes, up to and including 400 amperes: \$50.
- (4) Over 400 amperes, up to and including 800 amperes: \$100.
- (5) Over 800 amperes, up to and including 2,000 amperes: \$200.
- (6) Over 2,000 amperes: \$400.
- (7) Temporary service of any size: \$25.

(8) Service hook up for a manufactured housing unit located in an existing mobile home park, up to and including 200 amperes: \$25.

(9) Feeders and sub-feeder shall be \$25 for each 100 amperes with a maximum of \$50 for each sub-feed.

(B) (1) If any person, firm, or corporation shall do any work covered by this chapter requiring a permit without first obtaining the permit, a penalty fee of \$50 shall be charged in addition to the regular amount of the permit.

(2) Payment of the penalty shall not release them from other penalties provided for in this chapter and each day the violation exists shall be deemed a separate offense.

(C) It shall be a violation of this chapter for any licensee to secure a permit to do electrical work if he or she does not intend to perform or inspect and supervise the performance of the work.

(D) (1) Permit fees for electrical work done on municipal property for the municipality and/or its authorized agencies may be waived.

(2) Permits must be obtained for the work by the license holder and the value of the waived fee noted on the permit.

(E) For each unnecessary trip of the inspection caused by defective work or incorrect information, a charge of \$25 will be made in addition to the regular fees.

(F) After due notification, failure to pay fees as set forth in this chapter shall be grounds for the Board to suspend an electrical license until such time as all outstanding fines and fees are paid.

(1979 Code, § 157.26) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983; Am. Ord. 3789, passed 4-6-1987; Am. Ord. 4159, passed 4-18-1994; Am. Ord. 4717, passed 12-2-2002; Am. Ord. 5070, passed 12-3-2007)

ELECTRICAL INSPECTOR

§ 157.050 QUALIFICATIONS AND APPOINTMENT.

(A) There is created the office of Electrical Inspector. The person chosen to fill the office of Electrical Inspector shall: be possessed of executive ability requisite for the performance of his or her duties; have a thorough knowledge of the standard materials and methods used in the installation of electrical equipment; be well versed in approved methods of construction for safety to persons and property, the statutes of the state relating to electrical work, and any orders, rules and regulations issued by authority thereof, and the National Electrical Code as approved by the American National Standards Institute; and shall have had at least 5 years experience in the lines of electrical installation for which he or she would be responsible as Inspector, or in lieu of this experience shall hold at least an associates degree from a recognized electrical or mechanical engineering school, college or university and in addition shall have 2 years practical experience. Within 1 year of appointment, the Electrical Inspector shall be certified by the National Certification Program for Construction Code Inspectors as an electrical inspector.

(B) The Electrical Inspector shall be appointed by the Mayor.

(C) The salary to be paid to the Electrical Inspector shall be determined by the Mayor and City Council in accordance with Indiana law. Before entering upon the discharge of his or her duties, he or she shall file a bond in the amount of \$8,500 in accordance with the provisions of Ord. 4543, payable to the city, the bond to be approved by the City Council conditioned upon the faithful performance of his or her duties. The Electrical Inspector shall also take and subscribe an oath, which, together with the certificate of his or her appointment, shall be filed with the City Clerk.

(1979 Code, § 157.30) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983; Am. Ord. 4717, passed 12-2-2002) Penalty, see § 157.999

§ 157.051 DUTIES OF ELECTRICAL INSPECTOR.

(A) (1) It shall be the duty of the Electrical Inspector to enforce the provisions of this chapter. He or she shall upon application grant permits for the installation or alteration of electrical equipment, and shall make inspections of electrical installations as provided in this chapter.

(2) He or she shall be responsible for the maintenance of electrical equipment for the civil city and shall cooperate with the Fire and Police Departments in the maintenance of signal and alarm circuits.

(3) He or she shall keep complete records of all permits issued, inspections and reinspections made, and other official work performed in accordance with the provisions of this chapter.

(4) He or she may hold membership in the International Association of Electrical Inspectors and with the consent of the Mayor shall serve on any electrical committee of these associations to which he or she may be appointed and shall be allowed all necessary expenses in connection with these activities.

(B) (1) The Electrical Inspector is empowered to employ, after receiving the approval of the Mayor, any assistants necessary for the proper conduct of his or her office and the inspection of electrical installations as provided for in this chapter.

(2) The salary of his or her assistants shall be determined by the Mayor and the City Council.

(C) It shall be unlawful for the Electrical Inspector or any of his or her assistants to engage in the business of the sale, installation or maintenance of electrical equipment, either directly or indirectly, and they shall have no financial interest in any concern engaged in that business at any time while holding office as herein provided except that the Electrical Inspector shall be responsible for the maintenance of electrical equipment of the civil city and shall cooperate with the Fire and Police Departments in the maintenance of signal and alarm circuits.

(1979 Code, § 157.31) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983) Penalty, see § 157.999

§ 157.052 AUTHORITY OF ELECTRICAL INSPECTOR.

(A) (1) The Electrical Inspector shall have the authority to make electrical inspections.

(2) When any electrical equipment is found by the Electrical Inspector to be dangerous to persons or property because it is defective or defectively installed, the person, firm or corporation responsible for the electrical equipment shall be notified in writing and shall make any changes or repairs required in the judgment of the Electrical Inspector to place the equipment in safe condition.

(3) If the work is not completed within 15 days or any longer period that may be specified by the Electrical Inspector in the notice, the Electrical Inspector shall have the authority to disconnect or order the discontinuance of electric service to the electrical equipment.

(4) In cases of emergency, where necessary for safety to persons or property, or where electrical equipment may interfere with the work of the Fire Department, the Electrical Inspector shall have the authority to immediately disconnect or cause the disconnection of any electrical equipment.

(B) (1) Those construction projects that the Electrical Inspector determine are repair rather than alteration and those projects of alteration which do not change the overall electrical service, the Electrical Inspector shall consider under local authority.

(2) Those projects under the jurisdiction of the State Fire Prevention and Building Safety Commission (I.C. 22-11-17 and I.E.R. Chapter 90) shall be released for construction by the Administrative Building Council prior to the issuance of a permit, by the Electrical Inspector.

(C) The Electrical Inspector may delegate any of his or her powers or duties to any of his or her assistants.

(1979 Code, § 157.32) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983) Penalty, see § 157.999

§ 157.053 INSPECTIONS AND CERTIFICATES.

