

PART II - LAND DEVELOPMENT ORDINANCES

Chapter 101 - GENERAL AND ADMINISTRATIVE PROVISIONS

Sec. 101-1. - Violations.

- (a) A person who violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this part shall be guilty of an offense. Each day the a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such. Neither suspension nor revocation of any permit shall bar prosecution for violations of this part.
- (b) Any person who parks a motor vehicle which does not have displayed a handicapped person's decal or registration plate in a parking space reserved for handicapped persons is liable for a fine of \$25.00.

(Code 1960, § 6-1599; Code 1989, § 163.999; Ord. No. 3376; Ord. No. 5982, 7-3-1984; Ord. No. 6110, 3-18-1986; Ord. No. 6630, § 163.099, 9-15-1992; Ord. No. 8256, § 1(163.999), 2-17-2009)

Sec. 101-2. - Comprehensive land use plan.

The comprehensive land use plan for the city is hereby adopted.

(Ord. No. 8255, 2-3-2009)

Chapter 103 - AIRPORT ZONING

Footnotes:

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State Law reference— *Airport zoning, IC 8-21-10-1 et seq.*

Sec. 103-1. - Definitions.

The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Airport means the Gary Municipal Airport encompassing the area bounded by all of that portion of the east ½, section 35 T. 37 N., Range 9 West, lying between the E.J. and E. Railroad, U.S. Highway No. 12 and Grand Calumet River; and all of that portion of the S.E. ¼, section 26 T. 37 N., Range 9 West, lying between E.J. and E. Railroad and U.S. Highway No. 12; and all of that portion of west ½, section 36 T. 37 N., Range 9 West lying between U.S. Highway No. 12 and Grand Calumet River; and all of that portion of the S.E. ¼, section 36 T. 37 N., Range .9 West lying between U.S. Highway No. 12 and Grand Calumet River.

Airport elevation means the established elevation of the highest point on the usable landing area which is 591 feet above mean sea level.

Airport hazard means any structure, tree, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at the airport or is otherwise hazardous to such landing or taking off of aircraft.

Airport reference point means the point established as the approximate geographic center of the airport landing area and is established at the Gary Municipal Airport as follows: The ARP is located at the intersection of two perpendicular lines, one of which is located 1,277.96 feet perpendicular from the centerline of the NE-SE runway, and the other located 186 feet perpendicular from the centerline of the NW-SE runway. Said point being located at latitude 31°46'54.2" and longitude 87°24'37.4".

Height. For the purpose of determining the height limits in all zones set forth in this chapter and shown on the zoning map, the datum shall be mean sea level (MSL) elevation unless otherwise specified.

Landing area means the area of the airport used for the descent, landing, taking off, or taxiing of aircraft.

Nonconforming use means any structure, tree, or use of land which does not conform to a regulation prescribed in this chapter or any amendment thereto as of the effective date of such regulations.

Structure means any object constructed or installed by man, including, but without limitation, buildings, towers, smoke stacks, and overhead transmission lines.

(Code 1960, § 6-1702; Code 1989, § 150.01; Ord. No. 4164)

Sec. 103-2. - Extraterritorial authority.

Whenever and wherever enforcement of this chapter necessarily involves property or real estate situated within the boundaries of another municipality, the board of zoning appeals is granted authority to act, if authority is granted by the adjoining municipality, through its board of zoning appeals, or may act jointly with the board of zoning appeals for any other municipality. It is the intention of this section to permit the board of zoning appeals to cooperate and coordinate its efforts with any other agency or board of any adjoining municipality to effectuate the purposes and intent of this chapter.

(Code 1960, § 6-1708; Code 1989, § 150.07; Ord. No. 2897; Ord. No. 4164)

Sec. 103-3. - Enforcement.

- (a) Where there exists a conflict between any of the regulations or limitations prescribed in this chapter and any other regulations applicable to the same area, whether the conflict be with respect to height of structures or trees, the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.
- (b) It shall be the duty of the director of development and planning to administer and enforce the regulation prescribed herein. Applications required by this chapter to be submitted to the director of development and planning shall be promptly considered and granted or denied by him. Application for action by the board of zoning appeals shall be forthwith transmitted by the department of development and planning.

(Code 1960, §§ 6-1711, 6-1713; Code 1989, § 150.09; Ord. No. 2897; Ord. No. 4164)

Sec. 103-4. - Nonconforming use.

The regulation prescribed in section 103-8 shall not be construed to require the removal, lowering, or other change or alteration of any structure not conforming to these regulations as of the effective date of the ordinance from which this chapter is derived or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall

require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of the ordinance from which this chapter is derived and is diligently prosecuted and completed within two years thereof.

(Code 1960, § 6-1705; Code 1989, § 150.04; Ord. No. 2897; Ord. No. 4164)

Sec. 103-5. - Variances.

Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or use his property other than in accordance with the regulations prescribed in this chapter may apply for a variance. The variance may be allowed where a literal application or enforcement of this chapter would result in practical difficulty or unnecessary hardship and where the relief granted would not be contrary to the public interest, would do substantial justice, and be within the spirit of this chapter. Any permit or variance granted shall be so conditioned as to require the owner of the structure or tree in question to allow the city at its own expense to install, operate, and maintain thereon any markers and lights necessary to indicate to flyers the presence of an airport hazard. All requests for variances shall be in accordance with and governed by the rules and regulations of the board of zoning appeals and all laws now in effect in respect thereto.

(Code 1960, § 6-1706; Code 1989, § 150.05; Ord. No. 2897; Ord. No. 4164)

Sec. 103-6. - Appeals.

- (a) The board of zoning appeals is constituted the proper board to which all appeals from decisions rendered in the enforcement of this chapter or any other zoning law shall be taken. All appeals from the decision or ruling of any board, agency, or department of the city shall follow the rules of the board of zoning appeals and all laws of the state.
- (b) Whenever notice of any appeal is served on any board, agency, or department of the city, it shall be the duty of the secretary, chairperson, or department head of the board, agency, or department to immediately notify in writing the secretary of the board of aviation commissioners of the appeal. The board of aviation commissioners shall have the power to intervene in the proceedings and be heard in respect thereto insofar as the ruling or decision may affect the operation of the municipal airport.
- (c) No department, board, or agency of the city shall have the power to grant variances hereunder, except the board of zoning appeals. Nothing contained herein shall prevent the board of aviation commissioners from appealing any decision, grant, or ruling of the board of zoning appeals to a proper court as now provided by law.
- (d) Whenever any petition or application is filed with the board of zoning appeals for any variance under this chapter or any other zoning law affecting the airport, the board of zoning appeals shall immediately notify the secretary of the board of commissioners of the application or petition and the board of aviation commissioners shall be granted an opportunity to be heard in respect thereto.
- (e) An appeal from the decision of any board, agency, or department of the city to the board of zoning appeals shall stay all proceedings of the action appealed from unless the aggrieved person or the board of aviation commissioners certifies to the board of zoning appeals after notice of appeal has been filed with it, that by reason of the facts stated in the certificate, a stay would in his or its opinion cause unusual peril to life or property. In that case, proceedings shall not be stayed otherwise than by order of the board of zoning appeals on notice to the board of aviation commissioners.
- (f) The board of zoning appeals shall have the same power as is now granted unto it by law in relation to other

zoning matters.

(Code 1960, § 6-1707; Code 1989, § 150.06; Ord. No. 2897; Ord. No. 4164)

State Law reference— Board of zoning appeals, IC 36-7-4-901 et seq.

Sec. 103-7. - Zones.

- (a) In order to carry out the purpose of this chapter, all the land within the boundaries of the Gary Municipal Airport and within a horizontal radius of 12,000 feet from the airport reference point and a maximum height of 400 feet is divided into the following zones:
- (1) Turning zones.
 - (2) Outer area approach zones.
 - (3) Inner area approach zones.
 - (4) Transition zones.
 - (5) Conical zone.
- (b) The boundaries of these zones are shown on the city airport zoning map and made a part hereof and incorporated herein by reference. Copies of the map are on file in the office of the department of development and planning and the city clerk. There is incorporated herein by reference and made a part hereof a layout plan or map to be used in connection with the city airport zoning map, copies of which are on file in the office of the department of development and planning, the city engineer, and the city clerk of the city.

(Code 1960, § 6-1703; Code 1989, § 150.02; Ord. No. 2897; Ord. No. 4164)

Sec. 103-8. - Height limits.

Except as otherwise provided in this chapter, 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 that zone. Height limitations are computed from the established airport elevation and are established for each of the zones in question as follows:

- (1) *Turning zone.* The area within a circle with its center at the airport reference point and having a radius of 7,000 feet and a height of 150 feet above the established airport elevation.
- (2) *Outer area approach zones.*
 - a. *NE-SW runway.* These zones are located at both ends of the NE-SW runway and begin 1,200 feet from the end of the runway with a width of 450 feet centered on the extended centerline of the runway and a height of 50 feet and extends outward and upward at a slope of 20 to 1 expanding to a width of 2,250 feet at a horizontal distance of 9,000 feet. The maximum height at the 9,000 feet distance is 500 feet above the established airport elevation.
 - b. *NW-SE runway.* These zones are located at both ends of the NW-SE runway with a width of 900 feet centered on the extended centerline of the runway and a height of 50 feet and extends outward and upward at a slope of 40 to 1 expanding to a width of 2,500 feet at a horizontal distance of 8,000 feet. Maximum height at the 8,000 feet distance is 250 feet above the established airport elevation.
- (3) *Inner area approach zones.*
 - a. *NE-SW runway.* These zones are located at both ends of NE-SW runway and these inner area approach

zones commence 200 feet from the end of the runway with a width of 250 feet centered on the extended centerline of the runway and extends outward and upward at a slope of 20 to 1, and expanding to a width of 450 feet at a horizontal distance of 1,000 feet. Maximum height at the 1,000 feet distance is 50 feet above the established airport elevation.

- b. *NW-SE runway.* These zones are located at both ends of the NW-SE runway and these inner area approach zones commence 200 feet from the end of the runway with a width of 500 feet centered on the extended centerline of the runway and extends outward and upward at a slope of 40 to 1, and expanding to a width of 900 feet at a horizontal distance of 2,000 feet. Maximum height at the 2,000 feet distance is 50 feet above the established airport elevation.

(4) *Transition zones.*

- a. *NE-SW runway.* These zones commence at 125 feet at right angles to the longitudinal centerline of the NE-SW runway and extend upward at a slope of one foot vertical height for each seven feet horizontal distance until a maximum height of 50 feet above the established airport elevation is attained. In addition to the foregoing, there are established height limits of one foot vertical height for each seven feet horizontal distance measured from the edges of the inner area approach zone extending upward and outward to a maximum of 50 feet above the established airport elevation.
- b. *NW-SE runway.* These zones are exactly the same as for the transition zones of the NE-SW runway with the only exception being that they start 250 feet at right angles to the longitudinal centerline of the NW-SE runway. The slope is one foot in vertical height for each seven feet horizontal distance until a maximum height of 50 feet above the established airport elevation is reached.

- (5) *Conical zone.* A zone extending from the periphery of the turning zone outward 5,000 feet and upward at a slope of one foot of vertical distance to each 20 feet of horizontal distance measured in an inclined plane passing through the airport reference point. The maximum height at a horizontal distance of 12,000 feet in radius from the airport reference point is 400 feet above the established airport elevation.

(Code 1960, § 6-1704; Code 1989, § 150.03; Ord. No. 2897; Ord. No. 4164; Ord. No. 4230; Ord. No. 4236)

Sec. 103-9. - Airport hazards.

It is found that an airport hazard endangers the lives and property of users of the Gary Municipal Airport and of occupants of land in its vicinity, and if of the obstruction type, reduces the area available for the landing, taking off, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Gary Municipal Airport and the public investment therein. Accordingly, the following regulations are established.

- (1) The erection or establishment of an airport hazard is a public nuisance and an injury to the region served by the Gary Municipal Airport.
- (2) It is necessary, in the interest of public health, public safety, and general welfare of the inhabitants of the city, that the creation or establishment of airport hazards be prevented to obviate the destruction or impairment of the utility of the airport and the public investment therein.
- (3) The prevention of airport hazards shall, to the extent legally possible, be accomplished by the exercise of the police power without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards, and the elimination, removal, alteration, mitigation, or marking and lighting

of existing airport hazards are public purposes, for which political subdivisions may raise and expend public funds and acquire land or interests in land.

- (4) Notwithstanding other provisions of this chapter, no use may be made of land within any zone established by this chapter in such a manner as to create electrical interference with radio communication between the airport and aircraft or make it difficult for flyers to distinguish between airport lights and others and which may result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the airport, or otherwise endanger the landing, taking off, or maneuvering of aircraft.

(Code 1960, § 6-1709; Code 1989, § 150.08; Ord. No. 2897; Ord. No. 4164)

Chapter 105 - BUILDINGS AND BUILDING REGULATIONS

ARTICLE I. - IN GENERAL

Secs. 105-1—105-18. - Reserved.

ARTICLE II. - PERMITS

Sec. 105-19. - Inspection fees.

- (a) In addition to permit fees, inspection fees are instituted to adjust the cost of operations. The inspection fee shall as provided in chapter 20. An inspection fee as provided in chapter 20 will be paid upon obtaining a permit for each specialty permit that is required.
- (b) If an owner or contractor fails to keep an inspection appointment, that failure to keep the appointment counts as a fee inspection and may result in an added inspection cost to the person failing to keep the appointment.
- (c) No person shall engage in the business of contracting without first procuring from the city controller a certificate evidencing payment of the fees prescribed in this section.

(Code 1989, § 111.12; Ord. No. 6198, 8-4-1987)

Sec. 105-20. - Requirements.

- (a) Permits shall not be issued by the building commissioner to anyone except a duly licensed contractor or his duly authorized agent under the provisions of this article.
- (b) Permits shall be granted to the actual owner of the premises in which that owner actually resides. Any permit issued to the owner of any property that is not the place of permanent residence shall be issued at the discretion of the building commissioner for only minor or cosmetic work.
- (c) The building commissioner may revoke a permit in case of any false statement or misrepresentation of facts in the application on which a permit was based, or in the event a structure or part thereof is condemned pursuant to this Code.
- (d) Any person applying for a permit to do work on property avowing ownership of the property must show proof of ownership by way of a warranty, deed, or tax statements along with any acceptable identification bearing that person's picture and place of residence.

- (e) Although a homeowner is entitled to a permit to do maintenance or improvement work to the place where the owner resides, that person must demonstrate knowledge of performing the anticipated work. Depending upon the work or project the building commissioner may require an oral or very basic written examination. The examination fee will be as established in chapter 20. If the examinee passes the examination, the portion of the examination fee provided for in chapter 20 will be applied toward the permit cost. If more than one trade is involved in completing a work project then an examination may be required for each specialty of work. A maximum examination fee provided for in chapter 20 may be charged regardless of the number of required specialty examinations permits are required.
- (f) Where an owner is going to do part of the work on any given project in conjunction with a duly licensed contractor, the owner shall still be obligated to obtain permits for his portion of work that is to be undertaken. No permits will be issued to anyone in any case where permits are required for more than one specialty on any given project until the first person applying for a permit can produce at least a written and signed contract by all necessary special contractors for their portion of completed work.
- (g) Where a property owner applies for a permit for the purpose of improvement, if the property is a structure where the owner does not reside, the cost of the examination fees shall be doubled with a maximum cost provided for in chapter 20 and a maximum of this amount provided for in chapter 20 being applied to the cost of permit.
- (h) In cases where an owner has been stopped from doing any work on a project because he failed to obtain a permit, after a determination has been made whether the work is done in a good workmanship manner and is in compliance with applicable code standards, the cost of the permit shall be 50 percent more than its normal cost. If there is any reason for doubt as to the capabilities of the owner to complete the project in a good workmanship manner or in compliance with any applicable code, the building commissioner shall require the owner to take a basic written examination.
- (i) Any work regardless of the stage of completion that is not in compliance with the building code shall be ordered to be brought into compliance by the building commissioner by whatever means will produce the desired results. The building commissioner may, if he deems it necessary, cause any unacceptable work to be dismantled through that part which is unacceptable and require that the work be performed by a competent and duly licensed contractor if the property owner still desires to have the project completed.
- (j) Where a project is completed and it comes to the attention of the building commissioner that a homeowner failed to obtain any required permits, the cost of the permit shall be doubled. If any work is deemed to be unacceptable workmanship and/or not in compliance with any applicable codes, the building commissioner may act in the same manner as stated in this section.

(Code 1989, § 111.13; Ord. No. 6198, 8-4-1987)

Sec. 105-21. - Suspension or revocation of permit.

The building commissioner may, in writing, suspend or revoke a permit issued under provisions of this Code whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any city ordinance, regulation, or any provision of this Code.

(Code 1989, § 111.15; Ord. No. 6198, 8-4-1987)

Secs. 105-22—105-45. - Reserved.

ARTICLE III. - BUILDING CODE

Footnotes:

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State Law reference— *Statewide code of fire safety and building laws, IC 22-13-2-1 et seq.*

DIVISION 1. - GENERALLY

Sec. 105-46. - Penalty.

If any person shall violate any of the provisions of this article 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 article for each such violation, failure or refusal, such person shall be guilty of an offense.

(Code 1989, § 151.99; Ord. No. 6228, 2-2-1988)

Sec. 105-47. - Remedies.

The building commissioner shall in the name of the city bring actions in the superior or circuit courts of the county, for mandatory and injunctive relief in the enforcement of and to secure compliance with any 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 article.

(Code 1989, § 151.20; Ord. No. 6228, 2-2-1988)

Sec. 105-48. - Purpose.

The purpose of this article 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.

(Code 1989, § 151.20; Ord. No. 6228, 2-2-1988)

Sec. 105-49. - Scope.

The provisions of this article apply to the construction, alterations, repair, use, occupancy, maintenance and additions to all buildings and structures, other than fences, in the city.

(Code 1989, § 151.04; Ord. No. 6228, 2-2-1988)

Sec. 105-50. - Violations.

It shall be unlawful for any person, 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, other than fences, in the city or cause or permit the same to be done, contrary to or in violation of the provisions of this article.

(Code 1989, § 151.18; Ord. No. 6228, 2-2-1988)

Sec. 105-51. - Right of appeal.

All persons shall have the right to appeal the building commissioner's decision first through the board of zoning appeals and then to the fire prevention and building safety commission of the state in accordance with the provisions of IC 22-13-2-7 and IC 4-21.5-3-7.

(Code 1989, § 151.19; Ord. No. 6228, 2-2-1988)

Sec. 105-52. - Incorporation of rules by reference.

(a) Building rules promulgated pursuant to IC 22-13-2-2 are hereby adopted.

(b) Two copies of adopted building rules, codes and standards are on file and available for public inspection in the office of the building department and the city clerk.

(Code 1989, § 151.05; Ord. No. 6228, 2-2-1988)

State Law reference— Incorporation by reference IC 36-1-5-4.

Sec. 105-53. - 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.

Code 1989, § 151.017; No. 6228, 2-2-1988)

Secs. 105-54—105-79. - Reserved.

DIVISION 2. - ADMINISTRATION AND ENFORCEMENT

Subdivision I. - In General

Sec. 105-80. - Authority.

The building commissioner is hereby authorized and directed to administer and enforce all of the provisions of this article. Whenever in this article 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 building department, this shall be construed to give such officer only the discretion of determining whether this article has been complied with; and no such provision shall be construed as giving any officer discretionary powers as to what this article shall be, or power to require conditions not prescribed by ordinances or to enforce this article in any arbitrary or discriminatory manner.

(Code 1989, § 151.03; Ord. No. 6228, 2-2-1988)

Sec. 105-81. - Stop order.

Whenever any work is being done contrary to the provisions of this chapter, the building commissioner may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the building commissioner to proceed with the work.

(Code 1989, § 151.15; Ord. No. 6228, 2-2-1988)

Sec. 105-82. - Certificate of occupancy.

No certificate of occupancy for any building or structure constructed after the adoption of the ordinance from which this article is derived shall be issued unless such building or structure was constructed in compliance with the provisions of this article. It shall be unlawful to occupy any such building or structure unless a full, partial, or temporary certificate of occupancy has been issued by the building commissioner.

(Code 1989, § 151.16; Ord. No. 6228, 2-2-1988; Ord. No. 6234, 3-15-1988)

Secs. 105-83—105-107. - Reserved.

Subdivision II. - Permit

Sec. 105-108. - Required.

A permit shall be obtained before beginning construction, alteration or repair of any building or structure using forms furnished by the building commissioner, and all fees required by chapter 20 shall be paid to the building department of the city.

(Code 1989, § 151.07; Ord. No. 6228, 2-2-1988)

Sec. 105-109. - Application for permits.

No building permit shall be issued for the foregoing purposes 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 addition, a copy of a design release, issued by the building law compliance officer pursuant to IC 22-15-3-1, shall be provided to the building commissioner before issuance of a permit for construction covered by such design release.

(Code 1989, § 151.06; Ord. No. 6228, 2-2-1988)

Sec. 105-110. - Multifamily structure recycling plan.

Persons or entities applying for building permits for multifamily structures, including but not limited to duplexes, fourplexes and other such structures, shall provide as part of their submission, a plan describing how the solid waste for the occupants of such structures will be managed, including reduction, reuse and recycling steps taken to reduce their wastestream.

(Ord. No. 7701, 3-15-2005)

Sec. 105-111. - Demolition recycling plan.

Individuals, businesses or other entities, or any other applicant, upon being permitted to demolish any structure, be it residential, business or otherwise or retaining any renewal thereof, shall provide as part of its submission a plan describing how material will be managed, including reduction, reuse and recycling steps taken to reduce its wastestream.

Sec. 105-112. - Review of application.

Prior to the issuance of any building permit, the building commissioner shall:

- (1) Review all building permit applications to determine full compliance with provisions of this article.
- (2) Review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding.
- (3) Review building permit applications for major repairs with the floodplain area having special flood hazards to determine that the proposed repair uses construction materials and utility equipment that are resistant to flood damage, and uses construction methods and practices that will minimize flood damage.
- (4) Review building permit applications for new construction or substantial improvements within the floodplain area having special flood hazards to assure that the proposed construction (including prefabricated and mobile homes) is protected against flood damage, is designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure, flood damage, and uses construction methods and practices that will minimize flood damage.

(Code 1989, § 151.11; Ord. No. 6228, 2-2-1988)

Sec. 105-113. - 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.

(Code 1989, § 151.08; Ord. No. 6228, 2-2-1988)

Secs. 105-114—105-139. - Reserved.

Subdivision III. - Inspections

Sec. 105-140. - Required.

After the issuance of any building permit, the building commissioner shall 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 article and the terms of the permit. Reinspections of work found to be incomplete or not ready for inspection are subject to assessment of reinspection fees as prescribed in this article.

(Code 1989, § 151.12; Ord. No. 6228, 2-2-1988)

Sec. 105-141. - Inspection assistance.

The chief of the fire department, or his designated representative, shall assist the building commissioner in the inspection of fire suppression, detection and alarm systems and shall provide reports of such inspection to the building commissioner.

(Code 1989, § 151.13; Ord. No. 6228, 2-2-1988)

Sec. 105-142. - Entry authorized.

Upon presentation of proper credentials, the building commissioner or his duly authorized representatives may enter at reasonable times any building, structure or premises in the city to perform any duty imposed upon him by this article.

(Code 1989, § 151.14; Ord. No. 6228, 2-2-1988)

Secs. 105-143—105-167. - Reserved.

ARTICLE IV. - ELECTRICAL CODE

Sec. 105-168. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Electrical work means all erecting, altering, repairing, servicing, maintaining, or installing of materials, devices, appliances, electrical signs, apparatus, motors, generators, fixtures and equipment used for the distribution, transmission, and supply of electrical energy, including conduits, tubes, ducts, raceways, wires, cables, fuses and similar materials used in the electrical industry for carrying and distributing electrical current, but not limited to the foregoing.

(Code 1960, § 5-1302; Code 1989, § 152.01; Ord. No. 2438)

Sec. 105-169. - Violations.

Any person violating any part of this article, with reference to the payment of fees or the correcting of defective work, shall not be entitled to any permits or inspections as provided in this article until defects are corrected and fees paid upon receiving ten days' notice from the electrical inspector to correct defective work and pay fees.