(A) (1) Upon completion of any installation of electrical wiring and equipment which has been made under a permit, it shall be the duty of the person, firm, or corporation making the installation to notify the Electrical Inspector.

(2) He or she shall inspect the installation within 48 hours, exclusive of Saturdays, Sundays and holidays, of the time the notice is given or as soon thereafter as practicable.

(B) Where the Electrical Inspector finds the installation to be in conformity with the provisions of this chapter, he or she shall issue a certificate of approval, authorizing connection to the supply of electricity, and he or she shall send written notice of the authorization to the agency supplying the electric service.

(C) When a certificate of approval is issued authorizing the connection and use of a temporary installation, the certificates shall be issued to expire at a time to be stated therein and shall be revocable by the Electrical Inspector for cause.

(D) (1) When any electrical equipment is to be hidden from view by the permanent placement of parts of the building, the person, firm or corporation installing the equipment shall notify the Electrical Inspector and the equipment shall not be concealed until it has been inspected and approved by the Electrical Inspector or until 48 hours, exclusive of Saturdays, Sundays and holidays, have elapsed from the time of the notification.

(2) However, on large installations, where the concealment of equipment proceeds continuously, the person, firm or corporation installing the electrical equipment shall give the Electrical Inspector due notice and inspections shall be made periodically during the progress of the work.

(E) If upon inspection the installation is not found to be fully in conformity with the provisions of this chapter, the Electrical Inspector shall at once forward to the person, firm or corporation making the installation a written notice stating the defects which have been found to exist, and the person, firm or corporation making the installation shall make the necessary corrections immediately and call for reinspection.

(1979 Code, § 157.33) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983 ; Am. Ord. 5070, passed 12-3-2007) Penalty, see § 157.999

§ 157.054 ELECTRICAL CONNECTIONS.

(A) It shall be unlawful for any person, firm or corporation to make connections from a supply of electricity or to supply electricity to any electrical equipment for the installation of which a permit is required or which has been disconnected by, or ordered to be disconnected by the Electrical Inspector, until approval has been issued by the Electrical Inspector authorizing the connection and use of the equipment.

(B) All electrical services that have been disconnected and the meter removed shall not be reconnected until approval is issued by the Electrical Inspector.

(1979 Code, § 157.34) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983) Penalty, see § 157.999

ELECTRICAL EXAMINING BOARD

§ 157.065 CREATION OF ELECTRICAL EXAMINING BOARD.

(A) There is created the Electrical Examining Board of the city hereinafter designated as the "Board," which shall consist of the Electrical Inspector of the city and 5 other members appointed by the Mayor as follows: 1 representative of the Electrical

Utility Company serving the city; 1 representative of a Class A contractor; 1 journeyman electrician not associated with the Class A contractor whose representative is appointed to the Board; 1 representative from an industry with a Class A license; and 1 homeowner representing the public. The 5 existing Board members shall continue to serve until their existing terms expire, and thereafter each appointment or reappointment shall be for a term of 4 years or until a successor is appointed. The Electrical Inspector shall act as Chairperson of the Board. Any appointed members may, for cause and after a hearing, be removed from office by the Mayor. Each appointed member shall receive the sum of \$10 for each day during which he or she has attended a meeting of the Board.

(B) Records of the meetings of the Board shall be open to the public for inspection at all times. The Board shall keep a record of all licenses and certificates issued by it and shall have printed a manual of its rules and regulations for the conduct of examinations.

(1979 Code, § 157.40) (Ord. 1453, passed 6-1-1949; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983; Am. Ord. 3999, passed 9-10-1990; Am. Ord. 5070, passed 12-3-2007) Penalty, see § 157.999

§ 157.066 DUTIES AND AUTHORITY OF ELECTRICAL EXAMINING BOARD.

(A) The second Monday of January, April, July and October of each year are hereby designated as examination dates for the examination of applicants for licenses, providing any such applications are pending. No licensing examinations shall be given on any other dates without the approval of a majority of the members of the Electrical Examining Board.

(B) It shall be the duty of the Board to examine the reports of persons, firms, or corporations who apply for licenses to approve the issuance of licenses to qualified applicants who have paid the prescribed fees, and to revoke or suspend any license on the grounds set forth in §§ 157.019 and 157.023.

(C) Regular meetings of the Board shall be held on the fourth Monday of January, April, July and October of each year at 4:00 p.m. Special meetings of the Board may be called at the discretion of the Chairperson or by a majority of the members of the Examining Board.

(D) Four members of the Board present at any meeting shall constitute a quorum for the transaction of business, but any action taken at any meeting shall require the affirmative vote of at least 4 members.

(1979 Code, § 157.41) (Ord. 1453, passed 6-1-1949; Am. Ord. 3581, passed 10-1-1984; Am. Ord. 3789, passed 4-6-1987; Am. Ord. 3999, passed 9-10-1990) Penalty, see § 157.999

BOARD OF REVIEW

§ 157.080 CREATION OF BOARD OF REVIEW; APPELLATE PROCEDURE.

(A) There is created a Board of Review which shall consist of the Mayor, who shall be the Chairperson, and 5 members of the Examining Board other than the Electrical Inspector.

(B) Each member of the Board shall serve without pay and until he has been removed from office by the Mayor and his or her successor has been appointed.

(C) Any person, firm or corporation may register an appeal with the Board of Review for a review of any decision of the Electrical Inspector provided that the appeal is made in writing within 10 days after that person, firm or corporation has been notified of the decision by the Electrical Inspector. Upon receipt of the appeal, the Board shall proceed to determine whether the action of the Electrical Inspector complies with this chapter and within 30 days shall make a decision in accordance with its findings. Four members of the Board present at any meeting shall constitute a quorum for the transaction of business, and any action taken at any meeting shall require the affirmative vote of at least 4 members.

(1979 Code, § 157.45) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981)

§ 157.081 POWER OF BOARD OF REVIEW.

The Board of Review shall have the power to grant permits for trial installations of new types of electrical equipment or any new methods of installing electrical equipment, subject to the approval of the Fire Prevention and Building Safety Commission.

(1979 Code, § 157.46) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3789, passed 4-6-1987)

§ 157.999 PENALTY.

(A) Any person, firm or corporation who violates any of the provisions of this chapter upon conviction, shall be liable for a civil penalty of not less than \$100, nor more than \$2,500, exclusive of court costs. Injunctive relief also shall be available to the city to prevent the violations. If such person, firm or corporation is the holder of any license provided for in this chapter, the conviction shall have the effect of suspending the license until such time as the suspension is lifted by the Examining Board.