(Code 1960, § 5-1311; Code 1989, § 152.09; Ord. No. 2438)

Sec. 105-170. - Inspections.

- (a) The electrical inspector shall have the right during reasonable hours to enter any building or premises in the discharge of his official duties or for the purpose of making any inspection, reinspection or test of the electrical equipment contained therein or its installation. 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 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 such equipment in safe condition. If such work is not completed within 15 days, or any longer period that may be specified by the electrical inspector in such notice, the electrical inspector shall have the authority to disconnect or order the discontinuance of electric service to such electrical equipment. 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) No electrical wiring or electrical work of any nature shall be concealed or enclosed before it shall have been inspected by the electrical inspector.

(Code 1960, §§ 5-1304, 5-1305; Code 1989, § 152.03; Ord. No. 2438)

Sec. 105-171. - Certificate of compliance.

No electrical current shall be turned on in any building, residential or commercial, whether vacant or inhabited, until all fees are paid and a certificate issued by the electrical inspector showing that the electrical work has been completed according to the provisions of this article. Partial service releases granted by the electrical inspector for the convenience of contractors are invalid after 30 days unless renewed.

(Code 1960, § 5-1306; Code 1989, § 152.04; Ord. No. 2438; Ord. No. 4414)

Sec. 105-172. - Electrical signs or displays.

All electrical sign wiring and electrical displays, whether of temporary or permanent nature, shall be subject to the approval of the electrical inspector and no electrical work shall be performed or equipment installed until the proper electrical permit is obtained.

(Code 1960, § 5-1308; Code 1989, § 152.06; Ord. No. 2438)

Sec. 105-173. - Inspection fees.

- (a) At the time of obtaining the permit to do the electrical work, fees for inspection by the electrical inspector shall be paid to the city controller according to the schedule, chapter 20.
- (b) Fees and applications for electric signs. Applications for all electric signs must be accompanied by drawings, plans, and zoning certificate before permit is given. Any deviation from this order shall be considered a violation and will be handled accordingly. No work shall be started until a permit is obtained.

(Code 1960, § 5-1310; Code 1989, § 152.08; Ord. No. 2438; Ord. No. 3936; Ord. No. 4414)

Secs. 105-174—105-199. - Reserved.

ARTICLE V. - SWIMMING POOLS

Sec. 105-200. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Private means not open to the public, not publicly owned, or otherwise regulated by the state, either by statutes or by rules or regulations of one of its administrative bodies.

Swimming pool means an artificially constructed, non-portable pool capable of being used for swimming or bathing, having a depth of three feet or more at any point.

(Code 1960, § 8-1201; Code 1989, § 161.01; Ord. No. 3484)

Sec. 105-201. - Permit for private pools.

A permit shall be applied for and issued from the department of health before construction shall begin on any private swimming pool. The application for the permit shall be accompanied by a complete and detailed set of plans and specifications of the swimming pool. Before any permit shall be issued, such plans and specifications shall be approved by the health department; and before any swimming pool shall be used, a final inspection and approval must be had from the health department.

(Code 1960, § 8-1202; Code 1989, § 161.02; Ord. No. 3484)

Sec. 105-202. - Location; construction standards.

- (a) Swimming pools shall not be any nearer than six feet from the side or rear lot lines or from any house, building, or residence.
- (b) No exposed electric wires shall be nearer than five feet from the water's edge, nor shall any exposed and permanently installed electric wire within 25 feet from the water's edge of the pool be less than ten feet above the ground, nor shall wires of any kind cross or be over the water surface unless otherwise approved by the building commissioner. Any underwater lighting shall be accomplished by the use of methods and materials approved for such purposes.
- (c) There shall be no cross connections of the city water supply with any other source of water supply for the pool. The line from the city water supply to the pool shall be protected against backflow of polluted water by means of an air gap and shall discharge at least six inches above the maximum high-water level of the make-up tank of the pool.
- (d) The drain line for the pool may be connected to the city sewer system if the following provisions are complied with:
 - (1) Pool drain shall be connected to the storm sewer if one is available.
 - (2) Provisions shall be made for adjusting the installation thereof so as to keep the germicidal or bacterial protection of the water in the pool equal to a standard of 0.5 parts per million minimum.
 - (3) There shall be testing devices capable of accurately measuring such.
 - (4) All swimming pools to be constructed or which are already constructed shall be enclosed by a fence which shall be at least four feet in height and which shall be of a type not readily climbed by children. The gates shall be of a self-closing and latching type with the latch on the inside of the gate, not readily available for children to open. If the entire premises of the residence is enclosed, then this provision may be waived upon inspection and approval of the residence enclosure. Swimming pools already constructed shall comply with this section within 60 days after the passage of this article.

(Code 1960, § 8-1203; Code 1989, § 161.03)

Sec. 105-203. - Inspections.

The health department shall have the right at any reasonable hour to inspect any swimming pool for the purpose of determining that all provisions of this article are fulfilled and complied with by all persons.

(Code 1960, § 8-1205; Code 1989, § 161.04; Ord. No. 3484)

ARTICLE VI. - HOUSING CODE

DIVISION 1. - GENERALLY

Sec. 105-231. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approved means approved by the building commissioner charged with responsibility for administering this article.

Available means a water sewer or electrical system shall be deemed available when a suitable connection to the system lies within 300 feet of the premises to be served.

Basement means a portion of a building located partly underground but having less than half of its clear floor-to-ceiling height below the average grade of adjoining ground.

Building inspector means the commissioner of buildings of the city or his authorized representative.

Building permit means a building permit, plumbing permit, electrical permit or sewer permit.

Cellar means a portion of a building located partly or wholly underground and having half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

Dwelling means any structure which is wholly or partly used or intended to be used for human habitation.

Dwelling unit means any room or group of rooms located within a dwelling and forming a single habitable unit, which facilities are used or intended to be used for living, sleeping, cooking, or eating.

Extermination means the control and elimination of insects, rodents, or other pests by eliminating their harborage places, by removing or making inaccessible materials that may serve as their food, by poisoning, spraying, fumigating, trapping, or any other recognized and legal pest elimination measures approved by the health commissioner.

Fire inspector means the chief of the fire department or his authorized representative.

Garbage means animal and vegetable waste or any other similar matter resulting from the handling, preparation, cooking, or consumption of food.

Habitable floor area means the square footage in a habitable room which shall be used in computing maximum permissible occupancy. At least one half of the habitable floor area shall have a height of at least seven feet, and the floor area of that part of any room where ceiling height is less than five feet shall not be considered in computing habitable floor area.

Habitable room means a room or enclosed floorspace used or intended to be used for living, sleeping, cooking, or eating purposes. Private laundries, bathrooms, toilet rooms, pantries, storerooms, corridors, rooms for mechanical equipment for services or spaces in attics are not habitable rooms.

Health officer means the health commissioner of the city or his authorized representative.

Hotel means any building or portion thereof designed or used for supplying food or shelter to residents or guests and containing more than 15 sleeping rooms above the first story.

Infestation means the presence within or around a dwelling of any insects, rodents, or other pests.

Minor violation means structural deterioration and environmental conditions.

Multiple dwelling means any dwelling containing more than two dwelling units.

Occupant means any person over one year of age living, sleeping, cooking or eating in or having actual possession of a dwelling unit or rooming unit.

Operator means any person who has charge or control of a building or part thereof in which dwelling units or rooming units are let.

Owner means any person who alone or jointly with others:

- (1) Shall have the legal title (fee or equitable) to any dwelling or dwelling unit with or without accompanying actual possession thereof;
- (2) Shall be a lessee of the premises which are sublet to others; or
- (3) Shall have charge, care, or control of any dwelling unit in fiduciary capacity whatsoever. Any such person thus representing the actual owner shall be bound by the provisions of this chapter to the same extent as if he were the actual owner.

Plumbing means all of the following supplied facilities and equipment: gas pipes, gas-burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catchbasins, drains, vents and any other similarly supplied fixtures together with all connections to water, sewer and gas lines.

Rooming unit means any room or group of rooms forming a single habitable unit intended to be used for living and sleeping but not for cooking and eating.

Roominghouse means any dwelling or that part of any dwelling containing one or more rooming units in which space is let by the owner or operator to five or more persons who are not members of the immediate family of such owner or operator.

Rubbish means combustible and noncombustible waste materials except garbage; and the term "rubbish" shall include the residue from the burning of wood, coal, coke and other combustible material, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, leaves, tin cans, metal, mineral matter, glass, crockery and dust and any other similar material.

Supplied means paid for, furnished, or provided by or under the control of the owner or operator.

(Code 1960, § 5-1601; Code 1989, § 154.02; Ord. No. 3425; Ord. No. 4415; Ord. No. 6635, 10-22-1992)

Sec. 105-232. - Penalty.

Any person who fails to comply with the notices and orders within 30 days of the date of compliance fixed by the building commissioner shall, upon conviction, be guilty of an offense.

(Code 1960, § 5-1618; Code 1989, § 154.99; Ord. No. 3425; Ord. No. 4415; Ord. No. 6635, 10-22-1992)

Sec. 105-233. - Application of housing code.

- (a) This article shall not be construed as repealing any other ordinance or codes fixing other standards or requirements for construction or alteration of existing or new construction.
- (b) This housing code shall apply to all buildings used for residential purposes whether or not such buildings were erected, altered, or converted in full or substantial compliance with ordinances in force at the time of their erection, alteration, or conversion and whether or not such buildings were erected, altered, or converted prior to the effective date of this housing code. Whenever any such ordinance imposes higher standards of health and safety than the standards imposed by this housing code, then the higher standards shall apply.
- (c) In the interpretation and application of this chapter, the provisions of this housing code shall be held to be the minimum requirements for the promotion of the public health, safety, morals, and welfare. Where the conditions imposed by any provisions of this housing code are either more restrictive or less restrictive than comparable conditions imposed by any provision of any other law, ordinance, code, rule or regulation of any kind, the regulations which impose higher standards or requirements shall govern. In any case where a provision of this article is found to be in conflict with a provision of any zoning, building, fire, safety, or health ordinance or code of the city existing on the effective date of the ordinance from which this article is derived, the provision which establishes the higher standard for the promotion and protection of public health and safety shall prevail.

(Code 1960, § 5-1616; Code 1989, § 154.15; Ord. No. 3425; Ord. No. 6635, 10-22-1992)

Secs. 105-234—105-259. - Reserved.

DIVISION 2. - ADMINISTRATION AND ENFORCEMENT

Sec. 105-260. - Administration by building commissioner.

- (a) The building commissioner is the designated authority to administer the housing code. The building commissioner is empowered to deputize an adequate number of housing inspectors to carry out the program.
- (b) It shall be the duty of the building commissioner to establish a systematic and planned citywide housing code compliance program, utilizing to the fullest extent possible, the provisions of the city's neighborhood analysis and the community renewal program for the purpose of effecting a complete program of slum prevention, structural rehabilitation, and neighborhood conservation on a citywide basis.
- (c) The mayor shall establish a liaison between the building commissioner, planning director, health commissioner, fire chief and the executive secretary of the department of redevelopment for the purpose of effecting a complete program of slum elimination, rehabilitation, neighborhood conservation, and slum prevention; and it shall be the duty of the building commissioner to place into effect or cause to be placed into effect the purpose and spirit of this article.
- (d) The building commissioner shall establish a board of appeals which shall consist of the building commissioner, health commissioner, fire prevention chief, the executive director of the human relations commission and one member of the common council designated by the majority vote of the council. The board of appeals shall establish an assistance program for the purpose of aiding, assisting or advising owners or occupants in complying with any notice issued under the provisions of this Code.
- (e) The city corporate counsel shall assign staff assistance to the building commissioner for the express purpose of

providing necessary legal services for housing code enforcement.

- (f) The building commissioner shall maintain accurate and up to date records in respect to the condition of buildings. All inspection reports made by building inspectors, housing inspectors, plumbing inspectors, electrical inspectors, health and sanitary inspectors, fire inspectors, police department members or any member of any other governmental agency shall be reported to the building commissioner. Such records shall be available for immediate referral to the mayor, the board of appeals and the board of public works and safety.
- (g) The building commissioner shall prepare and distribute a monthly and annual report setting out complete workload and data pertaining to departmental operations. The housing code data shall indicate results obtained in the elimination of substandard housing. The individual case records shall be open to inspection during normal working hours.

(Code 1960, § 5-1602; Code 1989, § 154.03; Ord. No. 3425; Ord. No. 4415; Ord. No. 6635, 10-22-1992)

Sec. 105-261. - Rules and regulations.

The building commissioner is authorized to make and adopt such written rules and regulations as may be necessary for the proper enforcement of the provisions hereof; provided, however, that such rules and regulations shall not conflict with the express provisions of this article. The building commissioner shall file a certified copy of all such rules and regulations, or any changes or modification thereof, in his office and with the city clerk. Such rules and regulations shall have the same force and effect as the provisions hereof and any violation thereof shall be punished in the same manner as now provided for a violation of any provision hereof.

(Code 1960, § 5-1606; Code 1989, § 154.07; Ord. No. 3425; Ord. No. 6635, 10-22-1992)

Sec. 105-262. - Inspections.

- (a) The building commissioner, health commissioner and fire chief are jointly and severally authorized to make inspections to determine the condition of dwellings, dwelling units, and premises located within the city in order that they may perform their duty of safeguarding the health and safety of the occupants, of dwellings and of the general public. For the purpose of making such inspections the building commissioner, health commissioner and fire chief are authorized to enter, examine, and survey, at all reasonable times, any dwelling, dwelling unit, rooming unit, and appurtenances thereto. The owner or occupant of every dwelling, dwelling unit, and room unit or the person in charge thereof shall allow the officials access to such dwelling, dwelling unit, or rooming unit, and appurtenances thereto at all reasonable times for the purpose of such inspection, examination, and survey.
- (b) Every occupant of a dwelling, dwelling unit, or rooming unit shall allow the owner thereof, his agents or employees, access to any part of the premises at all reasonable times for the purpose of making such repairs, installations, or alterations as may be necessary to effect compliance with the provisions of this article.

(Code 1960, § 5-1603; Code 1989, § 154.04; Ord. No. 3425; Ord. No. 6635, 10-22-1992)

Sec. 105-263. - Housing violations.

- (a) Whenever the building commissioner shall determine that there has been a violation of any of the provisions of this article, he shall serve notice of the alleged violation upon the person responsible therefor and to any known agent of such person as hereinafter provided. The notice shall meet the following requirements:

- (1) Be in writing;

- (2) Include a concise statement of the alleged violation;
- (3) Fix a reasonable time within which the alleged violation shall be corrected.
- (b) The notice shall be served upon the person or his agent or the occupant, as the case may be, in person; and if such service cannot be had, then a copy of the notice shall be sent by ordinary first class mail to the last known address of the owner or occupant or by posting a copy thereof in a conspicuous place in or upon the premises affected by the notice.
- (c) Any owner or person who is aggrieved with the orders of the enforcing officer shall have the right of appeal to the board of appeals established by section 105-260(d). The hearing before the board of appeals shall be a public meeting with records of its proceedings duly recorded and all findings of the appeals board shall be a part of the record. If a satisfactory method is not determined at the board of appeals level, the building commissioner shall proceed to effect compliance in accordance with existing state statutes and all amendments thereto.

(Code 1960, § 5-1604; Code 1989, § 154.05; Ord. No. 4415; Ord. No. 6635, 10-22-1992)

Sec. 105-264. - Appeal.

- (a) Any person aggrieved by the action of the board of public works and safety in affirming, changing or modifying the order of the building commissioner shall have the right to appeal same to the county circuit court or superior court pursuant to law.
- (b) Whenever the building commissioner finds that an emergency exists which requires immediate action in order to protect the public health, public safety, public morals, and public welfare, he may, without notice or hearing, issue an order reciting the existence of such emergency and require that such action be taken as he may deem necessary to meet the emergency. Notwithstanding other provisions of this article, such orders shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately but, upon petition filed with the building commissioner, shall be afforded a hearing as soon as possible in the manner provided in section 105-263. Upon such hearing the board may affirm, modify or revoke the order after which the order, if affirmed or as modified, shall be complied with immediately.

(Code 1960, § 5-1605; Code 1989, § 154.06; Ord. No. 3425; Ord. No. 4415; Ord. No. 6635, 10-22-1992)

Secs. 105-265—105-291. - Reserved.

DIVISION 3. - STANDARDS AND REQUIREMENTS

Sec. 105-292. - Duties of owners and occupants.

- (a) Every owner of a dwelling or dwelling unit containing two or more dwelling units shall be responsible for maintaining in a sanitary condition the shared or public areas of the dwelling and premises thereof.
- (b) Every occupant of a dwelling unit shall keep in a sanitary condition that part of the dwelling, dwelling unit, and premises thereof which he occupies and controls.
- (c) Every occupant of a dwelling or dwelling unit shall dispose of all his rubbish in a sanitary manner by placing it in the rubbish containers required by section 34-32(a).
- (d) Every occupant of a dwelling unit shall dispose of all his garbage and any other organic waste which might provide

food for rodents in a sanitary manner by placing it in the garbage disposal facilities or garbage storage containers required by section 34-32(b).

- (e) Garbage and rubbish disposal facilities shall be furnished by the owner, and the owner shall be responsible for the removal of all garbage and waste from the physical premises of the building and lot. No garbage containers shall be left in corridors or hallways. A minimum of two garbage cans per dwelling unit shall be provided.
- (f) Every occupant of a dwelling unit shall be responsible for hanging all screens and double or storm doors and windows whenever the same are required under the provisions of this division or of any regulation adopted pursuant thereto, except where the owner has agreed to supply such service.
- (g) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, or other pests therein or on the premises.
- (h) Notwithstanding the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a ratproof or reasonably insectproof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two or more dwelling units in any dwelling or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner. Whenever dwellings are exterminated, such extermination shall be conducted by an approved, licensed exterminator.
- (i) Every occupant of a dwelling unit shall keep all plumbing fixtures therein in a sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof.
- (j) Whenever a dwelling unit is vacated it shall be the duty of the owner to place same in a sanitary, habitable condition, free from infestation, before renting such dwelling unit to another occupant.
- (k) An owner shall be responsible for violations or duties imposed upon him by this division even though:
 - (1) An obligation is also imposed on the occupant by this division; or
 - (2) The owner has by agreement imposed on the occupant the duty of furnishing required equipment or by complying with this division.

(Code 1960, § 5-1611; Code 1989, § 154.12; Ord. No. 3425; Ord. No. 4415; Ord. No. 6635, 10-22-1992)

Sec. 105-293. - Roominghouses.

No person shall occupy a roominghouse, or shall occupy or let to another for occupancy, any rooming unit in any roominghouse except in compliance with the provisions of every section of this article, except the provisions of section 105-294(1) and (2).

- (1) No person shall operate a roominghouse, unless he holds a valid roominghouse license issued by the office of the city controller in the name of the operator and for the specific dwelling unit. The operator shall apply to the office of the city controller for the license. Before the license shall be issued, certification shall be made by the building commissioner, health commissioner and fire chief that all provisions of this division and all other applicable ordinances have been fully complied with. The license shall be displayed in a conspicuous place within the roominghouse at all times. No such license shall be transferable. It shall be the duty of any person holding such license to notify the city controller, in writing, within 24 hours, of any transfer or other disposition of the premises for which the license shall have been issued. Such notice shall include the name

and address of the person succeeding to the ownership or control of the roominghouse. Every roominghouse license shall expire at the end of one year following its date of issuance, unless sooner suspended or revoked as hereinafter provided.

- (2) Any person whose application for such a license to operate a roominghouse has been denied may request and shall be granted a hearing on the matter as provided in section 105-263(c).
- (3) Whenever an inspection is made of any roominghouse by the building commissioner, health commissioner or fire chief and it is found that conditions or practices exist which are in violation of any provisions of this division, the building commissioner shall give notice in writing to the operator of the roominghouse that unless the conditions or practices are corrected within a reasonable period, the operator's roominghouse license may be suspended. The notice of such alleged violation shall be served upon the person responsible therefor in the manner set forth in section 105-263. If the work involved in correcting the alleged violation shall not be commenced within the time allotted in the notice, the roominghouse operator's license shall be immediately suspended until full compliance shall be had; and it shall be the duty of the building commissioner to proceed forthwith to cause the roominghouse or part thereof to be brought in compliance with the orders issued in the manner prescribed in section 105-263. Upon receipt of any notice suspending a roominghouse license, such operator shall immediately cease operation of such roominghouse and no person shall occupy, for sleeping or living purposes, any rooming unit therein.
- (4) At least one flush water closet, lavatory basin and bathtub or shower properly connected to a water and sewer system and approved by the city health commissioner or city plumbing inspector shall be supplied and adequately maintained for each eight persons or any fraction of that number residing therein, including members of the operator's family whenever they share the use of said facilities; provided, however, that in a roominghouse where rooms are let only to males, flush urinals must be included in the ratio of one flush urinal for every two water closets. All such facilities shall be located within the dwelling so as to be reasonably accessible from a common hall or passageway to all persons sharing such facilities. Every lavatory basin and bathtub or shower shall be supplied with hot water as required by this division.
- (5) No such facilities shall be located in a basement except as an additional and accessory facility.
- (6) The operator of every roominghouse shall change supplied bed linen and towels therein at least once each week. Where bed linen and towels are supplied, such linens shall be newly laundered before the letting of any room. The operator shall be responsible for the maintenance of all supplied bedding in a clean and sanitary manner.
- (7) Every room used for sleeping purposes by one occupant shall have a minimum gross floor area of at least 80 square feet. Every room used for sleeping purposes by more than one person shall have a minimum gross floor area of 50 square feet per occupant thereof.
- (8) Every rooming unit shall have safe, unobstructed means of egress leading to a safe and open space at ground level as required by the laws of this state and the city.
- (9) The operator of every roominghouse shall be responsible for the sanitary maintenance of all walls, floors, and ceilings and for the maintenance of sanitary conditions in every other part of the roominghouse. The operator shall be responsible for the sanitary maintenance of the entire premises where the entire structure or building is leased or occupied by the operator.
- (10) Every provision of this division which applies to roominghouses shall also apply to hotels, except where such provisions may conflict with the laws of this state, in which case such state laws shall govern.

Sec. 105-294. - Minimum dwelling standards.

No person shall occupy, either as owner or as tenant, or permit another to occupy any dwelling or dwelling unit for the purpose of living, sleeping, cooking or eating therein, which does not comply with the following provisions:

- (1) Every dwelling unit shall be provided with a kitchen sink in good working condition and properly connected to a water and sewer system approved by the health commissioner or the plumbing inspector; and every dwelling unit shall contain a bathroom which affords complete privacy to a person with same and which is equipped with a flush water closed and a lavatory basin in good working condition and properly connected to a water and sewer system approved by the health commissioner.
- (2) Every dwelling shall be provided with a bathroom which affords complete privacy to a person within the room, a bathtub or shower in good working condition and properly connected to a water or sewer system approved by the health commissioner or plumbing inspector.
- (3) Each dwelling unit shall have access to a bedroom or bathroom without passing through another bedroom and without going outside the building.
- (4) Every kitchen sink, lavatory basin, and bathtub or shower required under the provisions of this section shall be properly connected with both hot and cold water lines.
- (5) Every dwelling shall have a continuous supply of hot water through water heating facilities which are properly installed and maintained in a safe and good working condition. Such hot water facilities shall be capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub or shower at a temperature of not less than 120 degrees Fahrenheit.
- (6) Outdoor privies are declared to be a public nuisance and shall not be permitted under any circumstances.
- (7) Every dwelling unit shall be provided with adequate receptacles to hold all garbage and rubbish and these shall at all times be maintained in good order and repair. Garbage and rubbish storage containers shall be of the type required under the provisions of section 34-32.
- (8) Every dwelling unit shall have two safe and unobstructed means of egress leading to a safe and open space at ground level without passing through any other dwelling unit.

(Code 1960, § 5-1607; Code 1989, § 154.08; Ord. No. 3425; Ord. No. 4415; Ord. No. 6635, 10-22-1992)

Sec. 105-295. - Light, ventilation, and heating.

No person shall occupy as owner-occupant or let to another for the purpose of living therein any dwelling unit which does not comply with the following requirements:

- (1) Every habitable room shall have at least one window or skylight opening directly to the outside of the dwelling. The minimum total window area shall not be less than ten percent of the floor area of such room. Whenever walls or other portions of an adjoining structure face a window of any room and such obstructions extend to a level above the room ceiling window, such a window shall not be deemed to contribute to the required minimum total window area for the room.
- (2) All window sash or skylights shall be glazed and contain suitable hardware so that one-half the window area may be fully opened.

- (3) Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms as required in this section, except that no window or skylight shall be required in adequately ventilated bathrooms and water closet compartments equipped with a ventilation system which is capable of changing the air four times per hour.
- (4) A window may not be required in an efficiency apartment where the kitchen is used only for the preparation of foods and is adjacent to a dinette or alcove off the living room.
- (5) Every habitable room shall contain at least three current-consuming outlets. Every water closet compartment, bathroom, laundry room, furnace room, and public hallway shall contain at least one ceiling or wall-type electric light fixture. Every such outlet and fixture shall be properly installed, shall be maintained in good and safe working condition and shall be connected to the source of electric power in a safe manner and meet the requirements of the electrical regulations of the city.
- (6) Every dwelling unit shall have heating facilities which are properly installed and maintained in safe and good working condition and are capable of safely and adequately heating all habitable rooms, bathrooms and water closet compartments contained therein to a temperature of at least 70 degrees Fahrenheit when the outside temperature is minus ten degrees Fahrenheit.
- (7) All gas-burning room heaters and water heaters shall be connected properly and vented to the outside air by a vitrified or fire underwriters approved flue-lined chimney in accordance with the regulations governing same.
- (8) Gas appliances designed primarily for cooking or water heating purposes shall not be considered as heating facilities within the meaning of this section.
- (9) Portable heating equipment employing flame is prohibited.
- (10) Copper tubing, rubber tube or armored rubber tube connections on gas heating fixtures are prohibited.
- (11) Where heat is not furnished from a central heating plant, each dwelling unit in such a dwelling or building shall have at least one-half of the habitable rooms provided with fireproof chimney flues to permit the operation of sufficient heating equipment to meet the standards for heating as herein set forth.
- (12) Every public hall and stairway in multiple dwellings shall be adequately lighted from sundown to sunup.
- (13) During the portion of each year when the health commissioner deems it necessary for protection against mosquitoes, flies, and other insects, every door opening directly from a dwelling unit to outdoor space shall be screened and controlled by a self-closing device; every window or other device with openings to outdoor space, used or intended to be used for ventilation, shall likewise be supplied with screens; provided, however, that such screens shall not be required in dwelling units located more than 50 feet above ground level.

(Code 1960, § 5-1608; Code 1989, § 154.09; Ord. No. 3425; Ord. No. 4415; Ord. No. 6635, 10-22-1992)

Sec. 105-296. - Safety and sanitation standards.

No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following provisions:

- (1) Every foundation, floor, wall, ceiling, and roof shall be reasonably weathertight and rodentproof and shall be kept in good, safe, and sound condition and repair.
- (2) Every window, exterior door, and basement hatchway shall be reasonably weathertight and rodentproof and shall be kept in good, safe, sound, and workable condition and repair.

- (3) Every inside and outside stair, every porch and every appurtenance thereto shall be constructed as to be safe to capable of supporting the load that normal use may place thereon and shall be kept in sound condition and good all times.
- (4) Every basement and every cellar shall be maintained in a safe and sanitary condition: water shall not be permitted to accumulate or stand on the floor; all sewer connections shall be properly trapped; all cellar and slab drains shall be covered with grating; and junk, rubbish, and waste shall not be permitted to accumulate to such an extent as to create a fire hazard or to endanger health or safety.
- (5) Every plumbing fixture, water and waste pipe shall be properly installed and maintained in good, sanitary working condition free from defects, leaks, and obstructions and in accordance with existing ordinances in respect thereto.
- (6) Every water closet compartment floor surface and bathroom floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit such floor to be easily kept in a sanitary condition.
- (7) Every supplied facility, piece of equipment, or utility which is required under this chapter shall be so constructed or installed that it will function safely and effectively and shall be maintained in good working condition.
- (8) No owner, operator or occupant shall cause any service facility, equipment, or utility which is required under this chapter to be removed or shut off from or discontinued for any occupied dwelling, except for such temporary interruptions as may be necessary while actual repairs or alterations are in process.
- (9) No owner shall occupy or let to any other person occupy any vacant dwelling unit unless it is sanitary and fit for human habitation.
- (10) Every roof shall be maintained so as not to leak, and all rainwater shall be drained and conveyed therefrom so as not to cause dampness in the walls and ceilings.
- (11) All structures used as dwellings shall be maintained in proper repair so as to give adequate protection from the elements. All exterior wood surfaces shall be protected from the elements and decay by painting or other protective covering.
- (12) There shall be no storage of combustible materials beneath stairways in any dwelling or in any roominghouse. No combustible or flammable materials, fluids, or compounds shall be placed, stored, or kept in any place inside or outside of any building where the ignition or burning of such materials fluids, or compounds would obstruct or render hazardous the egress from any family unit.
- (13) Every dwelling with a basement is to be provided with gutters and downspouts unless omission is specifically permitted by the building commissioner.

(Code 1960, § 5-1609; Code 1989, § 154.10; Ord. No. 4415; Ord. No. 6320, § 1, 5-2-1989; Ord. No. 6635, 10-22-1992; Ord. No. 3425)

Sec. 105-297. - Space and use requirements.

No person shall occupy or let to another for occupancy any dwelling or dwelling unit for the purpose of living therein, which has not complied with the following requirements:

- (1) Every room used for sleeping purposes by one occupant shall have a minimum gross floor area of at least 80 square feet. Every room used for sleeping purposes by more than one person shall have a minimum gross

floor area of 50 square feet per occupant thereof.

- (2) Every dwelling unit shall contain a minimum gross floor area (in addition to the requirements set forth in subsection (1) of this section) of at least 150 square feet for the first occupant and at least 100 additional square feet of floor space for every one additional occupant; the floor space to be calculated on the basis of total habitable room area.
- (3) The minimum clear floor-to-ceiling heights in all habitable rooms shall be:
 - a. Basements. Seven feet clear under joists.
 - b. Main floor of living units. Seven feet, six inches for at least 75 percent of the floor area.
 - c. Above main floor of living units. Seven feet, six inches clear; under sloping roofs, seven feet for not less than 50 percent of floor area having five feet or more headroom.
- (4) No cellar space shall be used as a habitable room or a dwelling unit.
- (5) No basement space shall be used as a habitable room or dwelling unit, unless:
 - a. The clear floor-to-ceiling height is at least seven feet.
 - b. The floors and walls are damp-proof in accordance with accepted and approved methods.
 - c. The total window area in each room is equal to at least the minimum window area requirements of section 105-295.
 - d. Such required minimum window area is located entirely above grade.

(Code 1960, § 5-1610; Code 1989, § 154.11; Ord. No. 3425; Ord. No. 4509, 12-1-1970; Ord. No. 6635, 10-22-1992)

Sec. 105-298. - Yards, fences, and accessory buildings.

Every owner of residential properties shall be responsible for the general maintenance and repair of his entire property.

- (1) All yards shall be kept free of unnecessary storage and debris.
- (2) Where possible, front, side, and rear yards should be provided lawns, and properly maintained.
- (3) All accessory buildings shall be maintained in proper repair and all exterior surfaces shall be protected by paint or other protective covering.
- (4) Sheds and other accessory buildings which are in a dilapidated condition and which contribute toward neighborhood blight shall be removed upon written orders of the building commissioner.
- (5) All fences shall be maintained in good repair and shall be protected by painting whenever possible.

(Code 1960, § 5-1613; Code 1989, § 154.14; Ord. No. 3425; Ord. No. 4415; Ord. No. 6635, 10-22-1992)

Secs. 105-299—105-329. - Reserved.

ARTICLE VII. - BUILDING NUMBERING

Footnotes:

--- (2) ---

State Law reference— *Building numbering, IC 36-7-4-405(b), (c)*

Sec. 105-330. - House numbering required.

Every building fronting on any street of the city shall be numbered by the owner or occupant thereof in the manner hereinafter provided.

(Code 1960, § 9-101; Code 1989, § 156.01)

Sec. 105-331. - Numbering system.

For numbering purposes, the frontage on the various streets and avenues of the city shall be subdivided, allowing two numbers to each lot as shown by the various maps, as provided for in the divisions and additions to the city. In all cases where the side line of any lot is adjacent to the line of any street or avenue, two numbers shall be assigned to each 25 feet thereof.

- (1) All buildings or lots on the east and west streets or avenues shall be numbered, commencing with the number one at Broadway and numbered both east and west, with the even numbers on the north side and the odd numbers on the south side of the street or avenue. One hundred numbers shall be assigned to each block. Locations west of Broadway shall be numbered as "number - west - street (avenue)," with the number and the name of the street or avenue inserted in the proper place. Locations east of Broadway shall be likewise designated, using the word "east" instead of "west."
- (2) All buildings or lots of the north and south streets or avenues shall be numbered commencing with the number 100 at First Avenue and numbered north and south, with the even numbers on the west side and the odd numbers on the east side of the street or avenue. One hundred numbers shall be assigned to each block. Locations north of First Avenue shall be known as "number - north - street (avenue)."

(Code 1960, § 9-102; Code 1989, § 156.02)

Sec. 105-332. - Designated number certificate.

It shall be the duty of the city engineer to furnish a certificate designating the number assigned to any building or vacant lot, without cost to the owner or occupant of the building or vacant lot, upon the owner or occupant giving to the city engineer the legal description of the building or vacant lot.

(Code 1960, § 9-104; Code 1989, § 156.03)

Sec. 105-333. - Size and location of numbers.

The owner or occupant of any building shall place a number, such number to correspond with the number assigned by the city engineer to such building, in a conspicuous place on the side of or above the front of the building. Each of the figures of every number shall be not less than three inches in height and so constructed as to be read easily.

(Code 1960, § 9-105; Code 1989, § 156.04)

Sec. 105-334. - Building entrances.

All business, apartment, or flat buildings having more than one entrance on the street shall have each of the entrances numbered.

(Code 1960, § 9-106; Code 1989, § 156.05)

Sec. 105-335. - Map of city.

It shall be the duty of the city engineer to prepare a map of the city to show the various subdivisions and additions, the numbers of the various lots and blocks, the names of the streets and avenues and the numbers to be used in the numbering of the buildings therein, all to be done in accordance with the provisions of this division.

(Code 1960, § 9-103; Code 1989, § 156.06)

Secs. 105-336—105-358. - Reserved.

ARTICLE VIII. - CONTRACTORS

Footnotes:

--- (3) ---

State Law reference— *Restrictions on licensing of contractors. 22-11-3.1-1 et seq.*

DIVISION 1. - GENERALLY

Sec. 105-359. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building contractor means any person who is in any capacity other than as the employee of another with wages as the sole compensation, undertakes, offers to undertake, purports to have the capacity to undertake or accepts an order or contract, whether on a fixed sum, cost-plus, percentage or fixed fee, or any combination thereof, or submits a bid to construct, alter, repair, add to, subtract from or improve any building, structure, project or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

Motor vehicle means every vehicle, as herein defined, which is self-propelled.

Vehicle means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power; provided that, for the purpose of this article, a bicycle, or ridden animal, or pushcart shall be deemed a vehicle.

(Ord. No. 6715, § 111.61, 6-7-1994)

Sec. 105-360. - Building contractors required to label company vehicles.

It shall be unlawful for any building contractor whether a resident of the city or not, to solicit, contract, or engage in any business within the city without labeling the company/business motor vehicles or any vehicle used in the performance of business activity.

- (1) The labels/lettering on the motor vehicle must be legible, in English (Spanish optional), and labeled with letters no smaller than one inch in diameter.
- (2) The labels/lettering must be of a color opposite the background color (vehicle color) so as to provide for easy

comprehension. For example, black labels/lettering on a white vehicle, and dark labels/lettering on light color vehicles.

- (3) The labels/lettering must be on the operator and passenger doors of the vehicle, with only one label/lettering on each side of the vehicle, in the event the vehicle has four doors.
- (4) The labels/lettering must provide the name, main business address, and an operational telephone number of the contractor that owns, leases, rents, or borrows the motor vehicle.

(Ord. No. 6715, § 111.60, 6-7-1994)

Secs. 105-361—105-378. - Reserved.

DIVISION 2. - GENERAL BUILDING CONTRACTORS

Subdivision I. - In General

Sec. 105-379. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Where definitions are not defined in this section and are defined in the building, plumbing, mechanical, electrical and/or fire prevention codes, they shall have the same meanings ascribed to them as in those codes. Where definitions are not defined in this section or under the provisions of the building, plumbing, mechanical, electrical and/or fire prevention codes, they shall have the meanings ascribed to them as the context herein may imply.

Building contractor means any person who is in any capacity, other than as the employee of another with wages as the sole compensation, undertakes, offers to undertake, purports to have the capacity to undertake or accepts an order or contract, whether on a fixed sum, cost-plus, percentage or fixed fee, or any combination thereof, or submits a bid to construct, alter, repair, add to, subtract from or improve any building, structure, project or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

Homeowner means the owner of a place where one permanently resides.

Project means the total construction of work to be performed under a contract consisting of at least two activities of different classifications of specialized construction work.

Work means the entire scope of the work to be performed within any specialized job classification of the construction trades. Included is everything to fulfill the obligations of the contract.

Workmanlike means the execution of the contractor's craft shall be performed in a reasonably skillful manner.

(Code 1989, § 111.02; Ord. No. 6198, 8-4-1987)

Sec. 105-380. - Penalties.

Any person presenting or attempting to use the license of another, who shall give false or forged evidence of any kind to the board of examiners in obtaining or maintaining a license, who shall falsely impersonate another, who shall use an expired, revoked, or non-currently registered license or shall violate any one or more of the provisions of any section of this

division, upon conviction, shall be guilty of an offense.

(Code 1989, § 111.16; Ord. No. 6198, 8-4-1987)

Sec. 105-381. - Exceptions.

This division shall not apply to:

- (1) Homeowners who undertake alone to do the work of a contractor on the place in which that person permanently resides.
- (2) Nothing in this division shall be construed to apply to private home building by private homeowners as defined in section 105-379.

(Code 1989, § 111.03; Ord. No. 6198, 8-4-1987)

Secs. 105-382—105-405. - Reserved.

Subdivision II. - Board of Examiners

Sec. 105-406. - Board of examiners of contractors.

There is hereby created a board of examiners of contractors, herein known as "the board."

- (1) This board shall consist of eight members, all of whom shall be residents of the city for at least two years prior to their appointment. One member shall be a licensed and registered architect in accordance with the laws of the state or a licensed specialty contractor; one member shall be the building commissioner; one member shall be the city engineer; one member shall be the director of consumer affairs; one member shall be a general contractor; one member shall be from the building trades council of the city, one member shall be a licensed electrical contractor, these three of whom shall be appointed by the mayor; and one member from the common council shall be appointed by the common council.
- (2) The members of the board shall be appointed for a period of one year. Their terms of office shall expire on December 31 each year. Thereafter, all appointments and all vacancies shall be appointed or replaced by and in accordance with the appointive powers herein designated. A member of the board shall hold office after the expiration of his term until his successor has been appointed and qualified.
- (3) Any member of the board may be removed from office in the same manner as is provided for removal of department heads of the city, except members appointed by the common council.
- (4) The board of examiners shall have the duty of enforcing the provisions of this chapter and shall cause periodic inspections to be made by the building department of the city of any work of a licensed contractor. The board shall request the building department inspectors to make investigations and submit written reports to the board upon the filing of any complaints by any person with reference to the work of a licensed contractor.
- (5) Members of the board may receive a salary or a per diem allowance for each day they attend a board meeting; and are entitled to reimbursement of expenses necessarily incurred in the performance of their duties as board members.

(Code 1989, § 111.04; Ord. No. 6198, 8-4-1987; Ord. No. 6511, § 1, 2-5-1991; Ord. No. 7414, § 1, 12-17-2002; Ord. No. 7424, § 1, 2-4-2003)

Sec. 105-407. - Organization of the board.

The members of the board of examiners shall hold a meeting within ten days from the date of qualification of all said members. The board shall elect from its membership the chairperson, vice chairperson and the secretary of the board. The board shall organize and adopt such rules and regulations as are deemed necessary and expedient for the purpose of administering this subdivision and carrying out the purpose and duties herein prescribed; thereafter, the board shall hold not less than one regular meeting every three months. Time for holding regular meetings and manner of giving notice of all meetings shall be prescribed in the rules and regulations of said board. The following basic principles shall govern at all times:

- (1) The majority vote of the total board of examiners shall control any issue before said board. Five members of the board shall constitute a quorum for transaction of all business except for proceedings and decisions under section 105-435.
- (2) The board of examiners shall establish periods of examination. Special meetings of the board can be called by three or more members of the board or the building commissioner.
- (3) Thirty days after the board has held its first meeting and elected officers, the board shall meet for the purpose of passing upon applications for a contractor's license as provided in this subdivision.

(Code 1989, § 111.05; Ord. No. 6198, 8-4-1987)

Sec. 105-408. - Records of the board.

- (a) The secretary shall keep a record of all of the meetings and proceedings of the board of examiners, together with the necessary register showing all applications, said register to show the date and name of each applicant, qualifications, place of business, place of residence and whether the application for a license was granted or refused. It shall be the duty of the secretary to promptly notify the city controller in the event of revocation or the re-issuance of any license. Prior to the acceptance of any application from an applicant desiring a license as a general contractor I (housing contractor) or general contractor II in the city, the applicant must first qualify by meeting one or more of the following conditions:
 - (1) Has held a license in any of the construction trades for a period of five or more years.
 - (2) Shows proof of having schooling in one of the construction-related trades along with a minimum of three years of actual experience.
 - (3) Shows proof of working in one or more of the construction trades for a period of ten or more years if not qualified by the first two conditions stated above.
- (b) Prior to the acceptance of any application from an applicant desiring a license for any of the specialty licenses specified herein in the city, the applicant must first qualify by meeting one or more of the following conditions:
 - (1) Held a license in any of the construction trades for a period of 15 years or more.
 - (2) Show proof of having schooling in the particular specialty of the construction trade for which the application is being made along with a minimum of three years of actual experience.
 - (3) Show proof of working in the particular specialty of the construction trade for which the application is being made for a period of ten or more years if the applicant is not qualified by the first two conditions stated in this

section.

(Code 1989, § 111.06; Ord. No. 6198, 8-4-1987)

Secs. 105-409—105-429. - Reserved.

Subdivision III. - License

Footnotes:

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State Law reference— *Restrictions on licensing of contractors. 22-11-3.1-1 et seq.*

Sec. 105-430. - Building contractors required to have license.

It shall be unlawful for any person to engage in the business or act in the capacity of a contractor within the city without having a license therefor as provided herein. The term "person" shall include a corporation, firm, partnership, association, organization or any other group acting as a unit, as well as a natural person.

(Code 1989, § 111.01; Ord. No. 6198, 8-4-1987)

Sec. 105-431. - Qualifications for contractor's license.

Any person over the age of 21 years may apply for a license, and the applicant's qualifications shall be determined by written and oral examinations. Each applicant for a general contractor license I or II shall be examined with reference to his ability to read plans, ability to interpret specifications, general knowledge of the proper use of building materials, ability to correctly estimate quantity of materials required for any construction project, general familiarity with the nationally accepted standards of good construction and practice and knowledge of the requirements of the laws of the state and ordinances of the city. Each applicant for a specialty license shall be examined with reference to his knowledge in the particular specialty for which he is applying as to his knowledge of the laws of the state and the ordinances of the city affecting his specialty. Each applicant shall be graded as follows: 75 percent minimum for the written examination and the oral examination will be given by the board of examiners to further ascertain the qualifications and competency of each applicant. Applicants failing to score 75 percent on the written examination shall not be interviewed by the board unless there is no written examination for the particular specialty license being sought by the applicant. The board then will administer an oral examination. If the applicant, however, fails to make a grade of 75 percent, as above provided, then the board shall refuse to grant such license.

(Code 1989, § 111.07; Ord. No. 6198, 8-4-1987)

Sec. 105-432. - Licenses.

- (a) General contractors license, within the meaning of this subdivision, shall permit all classes of building construction, except licensed contractors governed by other existing license ordinances.
 - (1) General contractor licenses are of two classes, general contractor I (housing contractor) and general contractor II.
 - a. General contractor I (housing contractor) is permitted all classes of work as herein provided; however, this

license is limited to projects of one- and two-family dwellings on a scattered site basis, detached garages, and may be permitted to undertake small commercial projects that do not exceed a gross area of 1,500 square feet.

b. General contractor II is an unlimited license in terms of the size or complexity of a project.

(2) Both classes of general contractor may subcontract any portion of a project to a specialty contractor who must be currently licensed and in good standing with the city and must obtain a permit for that portion of work prior to the beginning of the project.

(b) Specialty licenses within the meaning of this subdivision shall include any building construction specialty such as:

(1) Heating, ventilation, and air conditioning licenses shall be divided into two categories: heating, ventilation, and air conditioning I and II.

a. License I is limited to the installation or repair work on mechanical air units on scattered sites of one- and two-family dwellings and small commercial buildings that do not exceed 1,500 square feet with the exception of electrical restrictions.

b. License II is unlimited with the exception of electrical restrictions that shall allow the installation and repair work to mechanical air units for all types of buildings.

(2) Refrigeration. All work pertaining to air conditioners and refrigeration of home appliances and to all commercial coolers or freezers.

(c) Specialty licenses, within the meaning of this subdivision, shall include any one or more building construction specialty, such as:

(1) Carpentry. All wood construction pertaining to building, also various types of siding and interior dry walls and lathing.

(2) Masonry. Anything constructed of materials, such as brick, stone, ceramic tile, or the like, excluding concrete work.

(3) Concrete. All work pertaining to and for the erection of a formed material made by mixture of sand, cement, gravel, and water.

(4) Steel. Erection of all formed structural steels and iron parts.

(5) Plastering. All work pertaining to the application of plaster, including dry-wall construction and lathing.

(6) Excavating. Excavating for purpose of erecting building.

(7) Escalators and elevators. All work pertaining to the installation of escalators and elevators.

(8) Machinery. All work pertaining to the installation of industrial manufacturing equipment.

(9) Roofing and siding. Installation of any and all types of roof covering and siding, waterproofing, and insulation.

(10) Garages. All work pertaining to a private garage.

(11) Floor covering. Installation of all types of floor covering, such as asphalt, rubber, plastic, cork, linoleum, etc., excluding hardwood and carpeting.

(12) Tuck-pointing. All work pertaining to tuck-pointing.

(13) Sheet metal. Installation of all sheet metal.

(14) Glaziers. Installation of all glass.

(15) Demolition. All work pertaining to the removal of structural or mechanical elements, mechanical equipment, or the razing of structures.

- (16) Painting. All work pertaining to painting and wall coverings.
 - (17) Landscaping. All work pertaining to underground watering systems, utilities, excavation, and land construction.
 - (18) Tank installers. All work pertaining to the installation of concrete, steel, and tanks.
 - (19) Heating, ventilation, and air conditioning I and II. All work pertaining to the installation and repair of heating, ventilation, and air conditioning mechanical units. Exempted is any electrical work beyond installing or replacing the electrical line to the unit.
 - (20) Fencing. All work pertaining to fencing.
 - (21) Other types of licenses for specialist may be added to these classifications as the board of examiners may deem under the authority given in section 105-408. Whenever a new classification has been added to this list a certified statement shall be filed with the clerk of the city. The license classifications of contractors do not give them the authority to subcontract any portion of any project nor any portion of any work.
- (d) To obtain a license under this chapter, any person desiring to engage in the business or act in the capacity of a contractor in the city having met all qualifications and conditions as set out herein shall make verified application for such license in writing to the board on such printed forms as the board shall prescribe and prepare. Such forms may be obtained from the office of the building commissioner. Each application must be accompanied by the sum of \$20.00 as an examination license fee to be paid to the city controller, the receipt to be submitted to the board. Each person shall designate in his application the active member or a legally authorized agent of such person.
- (1) Any individual cannot qualify to take an examination for himself and for another person while any license that is issued as a result of an examination given to the individual remains unexpired or uncanceled; provided, however, that if the individual passing the examination shall at any time sever his connection with the contractor to whom said license was issued, it shall be the duty of both the individual and contractor to give written notice immediately to the board and at the same time surrender the license for cancellation. The contractor to whom the license was issued may, at the time of surrendering same, delegate some other active member, officer, or authorized agent to qualify for examination. The person who has passed the examination, provided that his license is currently valid, with all required fees paid, and no current complaints pending with the board will not be required to take another examination and shall not be required to pay an additional license for the remainder of the year.
 - (2) Whenever the holder of a license becomes deceased or disabled during the time the contract has been executed and commenced, the legal representative may be empowered to complete said contract by assigning or appointing another to qualify for a license without any further cost.
 - (3) The person to be tested for a contractor's license shall be notified in writing of the date of his examination at least five days before such date at the address given in his application and shall be examined by the board of examiners.
 - (4) If the result of the examination conducted by the board as heretofore provided is satisfactory, the board shall immediately issue to the controller a certificate stating:
 - a. The applicant is qualified for a license as a contractor under the terms of this chapter, and
 - b. The classification for which said license shall be issued;and the controller shall then issue a license to the applicant upon payment of such license fee as is hereinafter provided in section 105-433.