(B) There is hereby created a Board of Review, which shall consist of the Mayor, who shall be Chairperson, and all 5

members of the Examining Board other than the Electrical Inspector. Each member of the Board shall serve without pay and until he or she has been removed from office by the Mayor and his or her successor has been appointed. Any person, firm or corporation may register an appeal with the Board of Review for a review of any decision of the Electrical Inspector , provided that the appeal is made in writing, within 10 days after that person, firm or corporation has been notified of that decision by the Electrical Inspector. Upon receipt of the appeal, the Board shall proceed to determine whether the action of the Electrical Inspector complies with this chapter and, within 30 days from receipt of the appeal, the Board shall make a decision in accordance with its findings. Four members of the Board present at any meeting shall constitute a quorum for the transition of business, any official action taken at any meeting shall require the concurring vote of at least 4 members.

(C) Further appeal may be sought as provided in I.C. 22-13-2-7. The Board of Review shall have the power to grant permits for trial installations of new types of electrical equipment or any new methods of installing electrical equipment, subject to the approval of the Fire Prevention and Building Safety Commission.

(1979 Code, § 157.99) (Ord. 1453, passed 6-1-1949; Am. Ord. 3295, passed 4-8-1981; Am. Ord. 3451, passed 5-2-1983; Am. Ord. 3460, passed 6-6-1983; Am. Ord. 4717, passed 12-2-2002)

CHAPTER 158: SWIMMING POOL REGULATIONS

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CONSTRUCTION

§ 158.01 DEFINITIONS.

For the purpose of §§ 158.02 through 158.12, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

BUILDING INSPECTOR. Any member of the Department of Buildings authorized to make inspections.

HEALTH OFFICER. The health authority having jurisdiction in the city or his or her authorized representative.

OWNER. The person, firm or corporation who owns the property on which the pool is built.

POOL AREA. The pool with the related deck area used by bathers.

PUBLIC SWIMMING POOL. A swimming pool held out for use by the general public, transient residents of motels and hotels, members or residents of apartments, country clubs, community associations, summer camps or public or private schools.

RESIDENTIAL SWIMMING POOL. Any constructed pool which is used or intended to be used as a swimming pool in connection with a single-family residence, and available only to the family of the householder and his or her private guests.

SPRAY POOL. An artificial or semiartificial hard-surfaced drainage area designed to remove water, at a rate sufficient to prevent impounding, from a shower or spray nozzle used in conjunction therewith for the spraying of human beings.

SWIMMING POOL. An artificial or semi- artificial basin or tank, including all appurtenant equipment, structures and facilities, for the purpose of impounding water to a depth of more than 2-1/2 feet for the immersion or partial immersion of human beings.

WADING POOL. An artificial or semi-artificial basin or tank, including all auxiliary equipment, structures and facilities, for the purpose of impounding water to a depth not greater than 2-1/2 feet for the immersion or partial immersion of human beings.

(1979 Code, § 158.01) (Ord. 2291, passed 5-6-1958; Am. Ord. 3502, passed 12-19-1983)

§ 158.02 SCOPE.

(A) The provisions of these regulations relating to the design, construction, alteration and maintenance of sanitation and safety features shall apply to the uses and operation of all swimming pools, wading pools and spray pools constructed of concrete, concrete units, gunite method, with vertical and horizontal reinforcing, formed plastic or metal.

(B) Pool construction of concrete units may be used with cavities grouted and reinforced, with walls placed on 8 inch by 16 inch integral stepped concrete footings. Footings shall have reinforcing dowels placed at 2 feet on center intervals. When pool wall construction is of reinforced cast concrete, steel or concrete units, a pool bottom of packed sand is permitted, provided that a plastic pool liner is used.

(C) Concrete units grouted and reinforced four feet on center may be used with 8 inch by 16 inch pilasters at 12 foot intervals.

(D) The Building Commissioner shall, however, have the right to order changes in existing pools and related facilities or in their operation if it is found that any condition exists that endangers the life or safety of the users of these swimming pools.

(E) The installation of pools primarily constructed of fiberglass, vinyl or other similar noncementitious materials, and not necessarily conforming to all portions of this chapter may be installed subject to the approval of the Building Commissioner, if after his or her tests safe construction is found to exist.

(F) In addition to the requirements of this chapter, the requirements of the Plumbing, Building, Electrical and Zoning Codes of the city shall apply to the construction, maintenance and operation of all swimming pools.

(1979 Code, § 158.02) (Ord. 2291, passed 5-6-1958; Am. Ord. 3502, passed 12-19-1983) Penalty, see § 158.99

§ 158.03 FEES AND PERMITS.

(A) A permit shall be obtained from the Department of Buildings before any bathing place may be altered, remodeled or constructed. Plans and specifications must be approved by the Department of Buildings prior to the issuance of the permit. Upon completion and before use, the owner shall make application to the Department of Buildings for an occupancy permit and final inspection shall include plumbing and electrical approval.

(B) Fee schedule:

(1) Wading pool: \$3.

(2) Residential or private swimming pool: \$10.

(3) Public swimming pool: \$20.

(C) Plumbing and electrical permits shall be secured before the building permit is approved.

(1979 Code, § 158.03) (Ord. 2291, passed 5-6-1958; Am. Ord. 3502, passed 12-19-1983) Penalty, see § 158.99

§ 158.04 MATERIALS.

Any materials which will provide a tight tank with light-colored, smooth, and easily cleaned surfaces may be used for the pool structure, upon approval by the Department of Buildings.

(1979 Code, § 158.04) (Ord. 2291, passed 5-6-1958; Am. Ord. 3502, passed 12-19-1983) Penalty, see § 158.99

§ 158.05 SHAPE.

Pools may be of any dimension or shape, provided they are not hazardous to bathers.

(1979 Code, § 158.05) (Ord. 2291, passed 5-6-1958; Am. Ord. 3502, passed 12-19-1983) Penalty, see § 158.99

§ 158.06 LOCATION.

Swimming and wading pools shall be subject to all the provisions of the Zoning Code of the city.

(1979 Code, § 158.06) (Ord. 2291, passed 5-6-1958; Am. Ord. 3502, passed 12-19-1983) Penalty, see § 158.99

§ 158.07 SLOPE OF BOTTOM.

Slope and design of the bottom of the pool shall conform to generally accepted standards for safety, subject to the approval of the Building Commissioner.