- (5) Any applicant failing to qualify for a license by failure to pass the examination shall not be eligible to take such examination again for a period of three months.
- (6) A contractor's license shall not be transferable. No person holding a license shall allow his name to be used by another for the purpose of obtaining permits or doing any of the work for which said license was issued. A contractor shall not engage in any work of another specialty without the proper license.
- (7) All licenses issued and registered under the provisions of this chapter shall expire on December 31 of each year following the date of their registration. All licenses are valid indefinitely provided that the holder registers his license on a yearly basis as stated. If the contractor fails to register his license and obtain permits to do work for a period of five years, the license is then expired. Upon the expiration of any license, the licensee will be required to apply for a license as if for the first time. Any licensee registering his license between February 1 and February 15 of each year shall be subject to a penalty provided for in chapter 20. Any license registered after March 1 shall be subject to a penalty of \$15.00.
- (8) A copy to replace any license certificate lost, destroyed or mutilated may be issued by the controller upon payment provided for in chapter 20.

(Code 1989, § 111.08; Ord. No. 6198, 8-4-1987)

Sec. 105-433. - License fees.

Upon presentation of evidence from the board of examiners stating that the board is satisfied the applicant has qualified for a license, the city controller shall furnish the contractor with a license upon the payment of the license fee for the type in which said contractor is classified. The fixed fee of licenses shall be according to chapter 20, plus any late registration fees as stated in section 105-434. Applicant shall be required to pay fees for any preceding years where there was a failure to register, plus any late fees.

(Code 1989, § 111.11; Ord. No. 6198, 8-4-1987)

Sec. 105-434. - Grounds for revocation of license.

- (a) It shall be the power of the board of examiners to temporarily suspend or permanently revoke the license of any contractor, while a licensee hereunder, who shall be guilty of any one or more of the following acts or omissions:
 - (1) Deliberate misrepresentation of any material fact, fraud or deceit in obtaining a license.
 - (2) Aiding, abetting or knowingly combining or conspiring with an unlicensed person with the intent to evade the provisions of this subdivision.
 - (3) Gross negligence, gross incompetency while engaged in business or acting in the capacity of a contractor within the meaning of this subdivision.
 - (4) Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as contractor. Upon a complaint the board may revoke a license for failure to complete any work or project based upon a time clause in a contract or upon the board's assessment of whether the project or work was not completed in a reasonable time.
 - (5) Diversion of funds or property received for a specified purpose in the prosecution or completion of any construction project or operation, and their application or use for any other project or operation, obligation or purpose with intent to defraud or deceive creditors or the owners.
 - (6) Willful and deliberate violation of the building laws of the state, and city, or any political subdivision thereof.

- (7) Willful departure from, or disregard of, plans or specifications in any material respect, without consent of the owner or his duly authorized representative, and without the consent of the person entitled to have the particular construction project or operation completed.
- (8) The doing of any willful or fraudulent act by the licensee as a contractor in consequence of which another is substantially injured.
- (9) Failure in any material respect to comply with the provisions of this subdivision.
- (10) Whenever a stop work order has been issued for a violation of this subdivision or the building laws and a contract has been executed and commenced, the contractor may proceed to complete said contract on condition that the contractor by a written agreement with the owner in the presence of a building department official will make the necessary adjustments and repairs. Such an agreement shall be subject to an approval by the board at their next scheduled meeting who may alter the agreement or take other action as it may deem appropriate. In the event that an agreement cannot be reached, the building commissioner may suspend all permit privileges and/or the license of the contractor until a hearing by the board can be held. The suspension of a license by the building commissioner shall not exceed 21 days; however, a suspension of permit privileges may extend indefinitely or until the matter has been resolved. After making such a determination the building commissioner shall send a written notice of his action to the contractor, the owner, and to each member of the board. He or it will make the necessary adjustments and repairs.
- (11) The board shall have the authority to revoke the license of any person issued under the provisions of this Code for any violation, upon conviction, of the laws of the state, of the United States, or of any provision of this Code or other ordinances of the city in connection with the operation of business or for any other reason as is now or shall be hereafter provided by law or ordinance.

(b) This section shall not be in conflict with section 10-30.

(c) A revoked license shall not be reinstated until after a period of not less than one year.

(Code 1989, § 111.09; Ord. No. 6198, 8-4-1987)

Sec. 105-435. - Procedure for revocation of license.

The board of examiners may, upon a complaint filed by a member of the building department, and may upon the filing of a verified complaint in writing by a contractee, prefer charges against any licensee under the terms of this subdivision. The building commissioner may forthwith issue a notice directing the licensee within ten days after service of notice, to answer to the complaint, and agree to appear at the next board meeting to show cause, if any, why his license should not be suspended or revoked. With that notice the building commissioner shall set the time and place said hearing shall be given. To suspend or revoke a license shall require the vote of five board members. The complaint shall contain a statement of facts pertaining to the specific charges of the violation of this subdivision, other ordinances and state or federal laws pertaining to building construction, or of any act which is a cause of suspension or revocation of a license. The licensee may be present and may be represented by counsel at said hearing.

- (1) A service of the notice upon the licensee shall be fully effectuated by mailing a true copy thereof, by the United States certified mail, with return receipt requested, addressed to the licensee at his latest address of record in the building commissioner's office. Failure of the licensee to answer may be deemed an admission by him of the commission of the acts charged in the complaint, and his license thereupon may be suspended forthwith pending any hearing of the cause that the board in its discretion may order. The board may also suspend or revoke the license without further evidence.

- (2) Whenever the board shall determine that a licensee is in violation of the terms of this chapter, the board may then issue an order against such offender to correct such violation, fixing a reasonable time within which such correction shall be made or accomplished; and upon compliance with said order the board may dismiss said complaint.
- (3) After revocation of a license upon any grounds set forth in this chapter, such license shall not be renewed or re-issued within a period of one year after the final determination of revocation, and then only upon proper showing that all loss caused by the act or omissions for which the license was revoked has been fully satisfied and that all conditions imposed by the decision of the revocation have been complied with.
- (4) Any licensee who is aggrieved by the decision of the board may take an appeal from such board as now allowed by IC 34-13-6.

(Code 1989, § 111.10; Ord. No. 6198, 8-4-1987)

Secs. 105-436—105-453. - Reserved.

DIVISION 3. - ELECTRICAL CONTRACTORS

Subdivision I. - In General

Sec. 105-454. - Penalties.

Any person presenting or attempting to use the license of another, who shall give false or forged evidence of any kind to the board in obtaining or maintaining a license, who shall falsely impersonate another, who shall use an expired, revoked, or non-currently registered license or shall violate any one or more of the provisions of any section of this chapter, upon conviction, shall be guilty of an offense.

(Code 1989, § 111.29; Ord. No. 6198, 8-4-1987)

Sec. 105-455. - Public service or communication utilities.

The provisions of this chapter shall not apply to electrical work done and materials used by a public service or communication utility with respect to plant, equipment, apparatus, material, property and appurtenances used in the generation, transmission, distribution, supply, utilization and metering of electrical energy and the adaptation of the utilization equipment of their customers to the electrical energy characteristics of the public service utility company and the servicing of such utilization equipment or in the operation of signals or the transmission of intelligence. A public service utility shall not install its customer's light or power service outlet, distribution center, switches or meter boxes in or on such customer's property; but the public service utility may install and connect its services, meters and metering equipment on the customer's premises.

(Code 1989, § 111.26; Ord. No. 6198, 8-4-1987)

Sec. 105-456. - Industries.

The provisions of this division shall not apply or be binding upon any industry located in buildings of fireproof construction used solely for manufacturing purposes and located at least 200 feet from any dwelling or residence and located in whole or in part within the corporate limits of the city, which industry exercises control through engineering, safety standards, competent electrical supervision and testing personnel in order to insure that all electrical work performed for such industry by its own employees is carried out in accordance with the laws of the state department of fire prevention and safety and the rules of the electrical inspector of the city.

(Code 1989, § 111.27; Ord. No. 6198, 8-4-1987)

Sec. 105-457. - Board of electrical examiners.

- (a) There is hereby created a board of electrical examiners, hereinafter referred to as "the board of examiners."
 - (1) Such board of examiners shall consist of two members of the common council, who shall constitute the electrical committee of the common council; the electrical inspector of the city; the city engineer, the building commissioner, one electrical contractor and one journeyman electrician, the two latter to be appointed by the mayor, who shall serve for a period of one year or until their successors shall have been duly appointed and qualified.
 - (2) The board members may receive a salary or a per diem allowance for each day they attend a board meeting; and are entitled to reimbursement for any expenses necessarily incurred in the performance of their duties as board members.
- (b) The members of the board of examiners shall hold a meeting within 30 days after being assigned by the common council or not later than the first 60 days of each year. At such meeting they shall organize and adopt such rules and regulations as are deemed necessary and expedient for the purpose of administering this division and carrying out the purposes and duties herein prescribed. Prior to the acceptance of any application from an applicant desiring an electrical license in the city, the applicant must first qualify by meeting one or more of the following conditions:
 - (1) Has held a license in any of the construction trades for period of 15 years or more years.
 - (2) Shows verifiable proof of having schooling in the electrical trade along with a minimum of three years of actual experience.
 - (3) Shows verifiable proof of working in electrical trade for a period of ten or more years if the applicant is not qualified by the first two conditions stated in this subsection (b).
- (c) The applicant for an electrical contractor's license shall be notified in writing of the date of his examination at least five days before such date at the address given in his application and shall be examined by the board of examiners. The board of examiners shall, by its rules and regulations, establish the type and nature of such examination and the method and manner of determining the result of such examination and shall, by their rules and regulations, establish the standard of results of such examination which all applicants shall meet to entitle them to a license.

(Code 1989, § 111.20; Ord. No. 6198, 8-4-1987; Ord. No. 7414, § 2, 12-17-2002)

Sec. 105-458. - Permits.

- (a) Electrical permits shall not be issued by the building commissioner to anyone except a duly licensed electrical contractor or his duly authorized agent under the provisions of this division.

- (b) Electrical permits shall be granted to the actual owner of the premises in which he actually resides. Any permits issued to the owner of a residential property that is not the applicant's actual place of residence shall be issued at the collective discretion of the building commissioner and the electrical inspector.
- (c) Any owner applying to undertake the work of an electrical contractor shall qualify by taking a written and oral examination to be administered by the electrical inspector. The owner shall be subject to the same rules as outlined in the building code with regards to examinations, permit fees, inspection fees, and penalties as provided therein. The building commissioner or electrical inspector may, in writing, suspend or revoke a permit issued under provisions of this Code, whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulations, or any provisions of this Code.

(Code 1989, § 111.25; Ord. No. 6198, 8-4-1987)

Secs. 105-459—105-484. - Reserved.

Subdivision II. - License

Sec. 105-485. - Licenses required; issuance and registration.

- (a) To obtain a license under this chapter any person desiring to engage in the business or act in the capacity of an electrical contractor in the city after meeting the conditions set out herein shall make a verified application for such license in writing to the board on such printed forms as the board shall prescribe and prepare. Such forms may be obtained from the office of the building commissioner. Each application must be accompanied by the sum provided for in chapter 20 as an examination license fee to be paid to the city controller, the receipt to be submitted to the board. Each person shall designate in his application the individual who will be required to take the examination and such individual must be an active member or a legally authorized agent of such person. He shall also state the name of the person who is to take the examination, hereinafter called the examinee, the relationship or authority and duty which he bears to the business conducted by such person applying for such electrical contractor's license, whether as owner, partner, officer or manager, and the business address of such person.
- (b) Any individual cannot qualify to take an examination for himself and for another person while any license that is issued as a result of an examination given to the individual remains unexpired or uncanceled; provided, however, that if the individual passing the examination shall at any time sever his connection with the contractor to whom said license was issued, it shall be the duty of both the individual and contractor to give written notice immediately to the board and at the same time surrendering same, delegate some other active member, officer or authorized agent to qualify for examination. The person who has passed the examination provided that his license is currently valid, all required fees are paid, and has no current complaints pending with the board of examiners will not be required to take another examination and shall be qualified without having to pay any additional license fee for the remainder of the year.
- (c) Whenever the holder of a license becomes deceased or disabled during the time the contract has been executed and commenced, the legal representative may be empowered to complete said contract, by assigning or appointing another to qualify for a license without any further cost.
- (d) If the result of the examination conducted by the board as heretofore provided is satisfactory, the board shall

immediately issue to the controller a certificate stating the applicant is qualified for a license as an electrical contractor under the terms of this division, and the controller shall then issue a license to the applicant upon payment of such license fee as is herein provided.

- (e) All licenses issued and registered under the provisions of this division shall expire on December 31 of each year following the date of their registration. All licenses are valid indefinitely provided that the holder registers his license on a yearly basis as stated. If the contractor fails to register his license and obtain permits to do work for a period of five years, the license is then expired. Upon expiration of the license, the licensee will be required to apply for a license as if for the first time.
- (f) Any licensee registering his license between February 1 and February 15 of each year shall be subject to a penalty fee provided for in chapter 20. Any license registered after March 1 shall be subject to a penalty provided for in chapter 20.
- (g) A copy to replace any license certificate lost, destroyed, or mutilated may be issued by the controller upon payment of the fee provided for in chapter 20.

(Code 1989, § 111.21; Ord. No. 6198, 8-4-1987)

Sec. 105-486. - License fees.

Upon presentation of evidence from the board of examiners stating that the board is satisfied the applicant has qualified for a license, the city controller shall furnish the contractor with a license upon the payment of the license fee for the type in which said contractor is classified. The fixed fee of licenses shall be according to chapter 20. Applicants shall be required to pay fees for any preceding years where there was a failure to register plus any late fees. No person shall engage in the business of contracting without first procuring from the city controller a certificate evidencing payment of the license fees prescribed in this section.

(Code 1989, § 111.24; Ord. No. 6198, 8-4-1987)

Sec. 105-487. - Unsuccessful applicants.

Any applicant failing to qualify for an electrical contractor's license shall not be eligible to file application for examination again for a period of six months, and no other person of the same firm or corporation shall be entitled to an examination for an electrical contractor's license before the expiration of the six-month period.

(Code 1989, § 111.23; Ord. No. 6198, 8-4-1987)

Sec. 105-488. - License not transferable.

The license required by this division, to be issued by the controller, shall not be transferable. No licensee shall allow his name to be used by any other person for the purpose of obtaining permits or do any other work outside of the scope of his license as allowed by this division.

(Code 1989, § 111.22; Ord. No. 6198, 8-4-1987)

Sec. 105-489. - Revocation of license.

The provisions of sections 105-434 and 105-435 shall also apply to the revocation of licenses under this division.

(Code 1989, § 111.28; Ord. No. 6198, 8-4-1987)

Secs. 105-490—105-516. - Reserved.

DIVISION 4. - PLUMBING CONTRACTORS

Footnotes:

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State Law reference— *State regulation of plumbers, IC 25-28.5-1-1 et seq.*

Subdivision I. - In General

Sec. 105-517. - Violations.

No plumbing permit shall be issued to any plumbing contractor while violating any of the provisions of this division or rules or regulations provided in this chapter.

(Code 1960, § 7-1925; Code 1989, § 111.45; Ord. No. 1707; Ord. No. 4759, 3-20-1973)

Sec. 105-518. - Plumbing work by owner.

Any person may do plumbing work for himself on his own property or premises without obtaining a license to do so. Before beginning any plumbing work the person shall first make a written application to the building commissioner for a permit to do his own plumbing work. He shall be granted a permit upon the payment of the regular fees, as required of other persons obtaining a plumbing permit or that may be hereafter required, the fee to be paid before the plumbing work is started.

(Code 1960, § 7-1924; Code 1989, § 111.44; Ord. No. 1707; Ord. No. 4759, 3-20-1973)

Sec. 105-519. - Plumbing permit.

- (a) Before any job of plumbing may be started in the city, except repairs as defined in subsection (b) of this section, an applicant desiring to do the job of plumbing or plumbing work shall file a written application for a plumbing permit with the building commissioner, describing the premises where the plumbing work is to be done. This application shall at once be filed with the city controller, who shall issue a plumbing permit. The applicant shall pay to the city controller the sum as provided in chapter 20 for each sink, closet, bathtub, lavatory, urinal, laundry tub, or other fixture it is proposed to install, which will discharge into a cesspool or a sewer which is a part of the sewer system of the city.
- (b) The application required by subsection (a) of this section shall not be required in case of repairs to plumbing, but repairs shall be taken to mean only the forcing out of waste pipes and repairing leaks. Repairs shall not be construed to include installation of backwater valves, replacing of an old fixture by a new one to be used for the same purpose or additional or relocating fixtures, lines or soil waste, or vent or leader pipes. However, in a building condemned because of unsanitary conditions, no plumbing shall be considered as coming under the head of repairs, but all plumbing shall be done as in a new building.

(Code 1960, § 7-1923; Code 1989, § 111.43; Ord. No. 1707; Ord. No. 3528; Ord. No. 4759, 3-20-1973)

Secs. 105-520—105-546. - Reserved.

Subdivision II. - License and Registration

Sec. 105-547. - Required.

- (a) It shall be unlawful for any plumbing contractor to engage in the practice of plumbing within the city without first obtaining a license from the state plumbing commission in accordance with the provisions of IC 25-28.5-1 and without first registering with the building commissioner of the city in accordance with subsection (b) of this section.
- (b) All persons desiring to engage in the practice of plumbing within the city shall submit a registration form to be prescribed by the building commissioner, together with the fee prescribed herein. The registration form shall include information that will enable the building commissioner to determine whether or not the person is duly licensed by the state, and other necessary information as will enable the building commission to insure compliance with all applicable laws and ordinances.
- (c) The above registration requirements shall not apply to any person who is exempted, pursuant to IC 25-28.5-1-1 et seq. from obtaining a state license.

(Code 1989, § 111.40; Ord. No. 4759, 3-20-1973)

Sec. 105-548. - Registration fee.

The annual registration fee shall be as established in chapter 20. The building commissioner upon receipt of a registration form and fee and following investigation, shall issue to the applicant a registration card and shall place the applicant's name on a list of registered and licensed plumbers maintained by the building commissioner. All registrations shall expire on December 31 of each and every year.

(Code 1989, § 111.41; Ord. No. 4759, 3-20-1973)

Sec. 105-549. - Bond.

No plumbing permit shall be issued to any applicant desiring to do the job of plumbing or plumbing work until the applicant has filed with the city controller an indemnifying bond to be approved by the city controller, payable to the city and all parties affected, in the penal sum of \$1,000.00 with good and sufficient surety. The bond shall be conditioned that the permittee will not violate any of the provisions of state standards, and the state administrative rules and regulations. The bond shall be further conditioned to reimburse any persons for whom the licensee may do plumbing work whereby the persons may be damaged by virtue of any improper work or neglect of the applicant in violating any of the terms of this section, the city building code, the administrative building council plumbing rules and regulations, or the state administrative rules and regulations.

(Code 1960, § 7-1914; Code 1989, § 111.42; Ord. No. 1707; Ord. No. 4759, 3-20-1973)

State Law reference— Unified license bond, IC 22-11-3.1-2.

Secs. 105-550—105-576. - Reserved.

DIVISION 5. - SEWER CONTRACTORS

Subdivision I. - In General

Sec. 105-577. - Definitions.

For the purpose of this division, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Board means the sewer contractors board.

Downspout means any pipe conducting precipitation from roofs and courts and connected directly or indirectly into the public sewers.

House sewer means that portion of a sewer running from the cast iron building sewer into any public sewer.

Private sewer means a sewer privately owned and not directly controlled by a public authority.

Public sewer means a common sewer directly controlled by a public authority.

Sewer means a passage or channel underground by which filth, corrupt and offensive matter may run or may be carried off by water and shall further be defined to include all storm sewers, drainage sewers, sanitary sewers, and combined sewers.

Sewer contractor means any person engaged in the business of building, constructing, repairing or maintaining any sewer as herein defined.

(Code 1989, § 111.51; Ord. No. 6198, 8-4-1987)

Sec. 105-578. - Permits.

- (a) Permits shall not be issued to anyone except the duly licensed contractor. The cost of a permit for tapping into a public sewer shall be as provided in chapter 20. The cost for a permit for a septic or private waste disposal system shall be as provided in chapter 20, providing the contractor has received a certificate of approval from the local board of health.
- (b) For homeowner's permit and inspection fee see section 105-108 and chapter 20.
- (c) All permits issued under this chapter shall be void within six months after date of issuance if the work contemplated under the same is not begun within that time or the work has stopped for more than 120 days.
- (d) The building commissioner may, in writing, suspend or revoke a permit issued under provisions of this Code, whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation of any provisions of this Code.

(Code 1989, § 111.58; Ord. No. 6198, 8-4-1987)

Secs. 105-579—105-604. - Reserved.

Sec. 105-605. - Membership; appointments.

- (a) The board shall consist of the city engineer, plumbing inspector, sewer inspector, one licensed sewer contractor, the director of the sewer division of the sanitary district of the city, and one councilmember. The licensed sewer contractor shall be appointed by the mayor and one member of the common council of the city. The members of the board shall be appointed for a period of one year. Their terms of office shall expire on December 31 each year. Thereafter, all appointments and all vacancies shall be appointed or replaced by and in accordance with the appointive powers herein designated. A member of the board shall hold office after the expiration of his term until his successor has been appointed and qualified. Any member of the board may be removed from office in the same manner as is provided for removal of department heads of the city, except members appointed by the common council. The board of examiners shall have the duty of enforcing the provisions of this chapter and shall cause periodic inspections to be made by the building department of the city of any work of a licensed contractor; and the board shall request the building department sewer inspector to make investigations and submit written reports to the board upon the filing of any complaints by any person with reference to the work of a licensed contractor. The board members may receive a salary or a per diem allowance for each day they attend a board meeting and are entitled to reimbursement for any expenses necessarily incurred in the performance of their duties as board members.
- (b) The board shall appoint a chairperson who shall be empowered to call a meeting of the board within 30 days when there are a sufficient number of applicants for an examination or whenever there is any violation of this division or of the rules or regulations as set forth by the board.
- (c) The members of the board shall elect from their membership a chairperson, vice chairperson and a secretary and shall adopt such rules and regulations as deemed necessary and expedient for the purpose of administering this division and the duties herein prescribed.
- (d) The secretary shall keep a record of all the meetings and proceedings of the board, together with the necessary registers showing all applications; said register to show the date and name of each applicant, qualifications, place of business, place of residence and whether the application for a license was granted or refused. It shall be the duty of the secretary to promptly notify the city controller in the event of revocation or the re-issuance of any license.

(Code 1989, § 111.52; Ord. No. 6198, 8-4-1987; Ord. No. 7414, § 3, 12-17-2002)

Sec. 105-606. - Duties of board.

The board shall examine the applicants as to their practical knowledge of the work incidental to the construction of sewers and sewer connections; and, if satisfied as to the competency of such applicant, the board may recommend to the city controller that a license be issued. Such license shall be issued only after the execution and filing of the bond required and the payment of the fee hereinafter provided. It shall be the duty of the city controller, upon receipt of recommendation by the board that the applicant is qualified and upon payment by applicant of a fee as established in chapter 20. Prior to the acceptance of any application from an applicant desiring a license to become a sewer contractor in the city, the applicant must first qualify by meeting one or more of the following conditions:

- (1) Has held a license as a plumber, general contractor, or excavation for a period of ten or more years.