(1979 Code, § 158.07) (Ord. 2291, passed 5-6-1958; Am. Ord. 3502, passed 12-19-1983) Penalty, see § 158.99

§ 158.08 STEPS AND LADDERS.

Two or more means of egress must be provided for all pools having a perimeter greater than 100 feet, and 1 means of egress for pools 100 feet or less. The number and location of egresses shall be subject to the approval of the Department of Buildings. The treads of all steps, ladders and stepholes shall be of nonslip construction.

(1979 Code, § 158.08) (Ord. 2291, passed 5-6-1958; Am. Ord. 3502, passed 12-19-1983) Penalty, see § 158.99

§ 158.09 DIVING BOARDS.

(A) At least 12 feet of free and unobstructed headroom shall be provided above any diving board.

(B) The minimum depth of water in a diving area shall be determined as follows:

<i>Elevation of Diving Point Above Water Surface</i>	<i>Depth of Water</i>	<i>Maximum Depth</i>
0 through 24 inches	6 ft. 6 in.	12 ft.
24 through 30 inches	7 ft. 6 in.	14 ft.

(C) Diving boards or platforms more than 30 inches above the water surface may not be installed unless approved by the Department of Buildings.

(D) Where multiple diving boards are used, the space between the center lines shall be not less than 12 feet, and no board shall be closer than 5 feet to a side wall. These dimensions shall apply both at the end wall and the point of maximum depth.

(1979 Code, § 158.09) (Ord. 2291, passed 5-6-1958; Am. Ord. 3502, passed 12-19-1983) Penalty, see § 158.99

§ 158.10 DECKS.

In-ground pools must have a smooth, nonslip, unobstructed deck of at least 2 feet in width, extending around the perimeter of the pool. The decks shall have a pitch of at least 1/4 inch to the foot and designed so as to prevent deck drainage from entering the pool water.

(1979 Code, § 158.10) (Ord. 2291, passed 5-6-1958; Am. Ord. 3502, passed 12-19-1983) Penalty, see § 158.99

§ 158.11 FENCES.

All outdoor, residential swimming or wading pools and spray pool areas shall be completely enclosed with a wall, natural barrier, hedge, woven-wire type or wood fence, sufficient to make the body of water inaccessible to small children. The enclosure, including gates therein, shall not be less than 6 feet above the underlying ground, subject to maximum height limitations set forth in the Zoning Code, as amended. All gates must be equipped with latches or locks placed four feet above the underlying ground at sufficient height to be inaccessible from the outside to small children.

(1979 Code, § 158.11) (Ord. 2291, passed 5-6-1958; Am. Ord. 3502, passed 12-19-1983) Penalty, see § 158.99

§ 158.12 RIGHT TO APPEAL.

Any person aggrieved by the refusal to grant, or by the revocation or suspension of, a permit shall have the right to appeal therefrom to the Administrative Building Council of the city.

(1979 Code, § 158.12) (Ord. 2291, passed 5-6-1958; Am. Ord. 3502, passed 12-19-1983) Penalty, see § 158.99

Editor's note:

As of 6-30-1984, I.C. 22-12-7, formerly 22-11-1-21.5 has been amended by changing State Administrative Building Council to State Fire Prevention and Building Safety Commission

Statutory reference:

Local governing unit action; appeal to Commission, see I.C. 22-12-7

PLUMBING FOR POOLS

§ 158.25 DEFINITIONS.

For the purpose of §§ 158.26 through 158.31, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BACKWASH PIPING. The piping which extends from the backwash outlet of the filter to its terminus at the point of disposal.

FACE PIPING. The piping with all valves and fittings which is used to connect the filter system together as a unit.

FILTER. Any material or apparatus by which water is clarified.

FILTER ELEMENT. That part of a filter device which removes the suspended particles from the water.

FILTER MEDIA. The fine material at the surface of the filter element which entraps the suspended particles.

FILTER ROCK. Graded rock and gravel used to support filter sand.

FILTER SAND. A type of filter media.

INLET. The fitting or opening through which water enters the pool.

MAIN OUTLET. The outlet at the deep portion of the pool through which the main flow of water leaves the pool.

MAIN SUCTION. The line connecting the main outlet to the pump suction.

OVERFLOW GUTTER. A trough in the wall of the pool which may be used as an overflow and to skim the pool surface.

POOL DECKS. The paved area around the pool.

POOL DEPTHS. The distance between the floor of the pool and the maximum operating level.

RECEPTOR. An approved plumbing fixture or device of such material, shape and capacity as to adequately receive the discharge from indirect waste piping, so constructed and located so as to be readily cleaned, and connected to a sewer or dry well. It may also be connected to a lawn sprinkler system properly protected by a vacuum breaker to protect city water.

RECIRCULATING PIPING. The piping from the pool to the filter and return to the pool, through which water circulates.

RECIRCULATING SKIMMER. A device connected with the pump suction used to skim the pool over a self-adjusting weir and return the water to the pool through the filter.

RETURN PIPING. The piping which carries the filtered water from the filter to the pool.

RESIDENTIAL SWIMMING POOL. Any constructed pool which is used, or intended to be used, as a swimming pool in connection with a single-family residence and available only to the family of the householder and his private guests.

SWIMMING POOL. Any constructed pool used for swimming or bathing, over 24 inches in depth, or with a surface area exceeding 250 square feet.

UNDERDRAIN. An appurtenance at the bottom of the filter to assure equal distribution of water through the filter media.

VACUUM FITTING. The fitting in the wall of the pool which is used as a convenient outlet for connecting the underwater suction cleaning equipment.

VACUUM PIPING. The piping which connects the vacuum fitting to the pump suction.

(1979 Code, § 158.20) (Ord. 1531, passed 6-13-1953; Am. Ord. 1818, passed 4-20-1960) Penalty, see § 158.99

§ 158.26 FILTERS, PIPING AND PUMPS.

(A) *Filters.* Every pool shall be equipped with a recirculating system capable of filtering the entire contents of the pool in 18 hours or less, when the flow is calculated at a maximum of 5 gallons per minute, per square foot of filter area.

(1) Filters shall be capable of maintaining the clarity of the water to permit the ready identification, through an 8-foot depth of water, of a disc 2 inches in diameter which is divided into 4 quadrants in alternate colors of red and white.

(2) Filter capacity shall be such that it need not be cleaned more frequently than once every 4 days under normal conditions of operation.