- (2) Shows proof of having schooling in one of the above construction trades along with a minimum of three years of actual experience.
- (3) Shows proof of working in one or more of the above construction trades for a period of 15 or more years if not qualified by the first two conditions stated in this sections.

(Code 1989, § 111.53; Ord. No. 6198, 8-4-1987)

Secs. 105-607—105-630. - Reserved.

Subdivision III. - License

Sec. 105-631. - Sewer contractor license required.

It shall be unlawful for any person, whether a resident of the city or not, to engage in the business of or in the capacity of a sewer contractor within the city without first having a license therefor as herein provided.

(Code 1989, § 111.50; Ord. No. 6198, 8-4-1987)

Sec. 105-632. - Application.

- (a) To obtain a license under this chapter, any person desiring to engage in the business or act in the capacity of a sewer contractor in the city shall have met the above-stated conditions. The applicant shall make verified application for such license in writing to the board on such printed forms as the board shall prescribe and prepare. Such forms may be obtained from the office of the building commissioner. The application shall be signed and verified under oath by the applicant as an individual or the duly authorized agent, if a partnership or a corporation, and shall at such time and place as said board may designate, be required to submit himself to such examination as to his qualifications to work at or engage in the business of a sewer contractor. Each application must be accompanied by the sum established in chapter 20 as an examination license fee to be paid to the city controller, the receipt to be submitted to the board. Each person shall designate in his application the individual who will be required to take the examination and such individual must be an active member or a legally authorized agent of such person. The examinee shall demonstrate his qualifications in the manner prescribed by the board of examiners.
- (b) Any individual cannot qualify to take an examination for himself and for another person while any license that is issued as a result of an examination given to the individual remains unexpired or uncanceled; provided, however, that if the individual passing the examination shall at any time sever his connection with the contractor to whom said license was issued, it shall be the duty of both the individual and contractor to give written notice immediately to the board and at the same time surrender the license for cancellation. The contractor to whom the license was issued may, at the time of surrendering same, delegate some other active member, officer or authorized agent to qualify for examination. The person who has passed the examination, provided that his license is currently valid, with all required fees paid, and no current complaints pending with the board will not be required to take another examination and shall be qualified without payment of any additional license fees.
- (c) Whenever the holder of a license becomes deceased or disabled during the time the contract has been executed and commenced, the legal representative may be empowered to complete said contract, assign or appoint another to qualify for a license.

- (d) If the result of the examination conducted by the board as heretofore provided is satisfactory, the board shall immediately issue to the controller a certificate stating:
- (1) The applicant is qualified for a license as a contractor under the terms of this subdivision; and
 - (2) The classification for which said license shall be issued;
- and the controller shall then issue a license to the applicant upon payment of such license fee as is provided in section 105-433.
- (e) Any applicant failing to qualify for a license by failure to pass the examination shall not be eligible to take such examination again for a period of three months.
- (f) All licenses issued and registered under the provisions of this subdivision shall expire on December 31 of each year following the date of their registration. All licenses are valid indefinitely provided that the holder registers his license on a yearly basis as stated. If the contractor fails to register his license and obtain permits to do work for a period of five years, the license is then expired. Upon the expiration of any license, the licensee will be required to apply for a license as if for the first time. Any licensee registering his license between February 1 and February 15 of each year shall be subject to a penalty fee in the amount established in chapter 20. Any license registered after March 1, shall be subject to a penalty fee in the amount established in chapter 20.
- (g) A copy to replace any license certificate lost, destroyed or mutilated may be issued by the controller upon payment of the fee established in chapter 20.

(Code 1989, § 111.54; Ord. No. 6198, 8-4-1987)

Sec. 105-633. - Bond.

- (a) Persons doing such work shall agree to indemnify any party against all claims, demands, actions, judgments, losses and expenses arising from any injuries to persons or damage to property resulting from said work. Persons shall present a certificate to the city controller that there is in effect a standard public liability insurance policy by a company authorized to engage in said business in this state with a minimum liability of \$5,000.00 for injuries to one person, not less than \$10,000.00 for injuries to two persons and not less than \$1,000.00 for damages to property.
- (b) A contractor's license shall not be transferable. No person holding a license shall allow his name to be used by any other person for the purpose of obtaining permits or doing any of the work for which said license was issued.
- (c) Sewers extending from the cast iron pipe from any building to the public sewer shall be:
 - (1) Vitrified clay pipe complying with federal specifications SS-P-361 or cast iron pipe; or such other materials as approved by the authority.
 - (2) All sewers must be laid in a dry trench;
 - (3) Full length pipes shall rest on solid ground and pumps used to keep trench dry when sewer is laid below groundwater level;
 - (4) All joints shall consist of Portland cement, hot-pour or reformed asphalt joint properly wiped; or as approved by authority.
 - (5) If a special tap is required, an adequate footing shall be placed under pipe where it connects to the main sewer;
 - (6) Earth soil shall be backed halfway around the pipe; and

(7) The minimum size on all sanitary lines from the building to main shall be six inches.

(d) Grade.

(1) House sewers shall run in practical alignment and at a uniform slope of not less than one-eighth of an inch per foot toward the point of disposal; provided, that where it is impractical, then the grade shall be determined and approved by the city engineer.

(2) The grade of all private sewers that exceed the minimum size of six inches shall be determined by the city engineer upon submission of the plans and specifications for the same.

(3) Connections into the public sewer shall be made so that the entering pipe is firmly embedded in the public sewer and shall be set at an angle of 45 degrees with the flow line of said sewer. Pipe sewers shall be placed in every sewer where vitrified clay pipe or concrete pipes exceed 100 feet.

(Code 1989, § 111.55; Ord. No. 6198, 8-4-1987)

Sec. 105-634. - Revocation.

It shall be the power of the board to temporarily suspend or permanently revoke the license of any contractor, while a licensee thereunder, who shall be guilty of any one or more of the acts or omissions detailed in section 105-434.

(Code 1989, § 111.56; Ord. No. 6198, 8-4-1987)

Sec. 105-635. - Procedure for revocation.

The provisions of section 105-435 shall also apply to the revocation of licenses under this subdivision.

(Code 1989, § 111.57; Ord. No. 6198, 8-4-1987)

Secs. 105-636—105-658. - Reserved.

ARTICLE IX. - ASBESTOS ABATEMENT HANDLING AND REMOVAL

Footnotes:

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State Law reference— *Asbestos contractors, IC 13-17-6-1 et seq.*

DIVISION 1. - GENERALLY

Sec. 105-659. - Permits.

(a) Permit for removal abatement handlers of asbestos shall not be issued by the building commissioner to anyone, except a duly state certified and city registered asbestos removal and abatement contractor or his duly authorized agent under provisions of this permit.

(b) The building commissioner may revoke a permit in case of any false statement or misrepresentation of facts in the application on which a permit was based or in the event a structure or part thereof is condemned pursuant to this Code.

(c) Fee. The fee for each permit shall be as established in chapter 20.

(Code 1989, §§ 114.312, 114.313; Ord. No. 6577, 12-3-1991; Ord. No. 6577, 12-3-1991)

Secs. 105-660—105-676. - Reserved.

DIVISION 2. - LICENSE AND REGISTRATION

Sec. 105-677. - Required.

- (a) It shall be unlawful for any asbestos contractor to engage in the practice of handling, removing and abating asbestos within the city without first registering with the building commissioner of the city.
- (b) All persons desiring to engage in the practice of asbestos removal, handling and abatement within the city shall submit a registration form to be prescribed by the building commissioner, together with the fee prescribed herein. The registration form shall include information that will enable the building commissioner to ensure compliance with all applicable laws and ordinances.
- (c) Registration fee. The registration fee shall be thereafter as established in chapter 20. All registrations are valid as long as the holder's certification is current with the state department of environmental management. The building commissioner, upon receipt of an application shall issue a registration card and shall place the applicant's name on a list of registered and licensed asbestos removers, abatement and handlers maintained by the building commissioner. All registration shall expire on December 31 of each year.

(Code 1989, §§ 114.310, 114.311; Ord. No. 6577, 12-3-1991)

Sec. 105-678. - Bond.

No permit shall be issued to any applicant desiring to remove, handle, or abate asbestos until applicant has filed with the city controller an indemnifying bond to be approved by the city controller, payable to the city and party affected, in the penal sum of \$10,000.00 with good and sufficient surety. The bond shall be conditioned that the permittee will not violate any of the provisions of the city building code and the state department of environmental management. The bond shall be further conditioned to reimburse any persons, firms or corporations for whom the licensee may do asbestos removal or abatement work whereby the person may be damaged by virtue of any improper work or neglect of the applicant in violating any of the terms of this section, the city building code, the state department of environmental management or the state administrative rules.

(Code 1989, § 114.314; Ord. No. 6577, 12-3-1991)

Sec. 105-679. - Insurance.

The contractor shall keep in force general liability, bodily injury, property liability and personal injury insurance in an amount not less than \$1,000,000.00 worker's compensation and employer's liability.

(Code 1989, § 114.315; Ord. No. 6577, 12-3-1991)

Secs. 105-680—105-701. - Reserved.

ARTICLE X. - LEAD PAINT

Footnotes:

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State Law reference— *Removal of lead-based paint, IC 13-17-14-12.*

Sec. 105-702. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approved means approved by the commissioner of health in accordance with rules and regulations established herein.

Commissioner means the legally designated commissioner of health of the city or his authorized representative.

Dwelling means any enclosed space which is wholly or partly used or intended to be used for living or sleeping by human occupants; temporary housing as hereinafter defined need not be regarded as a dwelling.

Dwelling unit means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating.

Facility means any building or structure and the equipment therein.

Lead paint means any pigmented, liquid substance applied to surfaces by brush, roller, or spray in which the total nonvolatile ingredients contain more than 0.5 percent of lead by weight, calculated as metallic lead by the end of 1972, and 0.06 by the end of 1973, or as outlined by FDA requirements.

Occupant means any person over six months of age, living, sleeping, cooking, or eating in, or actually having possession of a dwelling unit or a rooming unit; in dwelling units a guest shall not be considered an occupant.

Operator means any person who has charge, care, control, or management of a multiple dwelling or part thereof, in which dwelling units or rooming units are let.

Ordinary summer conditions means a temperature ten degrees Fahrenheit below the highest recorded temperature in the locality for the prior ten-year period.

Ordinary winter conditions means a temperature 15 degrees Fahrenheit above the lowest recorded temperature in the locality for the prior ten-year period.

Owner means any person who, alone, or jointly or severally with others who meets one of the following conditions:

- (1) Legal or equitable ownership of any dwelling or dwelling unit, with or without accompanying actual possession thereof.
- (2) Charge, care, or control of any dwelling or dwelling unit as owner or agent of the owner or as executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the owner. Any person thus representing the actual owner shall be bound to comply with the provision of this article and the rules and regulations adopted pursuant thereto to the same extent as if he were the owner.

Rehabilitation area means an area in the city consisting of one block or more within which systematic rehabilitation is necessary or being performed to protect the public health, safety, and welfare.

Roominghouse means any dwelling, or that part of any dwelling containing one or more rooming units, in which space is let by the owner or operator for living or sleeping, but not for cooking or eating purposes.

Safety means the condition of being free from danger and hazards such as accidents or disease.

Supplied means paid for, furnished, or provided by or under the control of the owner or operator.

Systematic rehabilitation means the inspection of all dwellings, dwelling units, and premises within a rehabilitation area for the purpose of finding all violations of this article and the elimination of all violations in accordance with the provisions of this article.

Temporary housing means any trailer, mobile home, or any other structure used for human shelter which is designated to be transportable and which is not attached to the ground, to another structure, or to any utility system on the same premises for more than 31 consecutive days.

(Code 1989, § 94.40; Ord. No. 5058, 7-22-1975)

Sec. 105-703. - Use of lead paint prohibited.

No person shall apply lead paint to toys, furniture, or the interior surfaces of any dwelling, dwelling unit, roominghouse, rooming unit, or facility occupied or used by children. Interior surfaces include but are not limited to window sills, window frames, doors, door frames, walls, ceilings, stair rails, spindles, or other appurtenances. No person shall sell, transfer, or deliver toys or furniture to which lead paint has been applied.

(Code 1989, § 94.41; Ord. No. 5058, 7-22-1975)

Sec. 105-704. - Removal of lead paint hazard.

- (a) Where the commissioner determines that the presence of lead paint upon any premises creates a health hazard to children, he shall issue a notice to the owner or occupant to eliminate the hazard. In the event an emergency exists, the health commissioner shall notify the building commissioner of the nature of the emergency. The building commissioner, pursuant to his powers and authority, may take whatever measure necessary for eliminating the emergency; however, the health commissioner can seek any remedial action in courts having appropriate jurisdiction to authorize injunctive relief.
- (b) Lead paint shall be completely removed from any surface which can be chewed or eaten by children. Cracked, chipped, blistered, or peeling lead paint shall be completely removed. The lead paint ordered to be removed shall be completely removed to the base surface under the safety conditions approved by the commissioner. In lieu of removal of the lead paint, the accessible surface shall be covered with an approved durable material. Repainting a surface with a nonlead paint without the completed removal of the existing lead paint shall not be deemed satisfactory compliance with this section.
- (c) The methods used for the removal of lead paint shall not present a hazard to health from fumes, dust, or vapors by inhalation or absorption through the skin and mucous membranes and shall be in accordance with all applicable laws, ordinances, regulations, and safety standards and practices of the city, and state and federal agencies.

(Code 1989, § 94.43; Ord. No. 5058, 7-22-1975)

Sec. 105-705. - Enforcement.

This regulation shall be enforced by the health commissioner. No person shall violate any section of this code, or any order or regulation of the board of health of this city or general health district made in pursuance thereof, obstruct or interfere with the execution of an order, or willfully or illegally omit to obey an order. Any administrative emergency order shall be in conjunction and cooperation with the building commissioner of the city.

(Code 1989, § 94.44; Ord. No. 5058, 7-22-1975; Ord. No. 8158, 12-4-2007)

Secs. 105-706—105-723. - Reserved.

ARTICLE XI. - UNSAFE BUILDINGS

Footnotes:

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State Law reference— *Unsafe building law, IC 36-7-9-1 et seq.*

Sec. 105-724. - Incorporation of unsafe building standards by reference.

The provisions of IC 36-7-9 are adopted by reference as the city's unsafe building code. Two copies of this material are on file in the clerk's office and available there for public inspection.

(Code 1989, § 162.01)

Sec. 105-725. - Administration.

The administration of the provisions of this article shall be the responsibility of the office of the building commissioner.

Sec. 105-726. - Definition incorporated by reference.

The definition of "substantial property interest" as it appears in IC 36-7-9-2 is hereby incorporated by reference.

Sec. 105-727. - Unsafe building fund.

There is hereby established in the operating budget of the building commissioner a fund designated as the "Unsafe Building Fund" in accordance with IC 36-7-9-14.

(Code 1989, § 162.02; Ord. No. 4882, 4-23-1974)

Sec. 105-728. - Vacant or abandoned buildings.

The owner of any vacant or abandoned building within the city shall be required to paint any plywood or other material used in boarding up the building. All such painting required by this section shall be done in a manner and in such color or colors so as to be complementary with the existing color and style of the building.

(Code 1989, § 162.03; Ord. No. 5349, 10-18-1977)

Chapter 107 - CONDOMINIUM CONVERSION PROCEDURES

Footnotes:

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State Law reference— *Condominiums, IC 32-25-1-1 et seq.; exemption from local subdivision regulations, IC 36-7-4-702.*

Sec. 107-1. - Purpose.

- (a) Condominium and other similar types of hybrid ownership arrangements mixing individual ownership with collective ownership of common areas represent an increasingly popular response to complex forces at work in our society and community. This type of hybrid ownership also magnifies the impact upon public health, safety, welfare, convenience and lifestyle when conditions of poor land use or site planning, mismanagement, neglect or deterioration, blight, or outdated structural conditions are allowed to occur or continue.
- (b) Corrections of building code violations and upgrading of safety or common functional elements of the structure are of prime importance. In addition, conversion of existing apartments or similar multifamily rental dwelling structures into condominiums, have had the effect and increase the potential of displacing longterm residents, especially senior citizens, who face this city's shortage of replacement rental housing. That shortage, combined with withdrawal of the private sector, is a situation to which public agencies involved with housing need time to respond. Therefore, it is the purpose of this chapter to regulate such conversion to promote the safety and revitalize use of the city's structures for the benefit of increased home ownership opportunity, while attempting to mitigate the human hardship of misplacement by reasonable notice and disclosure requirements.
- (c) The procedures and requirements of this chapter shall apply to and govern the processing and requirements for approval of condominium record of survey maps for condominium projects. Said provisions shall supplement zoning, site development, health, building or other ordinances which may be applicable to the particular condominium project, and shall apply to the approval of condominium projects involving new construction as well as projects involving the conversion of existing structures.

(Code 1989, § 163.501; Ord. No. 6227, 2-2-1988; Ord. No. 8256, § 1(163.501), 2-17-2009)

Sec. 107-2. - Enforcement.

- (a) It is unlawful for any person, firm, corporation, partnership or association to sell or lease any unit of any condominium or any other portion thereof until the final record of plan, in full compliance with the provisions of this title, have been finally approved by the plan commission and duly recorded in the office of the city clerk.
- (b) All departments, officials and public employees of the city, vested with the duty or authority to approve or issue permits, shall conform to the provisions of this code and shall neither accept applications nor approve or issue any permit or license for use, construction, or any other purpose in conflict with the provisions of this Code. Any such permit or license issued or approved in conflict with the provisions of this Code shall be null and void.
- (c) The planning director or the building commissioner shall have the authority to enforce this Code against violations thereof by any of the following actions:
 - (1) To serve notice requiring the cessation or correction of any action in violation of this Code upon the owner/developer, agent of the owner/developer, successor-in-interest of the developer or owner, tenant, purchaser, builder, contractor or other persons who commits or assists in such violation;
 - (2) To recommend denial of the condominium project application; or

- (3) To call upon the corporation counsel to maintain an action for injunctive relief to restrain, abate or cause the corporation to cease such violation, or to institute criminal proceedings.

(Code 1989, § 163.512; Ord. No. 6227, 2-2-1988; Ord. No. 8256, § 1(163.512), 2-17-2009)

Sec. 107-3. - Submission of application.

- (a) The owner or developer of a proposed condominium desiring approval shall file an application with the department of planning and development on a form prescribed by the city together with:
 - (1) Two copies of the proposed plan accurately drawn to scale which shall be made by a registered Indiana land surveyor using a scale no smaller than one inch to equal 40 feet. In addition, said plan or an additional site plan shall reflect the required floor plans identifying boundaries of the project units, convertible and expandable areas or spaces, and common areas. Said plan should designate the intended use of common areas (e. g. storage, recreational, parking for guest as opposed to unit owners, open space, etc.), and should indicate whether such common areas are to be open to the public, assigned to specific units or semi-private being available only to unit owners. Said site plan shall also identify and describe in detail the location of existing or proposed driveways, pedestrian ways, curbcuts, walls, structures, fences, landscaping and sprinkling systems. A copy of the plan shall be returned to the Planning Department after final approval.
 - (2) Two copies, signed in the original, of the proposed condominium declarations and bylaws, together with a copy of the documents recorded after final approval.
 - (3) Where conversion of an existing building is proposed as part of the condominium project, a property report for each conversion project shall be submitted as part of the application together with the plan for proposed improvements, renovations and repairs.
 - (4) Proof of notice to tenants shall be required before final approval, but may be submitted at owner/developer's option after preliminary approval is obtained.
 - (5) To assist the city to defray costs involved with the review of the project, fees shall be submitted with the application in the following amounts:
 - a. \$50.00 per project plan plus.
 - b. \$20.00 per unit (one to ten units) plus.
 - c. \$10.00 per unit over ten units.
- (b) Incomplete applications may be proffered and reviewed for advisory comments by the planning or building departments, but shall not be deemed accepted or received until complete nor shall the condominium project be scheduled for any hearings before the planning commission until applications are complete, excepting only subsection (a)(4) of this section.

(Code 1989, § 163.502; Ord. No. 6227, 2-2-1988; Ord. No. 8256, § 1(163.502), 2-17-2009)

Sec. 107-4. - Review of declarations.

Condominium declarations and bylaws shall be reviewed by the planning department to ensure the inclusion of provisions which to city's satisfaction address and fix responsibility for the maintenance, upkeep and repair of common areas including common walls, electrical, mechanical, plumbing or utility systems, recreational areas, landscaping and

parking areas. Also declarations shall restrict the use of any individual residential dwelling unit to single families. The planning director shall also review said declarations and require appropriate disclosure or treatment of any unusual circumstances, variances, or conditions placed upon the condominium project for approval.

(Code 1989, § 163.503; Ord. No. 6227, 2-2-1988; Ord. No. 8256, § 1(163.503), 2-17-2009)

Sec. 107-5. - Preliminary review and approval by building commissioner.

Upon receipt of an application for approval of a condominium project, the building commissioner shall review the proposed building plans for new construction, and/or the property plan of improvements, renovations, and repairs in the case of a conversion project. In the case of a conversion, the building commissioner shall require inspections of the property and may require supplementations, revisions, and resubmission of the property report should it be determined that substantial discrepancies exist or inspections indicate report statements are not supported by facts, code requirements or sound construction practices. Upon preliminary review, the building commissioner shall note corrections, repairs and replacements which must be made to bring the structures into code compliance together with a list of renovation improvements proposed by the developer not required by code. The building commissioner in such preliminary report, shall indicate any requirements he anticipates waiving as being impractical because of the unique circumstances associated with the structure and any conditions he intends to impose upon such waivers. The building commissioner may then recommend denial until such time as existing violations of code are corrected or may recommend preliminary approval of the project and building report subject to the condition that violations be corrected prior to final approval.

(Code 1989, § 163.504; Ord. No. 6227, 2-2-1988; Ord. No. 8256, § 1(163.504), 2-17-2009)

Sec. 107-6. - Preliminary review by planning director.

The planning director shall review the application and related documents to determine whether the project conforms to applicable zoning ordinances of the districts in which the condominium project is located, the status or extent of nonconforming rights, applicable conditions on the use or building imposed by ordinance, variance, conditional uses, and/or prior approval of a planned unit, clustered, or group development. If the planning director finds there are violations of applicable zoning ordinances or requirements, the director may recommend denial of the condominium project until such violations have been corrected or requirements have been completed and the director may recommend preliminary approval subject to the condition the violations be corrected, completed or bonded prior to final approval.

(Code 1989, § 163.505; Ord. No. 6227, 2-2-1988; Ord. No. 8256, § 1(163.505), 2-17-2009)

Sec. 107-7. - Preliminary approval.

- (a) If upon submission of the reports and recommendations of the building commissioner and planning director, the planning director finds that: both recommendations are favorable, and that the building commissioner is not waiving any requirements imposed by this chapter, the planning director may, on an administrative basis grant preliminary approval. Absent such a finding that said criteria is met, or in the event of a dispute regarding conditions imposed by such an administrative preliminary approval, the matter shall be set for hearing before the plan commission pursuant to subsection (b) of this section.
- (b) When an administrative approval is not appropriate under subsection (a) of this section, the planning director shall submit the reports and recommendations of the building commissioner and planning director before a hearing of the plan commission for consideration of preliminary approval or modifications thereof. If the plan

commission finds that approval is recommended by the building official and planning director, and that the project is in compliance with applicable zoning, building, health or subdivision ordinances and requirements, the plan commission may grant preliminary approval and it may impose appropriate conditions subsequent as part of its approval. Such conditions may include correction of violations, appropriate amendment to declarations, and the submission of notice of intent to tenants, to be completed prior to final approval.

- (c) The effect of preliminary approval shall entitle the owner/developer to proceed with obtaining building permits, giving notice to tenants and preparing documents for final approval, and to otherwise proceed with the project with all aspects thereof being subject and conditioned upon final approval.

(Code 1989, § 163.506; Ord. No. 6227, 2-2-1988; Ord. No. 8256, § 1(163.506), 2-17-2009)

Sec. 107-8. - Final review.

- (a) *Building commissioner.* After preliminary approval, the building commissioner shall cause the structure to be inspected in the normal course of inspection work being conducted under permit. Prior to final approval, the building commissioner shall cause final inspections on all structures and work therein to applicable building codes. If the building commissioner finds remaining corrections, repairs or replacements which are required to bring the buildings or units into compliance or to complete proposed renovations, said official may require corrections and completion of such work prior to final approval. However, should the building commissioner determine plans to correct code violations or to complete proposed renovations or refurbishing after final approval as a condition thereof, are reasonable and shall not create hazards to the health or welfare of occupants, said building commissioner may recommend final approval subject to completion of necessary or planned work, upon the owner's submission of a signed contract with a contractors licensed to do work in the city.
- (b) *Planning director.* After preliminary approval, the Planning Director shall be responsible to monitor conditions of preliminary approval to insure compliance therewith prior to presentation to the plan commission and city commission for final approval. All violations of existing ordinances shall be corrected and requirements shall be completed prior to final approval or shall be corrected or completed as a condition of final approval prior to submission to the plan commission or shall be bonded according to the criteria and standards set forth in subsection (a) of this section. The 120-day notice period shall commence from the latest date of notice to any tenant and must elapse prior to submission of the condominium project to the plan commission for final approval. The planning director may recommend final approval subject to completion of necessary or planned work provided the owner/developer files a performance bond in an amount equal to guarantee the estimated cost of labor and materials to correct violations of building codes, or conditions imposed by ordinance or order.

(Code 1989, § 163.507; Ord. No. 6227, 2-2-1988; Ord. No. 8256, § 1(163.507), 2-17-2009)

Sec. 107-9. - Final approval.

Upon submission of the recommendation of the building commissioner and the planning director, the matter shall be set for the consideration of the plan commission. If the plan commission finds that the project is in compliance with applicable ordinances and the requirements of preliminary approval, the plan commission may recommend final approval. The plan commission must approve any recommendations from the planning director and building commissioner for work that is proposed for subsequent completion, bonding, or waiver and may affirm or otherwise impose appropriate terms upon such bonding or conditions upon its approval. Upon final approval by the plan commission, the planning director shall ensure all

conditions of approval have been completed, all final documentation is signed and submitted including any required bonds or agreements required to be filed, and shall then submit the matter together with the recommendation of the plan commission with his signature upon the plan before the plan commission for final approval. If the plan commission shall determine said project is in conformity with the requirements of applicable ordinances of the city, it shall approve said plan. If it should determine said project is not in conformity with requirements of the ordinances of the city, or if it rejects any offers of dedication, or if it is not satisfied with plans of a project which constitutes a subdivision, it shall disapprove said plan specifying reasons for disapproval. Within 60 days after the plan commission has disapproved any project, the developer may file with the planning director a plan altered to meet the requirements of the board of zoning appeals. No final plan shall have any force or effect until the same has been approved by the plan commission and by the common council.

(Code 1989, § 163.508; Ord. No. 6227, 2-2-1988; Ord. No. 8256, § 1(163.508), 2-17-2009)

Sec. 107-10. - Bond requirements.

- (a) The owner/developer shall provide a performance bond in an amount equal to guarantee the estimated cost of labor and materials to correct violations of building codes or conditions imposed by ordinance or order. The form of the bond shall be determined by the plan commission. The plan commission may elect to require deposit of cash, negotiable bonds of the United States Government, the state, or of the city, or negotiable certificates of deposit, or irrevocable letters of credit from any banking institution organized and transacting business in the United States or an irrevocable corporation surety; all surety shall be in an amount, or which has a market value, equal to or greater than the amount of the surety required for the bonded area.
- (b) The form of the bond shall be approved by the corporation counsel of the city and the bond shall be approved by the city controller.
- (c) The bond shall remain in effect until the area has been completely restored in accordance with the provisions of this Code, and the conditions of this chapter.
- (d) Said approved bond must be filed with the final plan prior to submission to and approval by the plan commission. The acceptance of such bond as a condition of final approval shall not waiver or substitute for the need of the owner/developer to obtain a certificate of occupancy for the project or units after work is completed prior to actual occupancy, if applicable.

(Code 1989, § 163.509; Ord. No. 6227, 2-2-1988; Ord. No. 8256, § 1(163.509), 2-17-2009)

Sec. 107-11. - Notice to residential tenants in conversion project.

- (a) *Notice.* As part of the application for approval of a condominium project, when said project involves the conversion of an existing residential structure where the structure has been occupied by residential tenants prior to application for conversion, the owner/developer shall provide notice of intended conversion to said tenants by certified mail. This notice requirement shall not apply to nonresidential structures or to a residential structure that was vacant upon acquisition and remained so during the year prior to filing of the developer's application for conversion; nor shall it preclude the approval of a project prior to the expiration date wherever tenant has executed a waiver relinquishing his right of notice under this provision.
- (b) *Contents.* Such notice shall include: the intention and plans for the conversion of the building to a condominium project; the estimated dates of construction period or termination of occupancy which shall not be less than 90 days from the date notice is served upon occupants or expiration of individual leases, whichever is longer; the

disclosure of the specific initial fixed sales price for each unit which shall be no greater than the price initially advertised and offered to the general public; and relocation information for the tenants specifying available alternative housing relocation resource agencies and organizations and a plan of any service to be voluntarily provided by the owner/developer.

- (c) *Dissemination of notice.* A copy of said notice, together with a list prepared by the owner/developer identifying names, apartment or unit numbers, approximate ages, rental rates and other known special handicaps or factors affecting relocation needs of the tenants shall be submitted to the housing authority and the redevelopment commission to advise said agencies of the conversion and/or solicit their assistance with relocation services. No final approval of such a conversion project shall be granted by the plan commission until the owner/developer has provided proof of service by certified mail of such notices and relocation plans as required in subsection (a) of this section, and the time designated therein (a minimum of 90 days) has expired.

(Code 1989, § 163.510; Ord. No. 6227, 2-2-1988; Ord. No. 8256, § 1(163.510), 2-17-2009)

Sec. 107-12. - Tenant protest review.

(a) *Protest review procedure.*

- (1) When a tenant of a residential dwelling has received written formal notice of eviction without cause and without at least 90 days' notice of conversion required in section 107-11 and has reason to believe that notice was issued because of a proposed condominium project, he may, within 60 days of the date of the notice of eviction, initiate an appeal regarding the issue of proper notice to the plan commission. The filing of such a protest shall stay the issuance of any approval or issuance of any permits for the structure in question for a period of not to exceed 60 days and the matter shall be set for hearing before the plan commission. Subsequent appeals shall not act to further stay the issuance of approval for the condominium project and no stay shall be granted if the planning director certifies to the plan commission that a stay could cause imminent peril of life or property. In such cases, approval shall not be stayed other than by order issued by the district court upon petition, notice and due cause being shown.
- (2) When a tenant believes he has not been properly notified of a proposed condominium conversion, the tenant may give notice of this fact to the planning director within 15 days of discovery of the alleged infraction.
- (3) The planning director shall investigate the matter and shall issue a written opinion within 30 days of receipt of notification.

(b) *Provisions for temporary cessation of condominium conversion.*

- (1) The executive secretary of the plan commission may, without notice, temporarily cause the cessation of a condominium conversion for the following reasons:
 - a. Upon determination that a violation of the terms of any part of this chapter has occurred; or
 - b. Upon determination that a violation of any of the specifications, rules, regulations or special conditions for the permit has occurred.
- (2) In case of temporary cessation of conversion, the executive secretary shall give immediate notification by certified mail to all members of the board of zoning appeals, the office of the mayor, and corporation counsel of the action taken. The planning director shall also give notice to the owner/developer to appear before the board of zoning appeals no later than at its next regular scheduled meeting to determine whether the permit shall be revoked at said meeting. The owner/developer shall be entitled to be represented by counsel, to confront and examine witnesses, and to present any other evidence in their behalf. If, after hearing the

evidence, the board of zoning appeals shall make a determination and finding that this subchapter or any of the specifications, rules, regulations, or special conditions has been violated, the board of zoning appeals shall then revoke the permit. if no such finding or determination shall be made by the board of zoning appeals, the suspension shall be immediately removed. Neither temporary cessation, suspension, nor revocation shall bar prosecution for violations of this chapter.

- (c) *Relocation assistance.* Upon filing, a copy of the appeal form shall be forwarded to the relocation division of the city redevelopment commission and the city housing authority for relocation advice and assistance. Said agency shall, within ten days, forward to the plan commission a statement of its report and recommendation.
- (d) *Investigation.* Upon filing of an appeal, the executive secretary shall institute an investigation to determine if the notice requirements set forth in subsection (a)(1) of this section were satisfied. The planning director shall then report the findings to the plan commission within 30 days of filing the appeal.
- (e) *Hearing.* The plan commission shall fix a reasonable time for the hearing to the appeal, give due notice to the appellant and to the owner/developer of the condominium project, and shall, at said hearing, review said appeal together with agency and department reports, recommendations and related permit or subdivision applications, and shall decide the same within 30 days from the date of filing of the appeal.
- (f) *Actions by plan commission.* The plan commission with regard to the hearing of said appeals, may:
 - (1) Enforce the attendance of witnesses, the production of books and papers and administer oaths;
 - (2) Direct city resources, if necessary, and appropriate to alleviate relocation hardships;
 - (3) Hear and decide allegations of error in any order, requirement, decision or determination made by a municipal official in the performance of his duties as related to the above;
 - (4) See that the laws and ordinances are faithfully executed and direct investigations accordingly;
 - (5) Institute any appropriate actions or proceedings to prevent or punish persons from or for performing any act contrary to the building and zoning ordinances of the city;
 - (6) Impose reasonable conditions relating to the terms and conditions upon which the project will be approved which may include suspension of approval pending preparations and implementation of a reasonable relocation plan or services for tenants who have not been given proper notice, or denial of the application in which event the owner/developer may not reapply for 18 months from the date of denial.

(Code 1989, § 163.511; Ord. No. 6227, 2-2-1988; Ord. No. 8256, § 1(163.511), 2-17-2009)

Chapter 109 - EXCAVATIONS

ARTICLE I. - IN GENERAL

Sec. 109-1. - Excavations below street grades.

The plan commission shall be authorized to permit excavations below existing and established contiguous street grades only in those cases where the excavation shall be used for public or recreational purposes. In such case, the commission shall have the authority to specify, as a prior condition to granting the permit, that the land shall be dedicated as a public facility to the city. The commission shall further be authorized to impose any other special conditions consistent with the master comprehensive plan for the city.

(Code 1960, § 6-1906; Code 1989, § 163.139; Ord. No. 4184; Ord. No. 4369; Ord. No. 8256, § 1(163.139), 2-17-2009)

Sec. 109-2. - Permit conditions.

- (a) The commission may impose any specifications, rules, regulations or special conditions, in the granting of an excavation permit, that may be required by the commission for the protection of public health, safety and welfare. Any such specifications, rules, regulations, or special conditions shall be in writing, shall be attached to the permit itself, and shall become a part of the permit granted by the commission.
- (b) When sand or materials are to be removed or moved in connection with excavations for construction, alteration of structures, or for accessory uses (such as parking areas, landscaping or gardening), approval by the plan commission shall be required. Construction drawings, plot plans, and when deemed necessary, topographic maps shall be presented to the plan commission for review. The plan commission when it deems necessary shall require a performance bond to be posted payable to the city if the sand or materials are moved and construction as proposed not performed.

(Code 1960, § 6-1903; Code 1989, § 163.137; Ord. No. 4184; Ord. No. 4369; Ord. No. 8256, § 1(163.137), 2-17-2009)

Sec. 109-3. - Bond.

- (a) The applicant shall be required to post a liability bond payable to the city prior to the issuance of any permit by the plan commission. The amount of the bond for each applicant shall be set by the commission, but in no event shall the amount be less than \$5,000.00. The form of the bond shall be approved by corporation counsel and surety shall be approved by the city controller. The condition of the bond shall be that the applicant will conform to the provisions of this chapter, any and all specifications, rules, regulations and special conditions prescribed by the commission, and shall protect and save harmless the city from any and all liability, damages, and expenses which the city may sustain by reason of any violation by the applicant of any of the provisions of this chapter, specifications, rules, regulations and special conditions of the permit.
- (b) In the event of damage to private or public property in the immediate area of the excavation site by spilling or blowing material, the city is authorized to declare a forfeiture of the bond posted by the applicant and collect the amount of damages inflicted upon or suffered by any property owner. The amount of damages shall be collected by the city as trustee, for and on behalf of the damaged property owner. The city is authorized to pay the amount of damages to the owner immediately upon collection from the indemnitor or his surety.

(Code 1960, § 6-1904; Code 1989, § 163.138; Ord. No. 4184; Ord. No. 8256, § 1(163.138), 2-17-2009)

Secs. 109-4—109-24. - Reserved.

ARTICLE II. - PERMIT

Sec. 109-25. - Required.

- (a) It shall be unlawful for any person to excavate or remove, or cause to be excavated or removed, or to take or carry away, or to cause to be taken or carried away, any sand, soil, earth, or rock from any land within the city for any purpose whatsoever, before the person shall first have obtained a permit for such purpose from the plan commission of the city or except as may be permitted under section 109-27.

- (b) It shall be unlawful for any person to excavate or remove, or cause to be excavated or removed, any sand, soil, earth rock from any land within the city for any purpose whatsoever, below existing and established contiguous street grade except as may be permitted under sections 109-1 and 109-27. In those areas where no established contiguous street exist, it shall be unlawful for any person to excavate or remove, or cause to be excavated or removed, any sand, soil, or rock from any land within the city for any purpose whatsoever, below an elevation to be determined by the city or said elevation to be consistent with any possible future extension of the closest existing street or alley into said area
- (c) It shall be unlawful for any person to excavate or remove or cause to be excavated or removed, any sand, soil, earth, or rock from any zoning district as defined in the zoning ordinance of the city within the corporate limits of the city, except to the extent approved by the plan commission after presentation of parallel and perpendicular cross sections of existing and proposed topography indicating necessity of such removal for the construction of permitted uses in such zoning districts, or as may be permitted under sections 109-1 and 109-27.
- (d) It shall be unlawful for any person to excavate or remove, or cause to be excavated or removed, any sand, soil, earth, or rock from any land within the city for any purpose whatsoever, without erecting and maintaining proper barricades or other suitable protective devices, to prevent said sand, soil, earth, or rock from blowing over or spilling upon other private or public property in the immediate area of the excavation.
- (e) It shall be unlawful for any person to terminate any permitted excavation operation by leaving the excavated site in a condition that constitutes a hazard to the health or safety of others.

(Code 1960, § 6-1901; Code 1989, § 163.135; Ord. No. 4184; Ord. No. 4297; Ord. No. 4369; Ord. No. 8256, § 1(163.135), 2-17-2009)

Sec. 109-26. - Application.

Application for a permit to excavate or remove, take or carry away any sand, soil, earth, or rock shall be made to the commission on the application form prescribed by it. Applications for any such permit shall include the following:

- (1) A general description of streets, highways, or other landmarks in the immediate area surrounding the proposed excavation site.
- (2) A legal description of the particular site of the proposed excavation.
- (3) A plot plan or a plan of survey.
- (4) A topographical map showing the elevation to which the proposed excavation will be made.
- (5) An accurate estimate of the amount of sand or other material, in cubic yards, expected to be removed during the life of the permit.
- (6) The proposed routes to be used by vehicles in the removal of any material from the site. Approval of the proposed routes by the traffic engineer of the city must be attached to the application before the commission.
- (7) If the applicant shall be any person other than the owner of the land, the applicant shall file, as a part of his application, a statement from the owner indicating that the applicant has the owner's permission for such excavation or removal.
- (8) A certificate of zoning clearance from the office of development and planning.
- (9) A statement explaining in detail the protection and precautionary methods to be employed by the applicant to prevent the excavated material from blowing over or spilling upon other private or public property in the immediate area of the excavation.

(Code 1960, § 6-1902; Code 1989, § 163.136; Ord. No. 4184; Ord. No. 8256, § 1(163.136), 2-17-2009)

Sec. 109-27. - Exemptions.

For the following listed exceptions, no permit or bond shall be necessary, but all other provisions of this chapter pertaining to the protection of private or public property in the immediate area of the excavation site shall remain in full force and effect:

- (1) Sand or materials which are removed or moved in cases involving public health or safety.
- (2) Sand or materials which are removed or moved in connection with the installation or repair of public utilities, street grading and sewer installation.
- (3) All cases where the aggregate volume of sand or material removed within any period of 365 days does not exceed ten cubic yards.

(Code 1960, § 6-1905; Code 1989, § 163.142; Ord. No. 4184; Ord. No. 4297; Ord. No. 4369; Ord. No. 8256, § 1(163.142), 2-17-2009)

Sec. 109-28. - Suspension or revocation of permit.

- (a) The director of the office of development and planning may, without notice, temporarily suspend any permit issued hereunder upon the following grounds:
 - (1) Upon his determination that a violation of the terms of the ordinance has occurred and that irreparable change in the condition of the land will result unless the excavation operation is immediately suspended.
 - (2) Upon his determination that a violation of any of the specifications, rules, regulations or special conditions of the permit has occurred and that irreparable change in the condition of the land will result unless the excavation is immediately suspended.
 - (3) Upon filing a verified petition with the city clerk specifically setting out therein that a violation of the terms of the ordinance has occurred or that a violation of any of the specifications, rules, regulations, or special conditions of the permit has occurred and that an irreparable change in the condition of the land will result unless the excavation is immediately suspended, the common council of the city may have the right to review the issuance of permits and revoke or suspend any such permits pursuant to the procedures prescribed in this section.
- (b) In case of suspension, the director of the office of development and planning shall give immediate notification by mail to all members of the plan commission of the action taken. The director shall also give notice to the permittee to appear before the plan commission at its next regular meeting, or at a special meeting of the plan commission called for that purpose, to determine whether the permit shall be revoked at the meeting, the permittee shall be given a full opportunity to appear and be heard. The permittee shall be entitled to be represented by counsel, to confront and examine witnesses, and to present any other evidence in his own behalf. If, after hearing the evidence, the commission shall make a determination and finding that this chapter or any of the specifications, rules, regulations or special conditions has been violated, the commission shall then revoke the permit. If no such finding or determination shall be made by the commission, the suspension shall be immediately removed.
- (c) Neither suspension nor revocation of any permit shall bar prosecution for violations of this chapter.

(Code 1960, § 6-1907; Ord. No. 4184; Code 1989, § 163.140; Ord. No. 4584, 11-9-1971; Ord. No. 8256, § 1(163.140), 2-17-2009)

Sec. 109-29. - Fees.

The fee for a permit shall be in the amount of \$100.00 which shall be paid to the city controller at the time of issuance. All such permits shall be valid for a specific period of time to be determined by the commission at the time of issuance.

(Code 1960, § 6-1908; Code 1989, § 163.141; Ord. No. 4184; Ord. No. 8256, § 1(163.141), 2-17-2009)

Chapter 111 - HISTORICAL PRESERVATION

Footnotes:

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State Law reference— *Historic preservation generally, IC 36-7-11-1 et seq.*

ARTICLE I. - IN GENERAL

Sec. 111-1. - Purpose and definitions.

- (a) *Purpose of historic preservation and protection.* In order to promote the educational, cultural and general welfare of the citizens and to ensure the harmonious and orderly growth and development of the municipality; to maintain established residential neighborhoods in danger of having their distinctiveness destroyed; to enhance property values and attract new residents; to ensure the viability of the traditional downtown area and to enhance tourism within the city; it is deemed essential by the city that qualities relating to its history and harmonious outward appearance of its structures be preserved. This purpose is advanced through the restoration and preservation of historic areas and buildings, the construction of compatible new buildings where appropriate, and the maintenance and insurance of compatibility in regards to style, form, proportion, texture, and material between historic buildings and those of contemporary design. It is the intention of the city through this chapter to preserve and protect historic and architecturally worthy buildings, structures, sites, monuments, streetscapes, and neighborhoods which impart a distinct aesthetic quality to the city and serve as visible reminders of its historic heritage.
- (b) *Definitions.* The following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed.

Alteration means a material or color change in the external architectural features of any building, structure, or site within a historic district.

Classifications.

- (1) *Outstanding.* The "O" classification means that the property has sufficient historic or architectural significance that is listed, or is eligible for individual listing, in the National Register of Historic Places. Outstanding resources can be of local, state, or national importance.
- (2) *Notable.* A classification of "N" means that the property does not merit the outstanding rating, but it is still above average in its importance. A notable structure may be eligible for the National Register.
- (3) *Contributing.* A "C" classification means the property is at least 40 years old, but does not meet the criteria for an "O" or "N" classification. Such resources are important to the density or continuity of the area's historic fabric. Contributing structures can be listed in the National Register only as part of a historic district.

- (4) *Noncontributing*. Property classified as "NC" is not included in an inventory unless it is located within the boundary of the historic district. Such properties may be less than 50 years old, or they may be older structures that have been altered in such a way that they have lost their historic character, or they may be otherwise incompatible with their historic surroundings. These properties are not eligible for listing in the National Register.

Demolition means the complete or substantial removal of any building, structure, or site located in a historic district.

Historic district means a single building, structure, object, or site or a concentration of buildings, structures, objects, spaces, or sites, the boundaries of which are described or delineated on a map approved in an ordinance adopted under this chapter.

Interested party means one of the following:

- (1) The mayor.
- (2) The common council.
- (3) The plan commission.
- (4) A neighborhood association, whether incorporated or unincorporated, a majority of whose members are residents of a historic district designated by an ordinance adopted under this chapter.
- (5) An owner or occupant of property located in a historic district established by an ordinance adopted under this chapter.
- (6) Historic Landmarks Foundation of Indiana, Inc., or any of its successors.
- (7) The state historic preservation officer designated under IC 14-21-1-19.

Preservation guidelines means criteria, locally developed, which identify local design concerns in an effort to assist property owners in maintaining the character of the designated district or buildings during the process of rehabilitation or new construction.

Primary area means the principal area of historic and/or architectural significance within a historic district as delineated on the map establishing the boundaries of the historic district.

Routine maintenance means work for which no certificate of appropriateness is required.

Secondary area means an area in a historic district delineated on the map establishing the boundaries of the historic district that is adjacent to a primary area and which has a visual relationship to the primary area and could affect the preservation of the primary area. The purpose of designating a secondary area is to assure its compatibility and harmony with an adjacent primary area.

Streetscape means appearance from a public way, the distinguishing characteristics of which are created by the width of the street and sidewalks, their paving materials and color, the design of the street furniture (e.g., streetlights, trash receptacles, benches, etc.) use of plant materials, such as trees and shrubs, and the setback, mass, and proportion of those buildings which enclose the street.

Visual compatibility means those elements of design that meet the guidelines set out in section 111-51.

(Ord. No. 7987, § 1, 11-21-2006)

Sec. 111-2. - Enforcement, penalties, and judicial review.

- (a) Any person, whether as principal, agent, owner, lessee, tenant, contractor, builder, architect, engineer, or

otherwise, who violates any provision of this chapter shall be guilty of an offense. All fines and penalties will be deposited into a historic preservation revolving fund; these funds will help augment costs for historic resource management, surveying, engineering, or any project-specific need

- (b) Each day of the existence of any violation of this chapter shall be a separate offense.
- (c) Any person or party aggrieved by a decision or action taken by the commission shall be entitled to a judicial review hereof in accordance with IC 4-21.5-5.

(Ord. No. 7987, § 15, 11-21-2006)

Sec. 111-3. - Interested parties.

- (a) An interested party, as defined in section 111-1 has a private right of action to enforce and prevent violation of provisions of this chapter or an ordinance adopted by the city under this chapter, and with respect to any building, structure, or site within a historic district, and has the right to restrain, enjoin, or enforce by restraining order or injunction, temporarily or permanently, any person from violating a provision of this chapter or an ordinance adopted under this chapter.
- (b) The interested party does not have to allege or prove irreparable harm or injury to any person or property to obtain relief under this section.
- (c) The interested party bringing an action under this section does not have to post a bond unless the court, after a hearing, determines that a bond should be required in the interest of justice.
- (d) The interested party that brings an action under this section is not liable to any person for damages resulting from bringing or prosecuting the action unless the action was brought without good faith or without a reasonable belief that a provision of this chapter, or an ordinance adopted by the city pursuant to this chapter, had been, or was about to be violated.
- (e) An interested party who obtains a favorable judgment in an action under this section may recover reasonable attorney fees and court costs from the person against whom judgment was rendered.
- (f) An action arising under this section must be brought in the circuit or superior court of the county in which the historic district lies and no change of venue from the county shall be allowed in the action.
- (g) The remedy provided in this section is in addition to other remedies that may be available at law or in equity.