(3) All filters shall be equipped with influent and effluent pressure gauges to determine the pressure differential and frequency of cleaning.

(4) All filter systems shall be equipped with an air release at the high point in the system. Each filter shall be provided with a visual means of determining when the filter has been restored to original cleanliness.

(5) Operating instructions shall be posted on every filter system and all valves shall be properly designated by noncorrosive tags, indicating the purpose and method of use.

(B) *Sand pressure filters.* Sand filter systems shall be designed and installed to operate at a rate not to exceed 5 gallons per minute, per square foot of filter area, and to backwash at a minimum of 10 gallons per minute, per square foot of surface area.

(1) Filter tanks shall be fabricated to 1956 ASME specifications for noncode pressure vessels, with the exception that standard type dished and flanged heads may be used. Tanks shall be built for a minimum of 50 pounds working pressure and tested at 150 PSI. The filter underdrain shall have an effective distribution of at least 25% of the cross-sectional area of the tank. Tanks placed underground shall be steel plate at least 3/16 inch in thickness, with an approved noncorrosive exterior coating.

(2) Filter tanks shall be supported in a manner to prevent tipping or settling.

(C) *Filter media specifications.*

(1) Filter sand shall be a hard, uniformly graded, silica material with effective particle sizes, between .45 and .55 millimeters in diameter, with uniformity coefficient of 1.45 to 1.69. There shall be no limestone or clay present.

(2) Filter sand shall be not less than 19 inches in depth with a freeboard of no less than 9 inches nor more than 12 inches.

(3) There shall be no less than 4 grades of rock, which shall be clean, noncrushed, rounded, noncalcareous material.

(4) The total depth of the rock supporting bed shall be no less than 15 inches and each grade shall be 2 inches or greater in depth. Each layer of rock shall be leveled to prevent intermixing of adjacent grades.

(5) (a) The top layer shall vary in size between 1/8 inch and 1/4 inch.

(b) The next layer shall vary in size between 1/4 inch and 1/2 inch.

(c) The next layer shall vary in size between 1/2 inch and 3/8 inch.

(d) The bottom layer shall vary in size between 1 inch and 1-1/2 inches.

(D) *Recirculating pumps.* The recirculating pump shall have sufficient capacity to provide the rated flows of the filter system, without exceeding the head loss at which the pump will deliver these flows. The pump motor shall not be operated at an overload which exceeds the service factor. The pool pump shall be equipped on the inlet side with an approved hair and lint strainer. The basket of the strainer shall be noncorrosive and have an open screen surface of at least 4 times the cross-sectional area of the inlet pipe.

(E) *Pool piping.* Piping shall be sized to permit the rated flows for filtering and cleaning without exceeding the maximum head at which the pump will provide these flows. In general, the water velocity in the pool piping should not exceed 10 feet per second. Where velocity exceeds ten feet per second, summary calculations should be provided to show that rated flows are possible with the pump and piping provided. The recirculating piping and fitting shall meet the following requirements:

(1) The vacuum fittings shall be located in accessible positions below the water line.

(2) A main outlet shall be placed at the deepest point in every pool for recirculating and emptying the pool.

(3) Pool recirculation piping passing through the pool structure shall be copper tubing with a minimum wall thickness of type "L" brass, galvanized iron, or A.S.A. Standards Polyethylene plastic piping.

(4) Filtered water inlets shall be provided in sufficient quantity and shall be properly spaced to provide a maximum circulation of the main body and surface of the pool water.

(F) *Diatomite-type filters.*

(1) Diatomite-type filters shall be designed for operation under either pressure or vacuum. The design capacity shall not exceed 3 g.p.m. per square foot of effective filter area for pressure filters and shall not exceed 2-1/4 g.p.m. per square foot of effective filter area for vacuum filters.

(2) The determination of the filter area shall be made on a basis of a true and effective supported septum surface. In the case of fabric septums, the area computation will be made on the basis of measurements of the septum support in a reasonably constant plane. Area allowance shall not be granted for folds in the septum fabric or deviations in the septum

surface which would easily bridge.

(3) The tank containing the filter elements shall be constructed of steel, plastic or other suitable material, which will satisfactorily provide resistance to corrosion, with or without coating. Pressure filters shall be designed for a working pressure equal to the shutoff head of the pump, with a factory safety of 4. Vacuum filters shall be designed to withstand the pressure developed by the weight of the water contained therein and closed vacuum filters shall, in addition, be designed to withstand the crushing pressure developed under a vacuum of 25 inches of mercury, both with a factory safety of 3.5. In either type filter where the tank is fabricated from material which is corroded by water, a suitable corrosion-resistant coating shall be applied to retard the attack.

(4) The filter elements shall be fabricated of corrosion-resistant materials throughout. They shall be designed to be adequately resistant to a differential pressure between the influent and the effluent of not less than the maximum pressure which can be developed by the circulating pump, and shall be of adequate strength to resist any additional stresses developed during the cleaning operation. The filter septum, on which the filter-aid cake is deposited, shall be provided with openings the maximum dimensions of which shall be not greater than .005 inches.

(5) (a) Provision shall be made to introduce filter aid into the filter in such a way as to evenly precoat the filter septum before the filter is placed in operation.

(b) The amount of filter aid shall be selected to provide at least the same protection to the filter septum as would be provided by the use of 1/10 pound of diatomite filter aid per square foot of filter area.

(c) Use of additional equipment to provide body feed to the filter influent is optional.

(d) Where provided, this equipment shall have the capacity to continuously and uniformly feed at a rate of not less than 1/10 pound of filter aid per square foot of filter area per 24 hours.

(6) (a) The filter piping shall be so designed that during the precoating operation the effluent from the filter shall be recirculated or run to waste and shall not be fed into the pool until free of filter aid.

(b) An exception to this requirement may be made if the filter septum is of the construction that no perceptible quantity of filter aid is introduced into the pool when the effluent discharges therein.

(7) Where dissimilar metals are used in the construction of the filter, which may set up galvanic currents, suitable provision shall be made to resist electrolytic corrosion.

(8) Filters shall be so designed and installed that they can readily be disassembled and the filter elements removed.

(1979 Code, § 158.21) (Ord. 1531, passed 6-13-1953; Am. Ord. 1818, passed 4-20-1960) Penalty, see § 158.99

§ 158.27 VALVES.

Fullway valves shall be installed throughout, to insure proper functioning of the filtration and piping system.

(A) A valve shall be installed on the main suction line located in an accessible place outside the walls of the pool.

(B) Valves up to and including 2 inches in size shall be brass, and sizes over 2 inches may have cast-iron or brass bodies. All working parts of valves shall be made of noncorrosive material.

(C) Combination valves may be installed if the materials and design comply with the intent of these standards.

(1979 Code, § 158.22) (Ord. 1531, passed 6-13-1953; Am. Ord. 1818, passed 4-20-1960) Penalty, see § 158.99

§ 158.28 WATER SUPPLY.

(A) The portable water supply to any swimming pool shall be installed as required in Chapter 10 of the Uniform Plumbing Code.

(B) Unless an approved type of filling system is installed, as required in Chapter 10 of the Uniform Plumbing Code, any source of water which may be used to fill the pool shall be equipped with backflow protection.

(C) No over-the-rim fill spout will be accepted unless located under a diving board or in a manner approved by local authorities so as to remove any hazard.

(1979 Code, § 158.23) (Ord. 1531, passed 6-13-1953; Am. Ord. 1818, passed 4-20-1960) Penalty, see § 158.99

§ 158.29 TESTS.

All pool piping shall be in compliance with these standards and the installation and construction of the pool piping system shall be in accordance with the approved plans. The entire pool piping system shall be tested with a water test of 50 PSI and proved tight before covering or concealing.

(1979 Code, § 158.24) (Ord. 1531, passed 6-13-1953; Am. Ord. 1818, passed 4-20-1960) Penalty, see § 158.99

§ 158.30 CHEMICAL TREATMENT.

The pool owner shall be instructed in the proper care and maintenance of the pool, including the use of chlorine (or any equally effective germicide and algaecide) and the importance of proper pH (alkalinity and acidity) control.

(1979 Code, § 158.25) (Ord. 1531, passed 6-13-1953; Am. Ord. 1818, passed 4-20-1960) Penalty, see § 158.99

§ 158.31 GENERAL REGULATIONS FOR POOL INSTALLATION.

Wherever plumbing regulations are established, generally the requirements are similar to those listed below:

(A) Before commencing the installation of any swimming pool, a permit authorizing the work shall be obtained from the Plumbing Department. The fees shall be as follows:

- (1) Public pools: \$10.
- (2) Residential pools: \$5.

(B) Application for permits shall be accompanied by plans and calculations in pool copy, and in sufficient detail to show the following:

- (1) Plot plan and elevations with dimensions drawn to scale;
- (2) Pool dimensions, depth and volume in gallons;
- (3) Type and size of filter systems, filtration and backwash capacities;
- (4) Pool piping layout, with all pipe sizes and valves shown, and types of materials to be used;

(5) The rated capacity and head at filtration and backwash flows of the pool pump in g.p.m. with the size and type of motor; and

- (6) Location and type of waste disposal system.

(1979 Code, § 158.26) (Ord. 1531, passed 6-13-1953; Am. Ord. 1818, passed 4-20-1960) Penalty, see § 158.99

§ 158.99 PENALTY.

(A) (1) When the Department of Buildings finds that the provisions of these regulations are not being met, or that any condition exists that endangers the life, health or safety of the users of any bathing place, he or she may order the pool closed until the condition is corrected.

- (2) Continued failure to comply with these regulations shall be cause for revocation of any operating permit.

(B) (1) Any owner of a swimming pool who violates, or aids or abets any violations of, any of the provisions of this chapter, shall upon conviction, be fined not less than \$25, nor more than \$100.

- (2) Each day of violation shall constitute a separate offense.

(1979 Code, § 158.99) (Ord. 1531, passed 6-13-1953; Am. Ord. 2291, passed 5-6-1968; Am. Ord. 3502, passed 12-19-1983)

CHAPTER 159: NUMBERING OF HOUSES AND OUT-LOTS

Section

House Numbering

- 159.01 Houses, buildings and lots on streets to be numbered
- 159.02 City Engineer to furnish certificate showing number
- 159.03 Responsibility for placing numbers on houses or buildings

Numbering of Out-lots

- 159.15 City plat; out-lots to be numbered
- 159.16 Plat to be recorded

- 159.99 Penalty

HOUSE NUMBERING

§ 159.01 HOUSES, BUILDINGS AND LOTS ON STREETS TO BE NUMBERED.

All buildings, houses, portions of land and lots adjacent to or abutting on the streets or avenues of this city shall be known and designated by the numbers on the map of the house numbers of the city on file in the office of the City Engineer.

(1979 Code, § 159.01) (Ord. 445, passed 11-5-1908) Penalty, see § 159.99

§ 159.02 CITY ENGINEER TO FURNISH CERTIFICATE SHOWING NUMBER.

It shall be the duty of the City Engineer to deliver to each owner or occupant of any building who furnishes him or her with a description of the premises so owned or occupied and an accurate statement of the location of any buildings thereon a certificate showing the number to be placed on the building.

(1979 Code, § 159.02) (Ord. 445, passed 11-5-1908) Penalty, see § 159.99

§ 159.03 RESPONSIBILITY FOR PLACING NUMBERS ON HOUSES OR BUILDINGS.

(A) It is the duty of the owner or agent having control of any house or building to see that it is properly numbered with numbers not less than 3 inches in length.

(B) These numbers shall be placed in some conspicuous place where they can be seen from the street or avenue.

(1979 Code, § 159.03) (Ord. 445, passed 11-5-1908) Penalty, see § 159.99

NUMBERING OF OUT-LOTS

§ 159.15 CITY PLAT; OUT-LOTS TO BE NUMBERED.

(A) A correct map or plat of the city shall be made, showing in addition to the lots that have already been platted and numbered all other lots or parcels of land within the city.

(B) All such lots which are not already numbered shall be denominated out-lots and numbered commencing with number 1 and running up until all parcels of land within the city, as now divided and owned by individuals, are numbered. When the map or plat is completed, it shall be placed on the records of the city as the corporation plat of the city.

(1979 Code, § 159.10) (Ord. passed 10-9-1863)

§ 159.16 PLAT TO BE RECORDED.

A duplicate copy of the plat shall be made, and it shall be certified and acknowledged by the President and Clerk of the Board to be a correct copy of the plat. The copy shall be furnished to the County Recorder and he or she shall place it in the records of his or her office. The City Clerk shall furnish the owners of the parcels or lots of land a number for the parcel or lot. This number shall be sufficient description in any conveyance of these lots or parcels.