(Ord. No. 7987, § 14, 11-21-2006)

Sec. 111-4. - Conflict of interest clause.

- (a) A municipal officer or interested party with the historic preservation commission may not have an interest in or derive a profit from a contract or purchase connected with an action by the historical preservation district or districts served by the officer and may not bind the city by any contract in which he is personally interested.
- (b) With certain exceptions, a public servant, officer, director, commissioner or interested party who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the historic preservation commission served by that interested party commits conflict of interest, a felony. A such person may not bind the city by any contract in which he is personally interested.
- (c) Under state law, a city employee may not derive a pecuniary interest in a city contract. If a city employee derives a pecuniary interest in contract, he has committed conflict of interest, a class D felony, IC 35-44-1-3(a).
- (d) However, if certain disclosures are made at the time of the granting of the contract, and other conditions are met,

the employee may derive a pecuniary interest in a contract with the city without offending the law. IC 35-44-1-3(c)

The conditions are as follows:

- (1) The public servant is not a member or on the staff of the governing body empowered to contract or purchase on behalf of the city.
 - (2) The functions and duties performed by the public servant are not related to the contract of purchase; and
 - (3) The public servant makes the proper disclosures provided for by law.
 - (4) The contract or purchase involves utility services from a utility whose rates are regulated by the state or federal government.
- (e) This section does not prohibit a public servant from receiving compensation for:
- (1) Services provided as a public servant; or
 - (2) Expenses incurred by the public servant as provided by law.
- (f) This section does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served under any of the following conditions:
- (1) If the:
 - a. Public servant is not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity;
 - b. Functions and duties performed by the public servant for the governmental entity are unrelated to the contract or purchase; and
 - c. Public servant makes a disclosure under subsection (g)(1) through (g)(6) of this section.
 - d. Contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government.
 - (2) If the public servant:
 - a. Is an elected public servant or a member of the board of trustees of a state-supported college or university; and
 - b. Makes a disclosure under subsection (g)(1) through (g)(6) of this section.
 - (3) If the public servant:
 - a. Was appointed by an elected public servant or the board of trustees of a state-supported college or university; and
 - b. Makes a disclosure under subsection (g)(1) through (g)(6) of this section.
 - (4) If the public servant:
 - a. Acts in only an advisory capacity for a state-supported college or university; and
 - b. Does not have authority to act on behalf of the college or university in a matter involving a contract or purchase.
- (g) A disclosure required by this section must:
- (1) Be in writing;
 - (2) Describe the contract or purchase to be made by the governmental entity;
 - (3) Describe the pecuniary interest that the public servant has in the contract or purchase;
 - (4) Be affirmed under penalty of perjury;

(5) Be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract or purchase;

(6) Be filed within 15 days after final action on the contract or purchase with:

a. The state board of accounts; and

b. If the governmental entity is a governmental entity other than the state or a state supported college or university, the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase.

(h) As used in this section, the term "dependent" means any of the following:

(1) The spouse of a public servant or interested party.

(2) A child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant or interested party who is:

a. Not emancipated; and

b. Less than 18 years of age.

(3) Any individual more than one-half of whose support is provided during a year by the public servant.

(Ord. No. 7987, § 16, 11-21-2006)

State Law reference— Similar provisions, IC 35-44-1-3.

Sec. 111-5. - Paint colors.

In an ordinance approving the establishment of a historic district, the city may exclude changes in paint colors from the activities requiring the issuance of a certificate of appropriateness under section 111-82 before a permit may be issued or work begun.

(Ord. No. 7987, § 13, 11-21-2006)

Secs. 111-6—111-28. - Reserved.

ARTICLE II. - HISTORIC PRESERVATION COMMISSION

Footnotes:

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State Law reference— *Historic preservation commissions, IC 36-7-11-4 et seq.*

Sec. 111-29. - Establishment and organization.

(a) *Creation.* There is hereby established the historic preservation commission of the city (hereinafter referred to as the "commission").

(b) *Composition.* The commission shall consist of not less than three nor more than nine voting members. The voting members shall be appointed by the mayor and shall be residents of the city who are interested in the preservation and development of historic areas. The members of the commission should include professionals in the disciplines of architectural history, planning, and other disciplines related to historic preservation, to the

extent that those professionals are available in the community. Nonvoting, advisory members may be appointed to the commission by the mayor. Commission members shall serve without compensation, except for reasonable expenses incurred in the performance of their duties.

- (c) *Term.* Voting members shall serve for a term of three years; however, the initial terms of members shall be for one year, two years, and three years in order for the terms to be staggered. The term for nonvoting, advisory members shall be for three years. A vacancy shall be filled within 90 days for the duration of the term.
- (d) *Commission administrator.* A city administrator designated by the mayor shall serve as the ex-officio administrator of the commission. The administrator shall provide staff assistance to the commission, act as the commission's secretary, and issue certificates of appropriateness as directed by the commission.
- (e) *Officers.* The commission shall elect from its membership a chairperson, vice-chairperson, and treasurer who shall serve for one year and who may be reelected.
- (f) *Rules.* The commission shall adopt rules consistent with this chapter for the transaction of its business. The rules must include the time and place of regular meetings and a procedure for the calling of special meetings.
- (g) *Meetings.* Commission meetings must be open to the public and a public record shall be kept of the commission's resolutions, proceedings, and actions. The commission shall hold regular meetings, at least monthly, except when it has no business pending. Special meetings may be called in a manner determined by the commission and its rules.

(Ord. No. 7987, § 2, 11-21-2006)

Sec. 111-30. - Powers and duties of the commission.

- (a) The commission shall be concerned with those elements of development, redevelopment, rehabilitation, and preservation that affect visual quality in a historic district, which include but are not limited to viewsheds, landscapes, and streetscapes of historic importance. The commission may not consider details of design, interior arrangements, or building features, if those details, arrangements, or features are not subject to public view, and may not make any requirement except for the purpose of preventing development, alteration, or demolition in the historic district obviously incongruous with the historic district.
- (b) The commission shall conduct surveys and establish historic districts in accordance with the provisions of section 111-49.
- (c) The commission may adopt preservation guidelines for architectural review. If adopted, preservation guidelines shall be published and made readily accessible to the general public.
- (d) The commission has the authority to receive funds in order to promote its stated purpose.
- (e) The commission shall promote public interest in historic preservation by initiating and carrying on a public relations and community education program.
- (f) The commission, through this article, may:
 - (1) Acquire, by purchase, gift, grant, bequest, devise or lease, any real or personal property, including easements, that is appropriate for carrying out the purposes of the commission;
 - (2) Hold title to real and personal property; and
 - (3) Sell, lease, rent, or otherwise dispose of real and personal property at a public or private sale on the terms and conditions that the commission considers best.
- (g) The commission shall establish procedures that the commission must follow in acquiring and disposing of

property.

(Ord. No. 7987, § 3, 11-21-2006)

Secs. 111-31—111-48. - Reserved.

ARTICLE III. - HISTORIC DISTRICTS CONSERVATION DISTRICTS AND GUIDELINES

DIVISION 1. - GENERALLY

Sec. 111-49. - Recommendations.

- (a) *Form.* All recommendations for the establishment of a historic district shall be in the form of a written report and must be based on the criteria outlined in this section. A recommendation for establishing a historic district may be initiated from either of the following two sources:
 - (1) Based on its survey, the commission may draw and submit historic district maps for common council approval.
 - (2) Owners of property in fee simple wishing to establish a historic district which includes their property may petition the commission to consider drawing and submitting a map or maps of said property to the common council for its approval. The commission may establish in its rules criteria to be met before it considers a petition.
- (b) *Conservation districts.* The commission may recommend, and the common council may provide that the establishment of a historic district shall occur in two phases. During the first phase, which continues for a period of three years from the date the ordinance is adopted, a certificate of appropriateness is required for the following activities: the demolition of any building; the moving of any building; and any new construction of a principal building or accessory building or structure subject to view from a public way.
 - (1) At the expiration of the initial three-year period, the first phase of a conservation district continues and the second phase does not become effective if a majority of the property owners in the district object to the commission, in writing, to the requirement that certificates of appropriateness be issued for the following activities:
 - a. A conspicuous change in the exterior appearance of historic buildings by additions, construction, alteration, or maintenance involving exterior color changes;
 - b. A change in walls and fences or construction of walls and fences, if along public ways;
 - c. A conspicuous change in the exterior appearance of nonhistoric buildings subject to view from a public way by additions, reconstruction, alteration, or maintenance involving exterior color change.
 - (2) The objections of a majority of the property owners must be received by the commission not earlier than 180 days or later than 60 days before the third anniversary of the adoption of the ordinance.
- (c) *Commission preparation of historic district maps.* In order to establish a historic district, the commission shall first prepare a map describing the district in accordance with the following:
 - (1) The map shall be based on a survey conducted by the commission which identifies historic buildings, structures, and sites located within the city.

(2) A district may be limited to the boundaries of a property containing a single building, structure, or site.

(3) The map may divide the district into primary and secondary areas as follows:

- a. Primary area: The principal area of historic and architectural significance.
- b. Secondary area: An area adjacent to a primary area which has a visual relationship to the primary area and could affect the preservation of the primary area. The purpose of designating a secondary area is to assure its compatibility and harmony with an adjacent primary area.

(d) *Classification.* The commission shall classify and designate on the map all buildings, structures, and sites within each historic district described on the map. Buildings, structures, and sites shall be classified as historic or nonhistoric. Historic buildings, structures, and sites must possess identified historic or architectural merit of a degree warranting their preservation. The commission shall further classify and designate all buildings and structures within a proposed historic district as follows:

- (1) Outstanding;
- (2) Notable; or
- (3) Contributing.

Nonhistoric buildings, structures, and sites are those not classified on the map as historic. In lieu of other classifications, the commission may devise its own system of further classification of historic buildings, structures, and sites.

(e) *Common council approval of maps of historic districts.* Before a historic district is established and the building classifications take effect, the map setting forth the district's boundaries and building classifications must be submitted to, and approved in an ordinance by, the common council.

(f) *Recording the map.* The map establishing boundaries of a historic district may be recorded in the office of the county recorder.

(Ord. No. 7987, § 4, 11-21-2006)

Sec. 111-50. - Interim protection.

- (a) When submitting a map to the common council under section 111-49, the commission may declare one or more buildings or structures that are classified and designated as historic on the map to be under interim protection.
- (b) Not more than two working days after declaring a building, structure, or site to be under interim protection under this section, the commission shall, by personal delivery or first class mail, provide the owner or occupant of the building, structure or site with a written notice of the declaration. The written notice must:
 - (1) Cite the authority of the commission to put the building, structure, or site under interim protection under this section;
 - (2) Explain the effect of putting the building, structure, or site under interim protection; and
 - (3) Indicate that the interim protection is temporary.
- (c) A building or structure put under interim protection under subsection (a) of this section remains under interim protection until the map is submitted to and approved in an ordinance or rejected by the common council.
- (d) While a building, structure, or site is under interim protection under this section:
 - (1) The building, structure, or site may not be demolished or moved; and
 - (2) The exterior appearance of the building, structure, or site may not be conspicuously changed by:

- a. Addition;
 - b. Reconstruction; or
 - c. Alteration.
- (e) The commission may approve a certificate of appropriateness at any time during the period of interim protection, provided the proposed change meets the criteria for considering effect of actions on historic buildings in section 111-82(d) and any proposed preservation guidelines prepared for the building, structure, or site, but the certificate of appropriateness shall have no effect, and no action may be taken pursuant thereto, unless the map including the building, structure or site is approved by the common council.

(Ord. No. 7987, § 5, 11-21-2006)

Sec. 111-51. - Visual compatibility.

- (a) *For new construction, contemporary design, and nonhistoric buildings.* To preserve and encourage the integrity of historic buildings, structures, sites, monuments, streetscapes, and neighborhoods and to ensure their compatibility with any new work, the construction of a new building or structure, and the moving, reconstruction, alteration, color change, major maintenance, or repair conspicuously affecting the external appearance of any nonhistoric building, structure, or appurtenance within the primary area must be generally of a design, form, proportion, mass, configuration, building material, texture, color, and location on a lot compatible with other buildings in the historic district and with places to which it is visually related.
- (b) *Criteria for considering visual compatibility within historic primary areas.* Within the primary area of a historic district, new buildings, structures, as well as buildings, structures, and appurtenances that are moved, reconstructed, materially altered, repaired, or changed in color, must be visually compatible with buildings and places to which they are visually related generally in terms of the following visual compatibility factors:
- (1) *Height.* The height of proposed buildings must be visually compatible with adjacent buildings.
 - (2) *Proportion of building's front façade.* The relationship of the width of a building to the height of the front elevation must be visually compatible with buildings, squares, and places to which it is visually related.
 - (3) *Proportion of openings within the facility.* The relationship of the width of the windows to the height of windows in a building must be visually compatible with buildings, squares, and places to which it is visually related.
 - (4) *Relationship of solids to voids in front facades.* The relationship of solids to voids in the front facade of a building must be visually compatible with buildings, squares, and places to which it is visually related.
 - (5) *Rhythm of spacing of buildings on streets.* The relationship of a building to the open space between it and adjoining buildings must be visually compatible with buildings, squares, and places to which it is visually related.
 - (6) *Rhythm of entrances and porch projections.* The relationship of entrances and porch projections of a building to sidewalks must be visually compatible with buildings, squares, and places to which it is visually related.
 - (7) *Relationship of materials, texture, and color.* The relationship of the materials, texture, and color of the facade of a building must be visually compatible with buildings, squares, and places to which it is visually related.
 - (8) *Roof shapes.* The roof shape of a building must be visually compatible with buildings, squares, and places to which it is visually related.
 - (9) *Wall of continuity.* Appurtenances of a building or site, such as walls, wrought iron fences, evergreen

landscape masses, and building facades, must form cohesive walls of enclosure along the street, if necessary to ensure visual compatibility of the building to the buildings and places to which it is visually related.

(10) *Scale of the building.* The size of a building, and the mass of a building in relation to open spaces, windows, door openings, porches, and balconies must be visually compatible with the buildings and places to which it is visually related.

(11) *Directional expression of front elevation.* A building must be visually compatible with buildings, squares, and places to which it is visually related in its directional character, including vertical character, horizontal character, or non-directional character.

(Ord. No. 7987, § 8, 11-21-2006)

Sec. 111-52. - Preservation of historical and architectural character upon alteration or relocation mandated.

(a) A historic building or structure or any part of or appurtenance to such a building or structure, including stone walls, fences, light fixtures, steps, paving, and signs may be moved, reconstructed, altered, or maintained only in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance.

(b) A historic building may be relocated to another site only if it is shown that preservation on its current site is inconsistent with subsection (a) of this section.

(Ord. No. 7987, § 9, 11-21-2006)

Sec. 111-53. - Maintenance.

(a) Historic buildings, structures, and sites shall be maintained to meet the applicable requirements established under state statute for buildings generally so as to prevent the loss of historic material and the deterioration of important character-defining details and features.

(b) Ordinary repairs and maintenance. Nothing in this section shall be construed so as to prevent the ordinary repairs and maintenance of any building, structure, or site, provided that such repairs or maintenance do not result in a conspicuous change in the design, form, proportion, mass, configuration, building material, texture, color, location, or external visual appearance of any structure, or part thereof.

(Ord. No. 7987, § 11, 11-21-2006)

Sec. 111-54. - Relationship with zoning districts.

Zoning districts lying within the boundaries of the historic district are subject to regulations for both the zoning district and the historic district. If there is a conflict between the requirements of the zoning district and the requirements of the historic district, the more restrictive requirements shall apply.

(Ord. No. 7987, § 12, 11-21-2006)

Secs. 111-55—111-81. - Reserved.

DIVISION 2. - CERTIFICATE OF APPROPRIATENESS (COA)

Sec. 111-82. - Required; application; action on certificate by commission.

- (a) *Required.* A certificate of appropriateness must be issued by the commission before a permit is issued for, or work is begun on, any of the following:
 - (1) Within all areas of a historic district:
 - a. The demolition of any building or structure;
 - b. The moving of any building or structure;
 - c. A conspicuous change in the exterior appearance of any historic building or any part of or appurtenance to such a building, including walls, fences, light fixtures, steps, paving, and signs by additions, reconstruction, alteration, or maintenance involving exterior color change if cited by individual ordinance; or
 - d. Any new construction of a principal building or accessory building or structure subject to view from a public way.
 - (2) Within a primary area of a historic district:
 - a. A change in walls and fences, or the construction of walls and fences along public ways;
 - b. A conspicuous change in the exterior appearance of nonhistoric buildings subject to view from a public way by additions, reconstruction, alteration and/or maintenance involving exterior color change.
 - (3) Within a conservation district:
 - a. The moving of any building;
 - b. The demolition of any building; or
 - c. Any new construction of a principal building or accessory building or structure subject to view from a public way.
- (b) *Application.* An application for a certificate of appropriateness shall be made in the office of the commission or its designee on forms provided by that office. All applications shall be subject to the rules and requirements established by the commission. Rules may include, but are not limited to, filing deadlines and application requirements such as sketches, drawings, photographs, descriptions, or other information which the commission requires to make a decision.
- (c) *Approval.* The commission may approve or deny certificates of appropriateness for any actions covered by this chapter. If an application for a certificate of appropriateness is approved by the commission, or is not acted on by the commission within 30 days after it is filed, a certificate of appropriateness shall be issued. The commission may grant an extension of the 30-day limit if the applicant agrees to it. The commission must report its findings and the reasons for its decision in written form, and supply the applicant with a copy of its report. A copy of the certificate of appropriateness must be submitted with the application for building or demolition permit; no building or demolition permit shall be issued unless a copy of the certificate of appropriateness is provided by the applicant with the application.
- (d) *Criteria for considering effect of actions on historic buildings.* The commission, in considering the appropriateness of any reconstruction, alteration, maintenance, or moving of a historic building, structure, site or any part of or appurtenance to such building or structure, including walls, fences, light fixtures, steps, paving, and signs shall

require that such work be done in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance. In considering historic and architectural character, the commission shall consider, among other things, the following:

- (1) Purposes of this article;
- (2) Historical and architectural value and significance of the building, structure, site or appurtenance;
- (3) Compatibility and significance of additions, alterations, details, materials, or other non-original elements which may be of a different style and construction date than the original;
- (4) The texture, material, color, style, and detailing of the building, structure, site or appurtenance;
- (5) The continued preservation and protection of original or otherwise significant structure, material, and ornamentation;
- (6) The relationship of buildings, structures, appurtenances, or architectural features similar to one within the same historic district, including for primary areas, visual compatibility as defined in section 111-51(b); and
- (7) The position of the building or structure in relation to the street, public right-of-way and to other buildings and structures.

(Ord. No. 7987, § 6, 11-21-2006)

Sec. 111-83. - Staff approvals.

- (a) The commission may authorize the staff of the commission, on behalf of the commission, to grant or deny an application for a certificate of appropriateness.
- (b) The commission shall specify by rule the types of applications for certificates of appropriateness that the staff of the commission is authorized to grant or deny. The staff may not be authorized to grant or deny an application for a certificate of appropriateness for the following:
 - (1) The demolition of a building, structure, or site.
 - (2) The moving of a building or structure.
 - (3) The construction of an addition to a building or structure.
 - (4) The construction of a new building or structure.

(Ord. No. 7987, § 7, 11-21-2006)

Sec. 111-84. - Appeal provisions.

- (a) The purpose of this section is to preserve historic buildings that are important to the education, culture, traditions, and economic values of the city and to afford the city, historical organizations, property owners, and other interested persons the opportunity to acquire or to arrange for the preservation of these buildings.
- (b) If the commission denies the issuance of a certificate of appropriateness for the demolition of a building, structure, or site, a demolition permit may be issued by other agencies and a building, structure, or site may be demolished, but only after the property owner has demonstrated to the commission that the historic building, structure, or site is incapable of earning an economic return on its value, as appraised by a licensed real estate appraiser.
- (c) Notice of the proposed demolition must be given for a period fixed by the commission, based on the commission's classification on the approved map, but not less than 60 days nor more than one year. Notice must

be posted on the premises of the building or structure proposed for demolition in a location clearly visible from the street. In addition, notice must be published in a newspaper of general local circulation at least three times before demolition, with the first publication not more than 15 days after the application for a permit to demolish is filed, and the final publication at least 15 days before the date of the permit.

- (d) The commission may approve a certificate of appropriateness at any time during the notice period under subsection (c) of this section. If the certificate of appropriateness is approved, a demolition permit shall be issued without further delay, and demolition may proceed.

(Ord. No. 7987, § 10, 11-21-2006)

Chapter 113 - LAND DISTURBING ACTIVITIES

Sec. 113-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Clearing means any activity that removes the vegetative ground cover.

Excavating means any digging, scooping or other methods of removing earth materials.

Executive director means the person authorized to enforce the provisions of this chapter.

Filling means any depositing or stockpiling of natural or manmade materials.

Grading means any excavating or filling of natural or manmade materials or any combination thereof, including the land in its excavated or filled condition.

Land disturbing activities means any activity which may result in soil erosion from water or wind and the movement of sediments into state waters, including, but not limited to, clearing, grading, excavating, transporting and filling of land.

Transportation means any moving of natural or manmade materials from one place to another other than such movement incidental to grading, when such movement results in destroying the vegetative cover either by tracking or the buildup of natural or manmade materials to the extent that erosion and sedimentation will result.

(Code 1989, § 163.144; Ord. No. 6714, § 1(163.144), 12-1991; Ord. No. 8256, § 1(163.144), 2-17-2009)

Sec. 113-2. - Purpose.

This chapter is enacted to preserve the natural terrain and contours, to regulate and control drainage and the blowing of sand, to prevent erosion, and to protect adjacent property from drainage resulting from land disturbing activities.

(Code 1989, § 163.143; Ord. No. 6714, § 1(163.143), 12-1991; Ord. No. 8256, § 1(163.143), 2-17-2009)

Sec. 113-3. - Exemptions.

For the following listed exceptions, no permit or bond or other such financial arrangement shall be necessary, but all other provisions of this chapter pertaining to the protection of private or public property in the immediate area of the land disturbing activity shall remain in full force and effect:

- (1) Sand or other natural or manmade materials which are moved or in connection with the installation or repair of utilities, street grading, sewer installation or other public purpose;
- (2) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (3) Septic tank lines or drainage fields unless included in overall plan for land disturbing activity relating to construction of the building to be served;
- (4) Preparation for single-family residences separately built, unless in conjunction with multiple construction in subdivision or planned unit developments;
- (5) Disturbed land areas for commercial or noncommercial uses less than 12,500 square feet of gross floor area;
- (6) Installation of fence or sign posts;
- (7) Emergency work to protect life, limb or property;
- (8) Exemptions in subsections (4) and (5) of this section do not apply to the areas bounded by Lake Michigan Shoreline, County Line Road, Mississippi Street and Indiana Harbor Belt Railroad.

(Code 1989, § 163.149; Ord. No. 6714, § 1(163.149), 12-1991; Ord. No. 8256, § 1(163.149), 2-17-2009)

Sec. 113-4. - Regulated land disturbing activities.

- (a) No person shall engage in any land disturbing activity until he has submitted to the executive director a plan for such land disturbing activity and that plan has been reviewed and approved.
- (b) Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to construction contract, the preparation, submission and approval of a plan shall be the responsibility of the owner of the land.

(Code 1989, § 163.145; Ord. No. 6714, § 1(163.145), 12-1991; Ord. No. 8256, § 1(163.145), 2-17-2009)

Sec. 113-5. - Land disturbing activity plans.