(1979 Code, § 159.11) (Ord. passed 10-9-1863)

§ 159.99 PENALTY.

Any person who violates §§ 159.01 through 159.03 shall be fined not more than \$100 for each offense, and each day's failure to place the number shall constitute a separate offense.

(1979 Code, § 159.99) (Ord. 445, passed 11-5-1908)

CHAPTER 160: CONSTRUCTION SITE STORMWATER EROSION CONTROL

Section

160.01 Applicability

160.02 Definitions

160.03 Stormwater erosion control clearance requirements

160.04 Filing and renewal fees for stormwater erosion control clearance

160.05 Adoption of the Indiana Storm Water Quality Manual

160.06 Compliance with Rule 5

160.07 Appeal of stormwater erosion control clearances

160.08 Inspections

160.09 Enforcement

160.10 Administration

160.99 Penalty

§ 160.01 APPLICABILITY.

(A) No person shall be issued a building permit, construction permit, driveway permit, excavation permit, or other license or authorization issued by the city for construction activities that result in a land disturbing activity to take place within the corporate boundaries of the city without first having obtained a stormwater erosion control clearance from the city's Office of Public Works.

(B) No person shall engage in construction activities with a land disturbance greater than or equal to 1 acre, or disturbances of less than 1 acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 or more acres of land, within the corporate boundaries of the city, without having and maintaining in effect a stormwater erosion control clearance from the Elkhart County Soil and Water Conservation District.

(Ord. 5034, passed 6-4-2007)

§ 160.02 DEFINITIONS.

(A) *Statutory definitions.* If any term or provision contained in 327 IAC 15-5-4 or 327 IAC 15-13-5 is used in this chapter, then the term or provision shall have the same meaning in this chapter as set forth in 327 IAC 15-5-4 or 327 IAC 15-13-5.

(B) *Chapter definitions.* For purposes of this chapter, the following definitions shall be applicable:

(1) **BOARD.** The Stormwater Board of the City of Elkhart.

(2) **CITY.** The City of Elkhart, Indiana.

(3) **DEPARTMENT.** The Department of Stormwater Management of the City of Elkhart.

(4) **INTERESTED PERSON.** The applicant for a stormwater clearance, the MS4 operator, the MS4 entities in Elkhart County, Indiana including the City of Elkhart, City of Goshen, Town of Bristol, and County of Elkhart, or any person adversely affected by a stormwater erosion control clearance.

(5) **PERSON.** Includes an individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, association, company, organization, or governmental entity, whether for-profit or not-for-profit.

(6) **RULE 5.** The Storm Water Run-Off Associated with Construction Activity regulation, 327 IAC 15-5 *et seq.*

(7) **SWCD.** The Elkhart County Soil and Water Conservation District. For purposes of this chapter and Rule 5, the terms **REVIEWING AGENCY** and **SWCD** as used in Rule 5 shall refer to the Elkhart County Soil and Water Conservation District.

(Ord. 5034, passed 6-4-2007)

§ 160.03 STORMWATER EROSION CONTROL CLEARANCE REQUIREMENTS.

(A) *Applications.*

(1) An application for a building permit, construction permit, driveway permit, excavation permit, or other license or authorization issued by the city for construction activities that result in a land disturbing activity to take place within the corporate boundaries of the city shall include a calculation of the acreage to be disturbed by the proposed construction activities which calculation shall be performed in accordance with the requirements of Rule 5.

(2) Any person engaging in construction activities with a land disturbance greater than or equal to 1 acre, or disturbances of less than 1 acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 or more acres of land, within the corporate boundaries of the city, shall complete and submit an application for a stormwater erosion control clearance to the SWCD on forms required by the SWCD. For any construction activities covered by Rule 5, the applicant must also submit a copy of the application directly to the Indiana Department of Environmental Management.

(B) *Submission of construction plans.* For construction projects requiring a construction plan pursuant to 327 IAC 15-5-

6.5 (a) or (b) under Rule 5, the applicant shall submit the construction plan to the SWCD with the stormwater clearance application. If the applicant does not receive notification within 28 days after the construction plan is received by the SWCD stating that the SWCD finds that the construction plan is deficient, the applicant may submit the notice of intent letter information to the Indiana Department of Environmental Management.

(C) *Expiration and renewal of stormwater clearances.*

(1) A stormwater erosion control clearance issued by the SWCD shall expire on December 31st of the year which is 1 year after the date the stormwater clearance was issued by the SWCD. Renewal of such stormwater clearances is required unless the following has occurred:

(a) All land disturbing activities, including construction on all building lots, have been completed and the entire site has been stabilized;

(b) All temporary erosion and sediment control measures have been removed; and

(c) A notice of termination letter has been submitted to the SWCD by the expiration of the stormwater erosion control clearance.

(2) Subsequent annual renewals shall be required until all land disturbing activities, including construction on all building lots, have been completed and the entire site has been stabilized; all temporary erosion and sediment control measures have been removed; and a notice of termination has been submitted to the SWCD.

(Ord. 5034, passed 6-4-2007)

§ 160.04 FILING AND RENEWAL FEES FOR STORMWATER EROSION CONTROL CLEARANCE.

(A) *Ordinance fees.* Filing and renewal fees for stormwater erosion control clearances under this chapter shall be as follows:

(1) For project sites that are required to submit construction plans to the SWCD pursuant to this chapter, a filing fee in the amount of \$100 per disturbed acre of land and per fractional acre exceeding a whole acre for review of the construction plans shall be due and payable at the time of application to the SWCD.

(2) For project sites that are required to renew the stormwater clearance, an annual renewal fee in the amount of \$100 shall be due and payable to the SWCD no later than January 31st of the year after the expiration of the stormwater clearance.

(B) *Governmental exemption.* Local, state, and federal governmental offices, agencies, and entities shall be exempt from the filing and renewal fees under this chapter.

(C) *Indiana Department of Environmental Management fees.* In addition to these fees, the Indiana Department of Environmental Management may have its own separate and distinct fees.

(Ord. 5034, passed 6-4-2007; Am. Ord. 5158, passed 5-4-2009)

§ 160.05 ADOPTION OF THE INDIANA STORM WATER QUALITY MANUAL.

The latest version of the planning and specification guide for effective erosion and sediment control and post-construction water quality (currently known as the "*Indiana Storm Water Quality Manual*"), as amended or replaced from time to time, is hereby adopted as the technical manual of reference for the minimum control during construction and post-construction stormwater quality measures.

(Ord. 5034, passed 6-4-2007; Am. Ord. 5158, passed 5-4-2009)

§ 160.06 COMPLIANCE WITH RULE 5.

Except for state permit processing references and submittal deadlines of construction plans and permit applications in 327 IAC 15-5, Rule 5, as amended from time to time, is hereby adopted and shall provide the minimum stormwater run-off requirements associated with construction activity within the city. In the event that Rule 5 is amended from time to time in the future, however, the then current Rule 5 requirements shall govern and be applicable within the city without this chapter having to be amended.

(Ord. 5034, passed 6-4-2007)

§ 160.07 APPEAL OF STORMWATER EROSION CONTROL CLEARANCES.

Any interested person who objects to or is dissatisfied with the actions of the SWCD in approving or denying any application for a stormwater erosion control clearance may file an appeal with the Stormwater Board; provided such filing is made within 15 calendar days of the action of the SWCD in question. The action of the SWCD shall be final and conclusive after the appeal deadline has expired. Any appeal shall be filed on the forms required by the Board with the stormwater clearance file being forwarded by the SWCD to the Board. The Board shall conduct a public hearing on the appeal within 45 calendar days after receipt of the filing. After an appeal has been filed, no land disturbing activities may begin or continue

unless in compliance with the stormwater clearance if one was issued. Following the conclusion of the public hearing which may adjourn from time to time, the Board shall render a decision on the appeal which decision may affirm, modify, or overturn the action of the SWCD or refer the matter back to the SWCD for further consideration.

(Ord. 5034, passed 6-4-2007)

§ 160.08 INSPECTIONS.

The MS4 operator, the SWCD, or the Department may inspect any project site involved in construction activities regulated under this chapter at all reasonable times. All required written self-monitoring program evaluation reports for a project site must be made available to the MS4 operator, the SWCD, or the Department for inspection within 48 hours of a request.

(Ord. 5034, passed 6-4-2007)

§ 160.09 ENFORCEMENT.

(A) *Violations.* Any failure to meet the requirements of this chapter, Rule 5, the state erosion and sediment control manual, and any applicable storm water pollution prevention plan or any commission of an act prohibited by this chapter, Rule 5, or the state erosion and sediment control manual within the corporate boundaries of the city constitutes a violation of this chapter and may be enforced in accordance with the terms and conditions of this chapter.

(B) *Notice of violation.*

(1) Whenever the Department determines that a violation of this chapter has occurred, the Department may take 1 or more of the following actions:

(a) Notify the person who committed the act or failed to meet the requirements of this chapter by telephone and request compliance or cessation of the prohibited act.

(b) Notify the person who committed the act or failed to meet the requirements of this chapter in writing and order compliance or cessation of the prohibited act.

(c) Enter into an agreed order with the approval of the Board which order may include payment of a civil penalty pursuant to § 160.99.

(d) Issue a stop work order until all corrective measures have been completed.

(e) File a notice of violation before the Board describing the violation of this chapter found by the Department.

(f) File a complaint in a court of competent jurisdiction within Elkhart County seeking a judicial determination that this chapter has been violated and requesting the imposition of fines.

(2) If the Department takes any authorized action and taking such action does not result in compliance with this chapter, the Department may take any other authorized action to obtain compliance.

(3) The Department may file a complaint with a court of competent jurisdiction to enforce the terms of an agreed order or an order of the Board.

(4) Filing a notice of violation is not a prerequisite to filing a complaint alleging a violation before a court of competent jurisdiction within Elkhart County.

(5) Any written notice of violation shall be issued upon the responsible party by Certified Mail to the responsible party unless the applicable ordinance or statute requires different written notice.

(C) *Right to enter premises.*

(1) The Department shall have the right to enter any premises for any of the following reasons:

(a) To investigate any construction site to determine the need for a stormwater clearance, compliance with the terms of a stormwater clearance issued by the SWCD, or compliance with the requirements of this chapter.

(b) To verify compliance with any agreed order, order of the Board, or order of any court of competent jurisdiction.

(2) If the Department has been refused access to any part of the premises for any permitted purpose and the Department is able to reasonably demonstrate to a court of competent jurisdiction within Elkhart County that there may be a violation of this chapter, the court may grant an order allowing the Department access to all relevant parts of a premises.

(D) *Appeal of stop work order.* Any person subject to a stop work order issued under this chapter within the city may appeal the stop work order by requesting a hearing before the Board. The request for a hearing must be made within 10 calendar days of the issuance of the stop work order.

(E) *Board hearing.*

(1) Before any Board hearing is held, the person alleged to have violated this chapter shall receive written notice of the violation including the nature of the violation and a summary of the facts that constitute that violation.

(2) Any person alleged to have violated this chapter has the right to have an attorney present to cross examine witnesses and has the right to present evidence and have witnesses testify.

(3) A person found to have violated this chapter has a right to appeal the determination of the Board to a court of competent jurisdiction within 20 calendar days of the action of the Board by filing a verified complaint. The court may affirm, modify, or reverse the action taken by the Board. Any such appeal shall be heard de novo.

(Ord. 5034, passed 6-4-2007)

§ 160.10 ADMINISTRATION.

Except as otherwise provided, the Department shall administer, implement, and enforce the provisions of this chapter. Any powers granted to or duties imposed upon the Department may be authorized by the Board to designated city personnel.

(Ord. 5034, passed 6-4-2007)

§ 160.99 PENALTY.

(A) Each violation of this chapter may be subject to a civil penalty of up to \$2,500.

(B) The Department may enter upon private property and take any and all measures necessary to abate a violation if a court of competent jurisdiction has found that a violation of this chapter has occurred and has approved the action to be taken by the Department. The costs of such abatement shall be assessed to the owner of the private property.

(C) The Department, MS4 operator, or SWCD may issue a stop work order if no stormwater erosion control clearance is obtained or if any provision of this chapter is violated.

(D) The Board or any court may order the owner of the real estate or the responsible party for the operations on the real estate to take any and all actions necessary to comply with this chapter.

(E) The Department may recover reasonable attorney fees, court costs, and other expenses associated with the enforcement of this chapter.

(F) Each day a violation continues constitutes a new and separate violation.

(G) If a party has violated this chapter and continues to do so, the Department may petition any court of competent jurisdiction within Elkhart County for the issuance of a temporary restraining order or permanent injunction which restrains or requires specific compliance with this chapter.

(Ord. 5034, passed 6-4-2007)