- (a) *Application.* An application for a permit for a land disturbing activity shall be made through the executive director on the application form prescribed by the city. Applications for any such permit shall include the following:
 - (1) A general description of streets, highways or other landmarks in the immediate area surrounding the proposed land disturbing activity.
 - (2) A legal description of the particular site of the proposed land disturbing activity.
 - (3) A plot plan or survey.
 - (4) An accurate estimate of the amount of sand or other natural or manmade material in cubic yards expected to be excavated, graded, filled or transported during the life of the permit.
 - (5) A statement explaining in detail the protection and precautionary methods to be employed by the applicant to prevent the natural or manmade material from blowing over or spilling upon other private or public property in the immediate area of the project.
- (b) *Permit conditions.*
 - (1) The executive director may impose any specifications or special conditions in the granting of a land disturbing activity permit, that in his opinion may be required for the protection of public health, safety, and welfare. Any specifications or special conditions shall be in writing, and shall be attached to the permit itself, and shall be a

part of the permit granted. The director may consult with appropriate authorities where necessary.

- (2) When sand or other natural or manmade materials are to be added or removed in connection with the construction, alternation of structures or for accessory uses, approval by the executive director shall be required. Construction drawings, plot plans, and when deemed necessary, topographic maps shall be presented to the executive director for review.

(c) *Changes in approved plan.*

- (1) When inspection has revealed the inadequacy of the plan to accomplish the objectives of the plan, appropriate modifications to correct the deficiencies may be agreed to in writing by both parties.
- (2) Where the person responsible for carrying out the approved plan finds that because of a change in circumstances the approved plan cannot be carried effectively, the proposed changes to the plan may be agreed to in writing by both parties.

(Code 1989, § 163.146; Ord. No. 6714, § 1(163.146), 12-1991; Ord. No. 8256, § 1(163.146), 2-17-2009)

Sec. 113-6. - Inspection.

- (a) The executive director shall periodically inspect the land disturbing activities to ensure compliance with the approved plan. The right-of-way entry to conduct such inspections shall be expressly reserved in the permit.
- (b) If the executive director determines that the permit has failed to comply with the plan, the executive director shall immediately serve upon the permit holder, by certified mail, a notice to comply. Such notice shall set forth specifically the measures needed to comply and shall specify the time within which measures shall be completed. If the permit holder fails to comply within the time specified, he may be subject to revocation of his permit and be subject to any other penalties provided by law.

(Code 1989, § 163.147; Ord. No. 6714, § 1(163.147), 12-1991; Ord. No. 8256, § 1(163.147), 2-17-2009)

Sec. 113-7. - Bond.

- (a) The executive director may require from any applicant, prior to the issuance of a land disturbing permit, a reasonable performance bond, cash escrow or other such legal arrangements as is acceptable to the corporation counsel and city controller to ensure compliance with the permit should he fail within the time specified to perform to the provisions of the ordinance, and any and all specifications or special conditions prescribed by the executive director, and shall protect and save harmless the city from any and all liability, damages, and expenses which the city may sustain by reason of any violation by the applicant of any of the provisions of the ordinance, specifications or special conditions of the permit.
- (b) In the event of damage to private or public property in the immediate area of excavation or fill site, the executive director is authorized to declare a forfeiture of the bond or other financial arrangement posted by the applicant and collect the amount of damages inflicted upon or suffered by any property owner. The amount of damages shall be collected by the city as trustee, for and on behalf of the damaged property owner. The city controller is authorized to pay the amount of damages to the owner immediately upon collection from the indemnitor or his surety.

(Code 1989, § 163.148; Ord. No. 6714, § 1(163.148), 12-1991; Ord. No. 8256, § 1(163.148), 2-17-2009)

Footnotes:

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State Law reference— *Mobile homes and manufactured homes, IC 16-41-27-1 et seq.*

ARTICLE I. - IN GENERAL

Secs. 115-1—115-18. - Reserved.

ARTICLE II. - MOBILE HOME PARKS

Sec. 115-19. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board of health means the health department of the city.

Independent mobile home means a mobile home which has a self-contained toilet, sink, and bath or shower facilities.

Mobile home means any vehicle, including the equipment sold as a part of a vehicle, which is so constructed as to permit its being used as a conveyance upon public streets or highways by either self-propelled or not self-propelled means, which is designed, constructed, or reconstructed, or added to by means of an enclosed addition or room in such manner as will permit the occupancy thereof as a dwelling for one or more persons, which is both used and occupied as a dwelling having no foundation other than jacks, skirting, or other temporary supports.

Mobile home community park means an area of land upon which two or more mobile homes are harbored for the purposes of being occupied either free of charge or for revenue purposes, and shall include any building, structure, vehicle, or enclosure used or intended for use as a part of the equipment of the mobile home park.

Mobile home space means the plot of ground within a mobile home park designed for the accommodation of one mobile home.

State board means the State Board of Health of Indiana.

(Code 1960, § 6-1801; Code 1989, § 155.01; Ord. No. 4038)

Sec. 115-20. - Parking of mobile homes.

It shall be unlawful for any person to park, place, or locate or permit the parking, placing, or locating of any mobile home within the city limits for a period exceeding 48 hours except in a mobile home park, on a properly zoned mobile homes sales lot, or as provided hereinafter for temporary occupancy.

(Code 1960, § 6-1802; Code 1989, § 155.02; Ord. No. 4038)

Sec. 115-21. - Mobile home occupation.

- (a) It shall be unlawful for any person to occupy or permit to be occupied for any period of time any mobile home within city limits; provided, that one mobile home may be occupied for a period not to exceed two weeks by special permit secured by the board of health and cleared by the director of the department of development and planning if such mobile home is occupied upon the premises of an occupied residential dwelling. This section shall not apply to mobile homes parked in mobile home parks. The aforementioned permit from the board of health shall be obtained by the owner or lessee of the occupied premises within two days after the mobile home is so parked, placed, or located; and not more than one such permit shall be granted to any owner or lessee in any six-month period.
- (b) No mobile home shall be used for any purpose other than that of single-family dwelling. 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 special use permit.

(Code 1960, §§ 6-1803, 6-1804; Code 1989, § 155.03; Ord. No. 4038)

Sec. 115-22. - Establishment, modification of mobile home community.

- (a) It shall be unlawful for any person to establish, maintain, or operate, within the corporate limits of the city, any mobile home park without first applying for and receiving the license from the state board and approval of the city plan commission, as provided for in section 115-23(a).
 - (1) Each application for origination, expansion, alteration, or modification of a mobile home park shall be made in writing upon a form provided by the director of the department of development and planning for such purpose. It shall state the name and address of the applicant, a description of the property and shall be accompanied by plans in triplicate, drawn to scale, showing clearly the extent and area to be used for mobile home park purposes. It shall show the number of mobile homes to be accommodated, the space upon which each trailer is to be located, the location of the proposed driveways, the location of the proposed facilities, the plan for sewage disposal, water supply and lighting and such other information as the plan commission may require.
 - (2) If such applications, plans and specifications meet with the requirements of this Code, the director shall note same and forward one copy to the city engineer and one copy to the building commissioner.
 - (3) The city engineer shall consult with the traffic engineer and list their recommendations thereon. The building commissioner shall list his recommendations in a like manner and both copies shall be forwarded to the plan commission for action in accordance with section 115-23(a).
 - (4) No mobile home park shall be organized or occupied until all provisions of this article have been fully complied with and the license of the state board, zoning certificate and building permits have been issued, further provided that special use so granted will be contingent upon license and continued approval by the state board.
- (b) Approval for any proposed alterations, changes, extensions, and enlargements or rebuilding, not within the purview of the original special use, shall be applied for and its issuance prosecuted in the same manner as herein provided for the original approval and license. All expansion or enlargement shall comply with the space requirements hereafter provided.

(Code 1960, §§ 6-1806, 6-1807; Code 1989, § 155.04; Ord. No. 4038)

Sec. 115-23. - Classification of communities.

- (a) Mobile home parks communities are special uses regulated under provisions of section 123-60. However, any mobile home parks communities existing and licensed on February 3, 1965, may, subject to the provisions of this article and with : board and plan commission approval, be permitted to expand or enlarge on abutting lands within the same zoning classification as the existing mobile home park if such lands were in the same ownership as the mobile home park on February 3, 1965.
- (b) For the purpose of planning and logical community development, the mobile home park shall be considered as a planned development and the procedure applicable thereon shall be accorded as modified herein.

(Code 1960, §§ 6-1805, 6-1810; Code 1989, § 155.05; Ord. No. 4038)

Sec. 115-24. - Mobile homes permitted in parks.

All mobile homes placed, parked, and occupied in a mobile home park shall be of the independent type, as defined in section 115-19.

(Code 1960, § 6-1808; Code 1989, § 155.06; Ord. No. 4038)

Sec. 115-25. - Mobile home community plan.

Any expansion, enlargement, or alteration of an existing park, or establishment of a new park shall be in conformance with the following provisions:

- (1) Every mobile home park hereinafter established shall have a minimum site area of not less than five acres.
- (2) There shall not be more than ten mobile home spaces per gross acre of ground.
- (3) Mobile home spaces shall be provided consisting of a minimum of 3,000 square feet for each site which shall be at least 40 feet wide and clearly defined, the pad of which shall meet prescribed state standards.
- (4) No existing mobile home parks communities shall be expanded unless the expansion will produce an average mobile home space area of 2,000 square feet for all existing and new mobile home spaces.
- (5) All mobile home spaces shall abut upon a driveway of not less than 20 feet in width, all such driveways or interior access streets being surfaced with a minimum of seven inches of concrete on a subgrade having minimum support of ten pounds per square inch or with hard, durable plant mix asphalt paving of comparable design. Driveways shall have unobstructed access to a public street.
- (6) Mobile homes shall be so arranged upon their respective spaces as not to be within 20 feet of any other mobile home or building. No mobile home or building shall be located within 50 feet of any public street.
- (7) Walkways not less than two feet wide shall be provided from the mobile home spaces to all service buildings.
- (8) One off-street parking space shall be provided on each mobile home space.
- (9) Laundry facilities shall be provided as determined by the plan commission.
- (10) Service buildings shall be permanent structures complying with the applicable zoning and building regulations.
- (11) The city traffic engineer shall approve all access points of the mobile home park.
- (12) No business or commercial establishment may be incorporated into a mobile home park except as may be determined to be incidental thereto by the plan commission.
- (13) Any mobile home space which is nonconforming with respect to minimum space width or minimum space area or any other bulk regulation cannot be occupied by a mobile home of any size greater than the one

which occupies the space at the time of the passing of the ordinance from which this article is derived unless the following standards are met:

- a. The space can be increased in gross area in the amount necessary to provide a minimum space area of 3,000 square feet.
- b. Additional width can be added to the space in the amount necessary to result in a minimum space width of 40 feet.
- c. However, in neither case will it be permitted to encroach on an occupied adjacent space unless the occupied space is vacated.

(Code 1960, § 6-1809; Code 1989, § 155.07; Ord. No. 4038; Ord. No. 4204)

Sec. 115-26. - Fire protection.

Every mobile home park shall be equipped at all times with fire extinguishing equipment in good working order, of such type, size, and number and so located within the park as to satisfy applicable reasonable regulations of the fire department. No open fires shall be permitted at any place which may endanger life or property. No fires shall be left unattended at any time under authority of the air pollution control board.

(Code 1960, § 6-1811; Code 1989, § 155.08; Ord. No. 4038)

Sec. 115-27. - Utilities.

- (a) The electrical distribution shall be as prescribed by the building commissioner in accordance with all city and state regulations.
- (b) Systems for water, lighting, sewage and garbage shall be as prescribed by the state board.

(Code 1960, §§ 6-1812, 6-1813; Code 1989, § 155.09; Ord. No. 4038)

Secs. 115-28—115-57. - Reserved.

ARTICLE III. - MANUFACTURED HOUSING

Sec. 115-58. - Intent.

It is the intent of this article to encourage provisions of alternate housing opportunities in residential areas by permitting the use of manufactured homes, as defined herein, in all districts in which similar dwellings constructed on site are permitted.

(Code 1989, § 155.20; Ord. No. 5887, 1-18-1983)

Sec. 115-59. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Add-a-room unit means a unit of manufactured housing, not designed as a part of the original structure, which may have less occupied space than a manufactured housing section.

Anchoring system means an approved system of straps, cables, turnbuckles, chains, ties, or other approved materials used to secure a manufactured home.

ANSI/NFPA 501A Standard for Installation of (Manufactured) Mobile homes refers to model national standards (including all authorized successor documents) for installation of manufactured homes, as adopted and copyrighted by the National Fire Protection Association and the Manufactured Housing Institute.

Expando unit means an expandable manufactured housing unit.

Foundation siding/skirting means a type of wainscoting constructed of fire- and weather-resistant material, such as aluminum, asbestos board, treated pressed wood or other approved materials, enclosing the entire undercarriage of the manufactured home.

Manufactured home means a dwelling unit fabricated in an offsite manufacturing facility for installation or assembly at the building site, bearing a seal certifying that it is built in compliance with law. The three types of manufactured homes (type I, type II, and type III) are defined as meeting all of the appropriate requirements of this article.

Manufactured housing construction and safety standards code refers to Title VI of the 1974 Housing and Community Development Act (42 USC 5401 et seq.), as amended (previously known as the federal Mobile Home Construction and Safety Act), rules and regulations adopted thereunder (including information supplied by the home manufacturer, which has been stamped and approved by a design approval primary inspection agency, as agent of the U.S. Department of Housing and Urban Development pursuant to HUD rules), and regulations and interpretations of said code by the state; all of which became effective for mobile/manufactured home construction on June 15, 1976.

Mobile home means any vehicle, including the equipment sold as part of a vehicle which is so constructed as to permit its being used as a conveyance upon public streets or highways by either self-propelled or not self-propelled means, which is designed, constructed, or reconstructed, or added to by means of an enclosed addition or room in such manner as will permit the occupancy thereof as a dwelling for one or more persons, which is both used and occupied as a dwelling having no foundation other than jacks, skirting, or other temporary supports.

Mobile home park means an area of land upon which two or more mobile homes are harbored for the purposes of being occupied either free of charge or for revenue purposes and shall include any building, structure, vehicle, or enclosure used or intended for use as a part of the equipment of such mobile home park.

Occupied space means the total area of earth horizontally covered by the structure, excluding accessory structures, such as, but not limited to, garages, patios, and porches.

Permanent foundation means a structural system for transposing loads from a structure to the earth at a depth below the established frost line without exceeding the safe bearing capacity of the supporting soil.

Permanent perimeter enclosure means a permanent perimeter structural system completely enclosing the space between the floor joists of the home and the ground.

Section means a unit of a manufactured home at least ten body feet in width and 30 body feet in length.

Supporting system means a pad or a combination of footage, piers, caps, plates, and shims, which, when properly installed, support the manufactured home.

Sec. 115-60. - Placement.

- (a) *Permitted placement.* The establishment, location, and use of manufactured homes as permanent residences approved individually, by specific materials, or by design, shall be permitted in any zone permitting installation of a dwelling unit, subject to requirements and limitations applying generally to such residential use in the district, and provided such homes shall meet the following requirements and limitations:
- (1) The dwelling shall meet the appropriate exterior appearance standards, as set forth in section 115-61.
 - (2) The dwelling shall receive all required permits and conform with the comprehensive plan and other ordinances and regulations of this Code.
- (b) *Nonconforming homes.* A manufactured home placed and maintained on a tract of land and deemed to be a legal nonconforming use prior to the adoption of this article shall continue to be a legal nonconforming use. If the nonconforming use is discontinued, the land thereafter must be used in conformity with all provisions of the article.
- (c) *Replacement of nonconforming homes.* Thereafter, upon application to the designated administrator and subsequent approval thereof, a manufactured home, deemed a legal nonconforming use, may be replaced by a manufactured home, provided the replacement is of an equal or a higher type, as specified in section 115-61 (exterior appearance standards). Equal or higher types means that a Type III manufactured home could be replaced with a Type I, II, or III manufactured home; a Type II manufactured home could be replaced with a Type I or II manufactured home; a Type I manufactured home could be replaced with another Type I manufactured home.
- (d) *Structural alteration.* Due to the integral and the unique design in manufactured homes, any structural alteration or modification of a manufactured home after it is placed on the site must receive a zoning clearance from the department of planning and development and a building permit from the building department.
- (e) *Mobile homes.* It shall be unlawful for any person to park, place, locate, or permit the parking, placing, or locating of any mobile home within the city limits for a period exceeding 48 hours except in a mobile home park, on a properly zoned mobile home sales lot, or as provided in section 115-200.
- (f) *Manufactured homes.* Manufactured homes are prohibited in designated historical areas and all business and manufacturing districts.

(Code 1989, § 155.22; Ord. No. 5887, 1-18-1983; Ord. No. 6958, § 1, 11-18-1997)

State Law reference— Authority to regulate, IC 36-7-4-1106.

Sec. 115-61. - Exterior appearance standards.

- (a) A Type I manufactured home shall:
- (1) Have more than 950 square feet of occupied space in a double-section or larger multi-section unit.
 - (2) Be placed onto a permanent foundation.
 - (3) Utilize a permanent perimeter enclosure in accordance with approved installation standards as specified in section 115-62.
 - (4) Be anchored to the ground, in accordance with state law and to the manufacturer's specifications.

- (5) Have wheels, axles, and hitch mechanisms removed.
- (6) Have utilities connected, in accordance with the one- and two-family dwelling code and manufacturer's specifications.
- (7) Have siding material of a type customarily used on site-constructed residences as provided by state law.
- (8) Have roofing material of a type customarily used on site-constructed residences as provided by state law.
- (b) A Type II manufactured home shall:
 - (1) Have more than 320 square feet of occupied space in a single, double, expando, or multi-section unit (including those with an add-a-room unit).
 - (2) Be placed onto a support system, in accordance with approved installation standards, as specified in section 115-62.
 - (3) Be enclosed with foundations siding/skirting, in accordance with approved installation standards, as specified in section 115-62.
 - (4) Be anchored to the ground, in accordance with manufacturer's specifications or the ANSI/NFPA 501A installation standards.
 - (5) Have utilities connected in accordance with manufacturer's specifications or the ANSI/NFPA 501A installation standards.
 - (6) Have siding material of a type customarily used on site-constructed residence as provided in the one- and two-family dwelling code of the state.
 - (7) Have roofing material of a type customarily used on site-constructed residences as provided by state law.

(Code 1989, § 155.23; Ord. No. 5887, 1-18-1983; Ord. No. 6958, § 2, 11-18-1997)

Sec. 115-62. - Installation standards.

- (a) *Permanent perimeter enclosure.* Those manufactured homes designated in the zoning chapter as requiring a permanent perimeter enclosure must be set onto an excavated area, with foundations, footings, and crawl space or basement walls constructed in accordance with the terms of the one- and two-family dwelling code. The space between the floor joists of the home and the excavated underfloor grade shall be completely enclosed with the perimeter enclosure (except for required openings).
- (b) *Support system.*
 - (1) *Type I manufactured homes.* All HUD-Code Type 1 manufactured home loadbearing foundations shall be installed in conformance with the regulations in the one- and two-family dwelling code and with the manufacturer's installation specifications.
 - (2) *PL 360 Code homes.* All PL 360 Code home foundations shall be installed in conformance with the regulations in the One- and Two-Family Dwelling Code and with the manufacturer's installation specifications.
 - (3) *Type II and III manufactured homes.* All HUD-Code Type II and III manufactured homes not placed on a permanent foundation shall be installed on a support system in conformance with the manufacturer's installation specifications or with the support systems regulations in the ANSI/NFPA 501A 1977 installation standards.

(Code 1989, § 155.25; Ord. No. 5887, 1-18-1983)

Sec. 115-63. - Appeal.

An action to review any order, requirement, decision, or determination made by an administrative official or board charged with enforcement of the zoning chapter shall be pursuant to IC 36-7-4-919.

(Code 1989, § 155.26; Ord. No. 5887, 1-18-1983)

State Law reference— Appeal to board of zoning appeals, IC 36-7-4-919.

Sec. 115-64. - Homes in violation subject to removal.

A manufactured home, sited upon property in violation of this article, shall be subject to removal from such property. However, the homeowner must be given a reasonable opportunity to bring the property into compliance before action for removal can be taken. If action finally is taken by the appropriate authority to bring compliance, the expenses involved may be made as a lien against the property.

(Code 1989, § 155.27; Ord. No. 5887, 1-18-1983)

Chapter 117 - SIGNS AND BILLBOARDS

ARTICLE I. - IN GENERAL

Sec. 117-1. - Signs in residential districts.

In all residence districts the following classes of signs are permitted in accordance with the following regulations:

(1) Nonflashing, nonilluminated accessory signs, as follows:

a. Nameplates and identification signs, subject to the following:

1. For one- and two-family dwellings, there shall be not more than one nameplate, not to exceed 1½ square feet in area, for each dwelling unit, indicating the name or address of the occupant or a permitted occupation; provided that on a corner lot two such nameplates for each dwelling unit, one facing each street, shall be permitted.
2. For multiple-family dwellings, for apartment hotels and for buildings other than dwellings, a single identification sign not exceeding nine square feet in area and indicating only the name and address of the building and the name of the management thereof may be displayed; provided that on a corner lot two such signs, one facing each street, shall be permitted.
3. No sign shall project more than two inches beyond the property line into the public way.
4. No signs shall project higher than one story or 20 feet above curb level, whichever is lower.

b. "To Rent" signs, subject to the following:

1. There shall be not more than one such sign per lot, except that on a corner lot two signs, one facing each street, shall be permitted. No sign shall exceed 16 square feet in area nor be closer than eight feet to any other zoning lot.
2. No sign shall project more than two inches beyond the property line into the public way.
3. No sign shall project higher than seven feet above curb level.

c. Signs accessory to parking areas, subject to the following:

1. Signs designating entrances or exits to or from a parking area, limited to one sign for each such exit or entrance, maximum size of two square feet each, shall be permitted. One sign per parking area, designating the location and identity of such parking area and limited to a maximum size of nine square feet, shall be permitted; provided that on a corner lot two such signs, one facing each street, shall be permitted.
 2. No sign shall project more than two inches beyond the property line into the public way.
 3. No sign shall project higher than seven feet above the curb level.
- (2) Nonflashing, accessory signs, as follows: church bulletins, subject to the following conditions: There shall be not more than one sign per lot, except on a corner lot, two signs, one facing each street, shall be permitted. No sign shall exceed 16 square feet in area nor be closer than eight feet to any other zoning lot. No sign shall project more than two inches beyond the property line into the public way. No sign shall project higher than seven feet above the curb level.

(Code 1960, § 6-1101; Code 1989, § 159.01; Ord. No. 3376; Ord. No. 6109, 3-18-1986)

Sec. 117-2. - Signs in business districts.

- (a) *B1-1 and B1-2 districts.* In the B1-1 and B1-2 districts, business signs are permitted, subject to the following:
- (1) The gross area in square feet of all signs on a zoning lot shall not exceed three times the lineal feet of frontage of such zoning lot, provided that the gross area of all flashing signs shall not exceed one time the lineal feet of frontage of the lot.
 - (2) No sign shall project more than 24 inches across the property line into the public way, except as provided for awnings, marquees and canopies in sections 117-5 and 117-6.
 - (3) No sign shall project higher than 30 feet above curb level.
- (b) *B2 districts.* In the B2-1 to B2-3 districts, inclusive, business and advertising signs are permitted subject to the following:
- (1) The gross area in square feet of all business and advertising signs on a zoning lot shall not exceed 24 times the lineal feet of frontage of such zoning lot; provided, however, that the gross area in square feet of all business signs projecting into a public way shall not exceed four times the lineal feet of frontage of the lot.
 - (2) No sign shall project across the property line into the public way more than 15 feet, nor in any case beyond a point within 18 inches of the curbline or, where no curb exists, within 18 inches of the paved portion of the street, except as provided for awnings, marquees, and canopies in sections 117-5 and 117-6. However, advertising signs shall not project into a public way except where attached flat against a building and in such case shall project not more than 12 inches. A business sign attached flat against a building and extending over a public way not more than 12 inches shall not be considered a projecting sign.
 - (3) No sign shall project higher than 45 feet above curb level.
- (c) *B3 districts.* In the B3-1 and B3-2 districts, the regulations governing signs in the B2 districts, as set forth in subsection (b) of this section, shall apply.
- (d) *B4 districts.* In the B4-1 to B4-3 districts, inclusive, the regulations governing the signs in the B3 districts, as set forth in subsection (c) of this section, shall apply.
- (e) *B5 districts.* In the B5-1 and B5-2 districts, the regulations governing the signs in the B3 districts, as set forth in subsection (c) of this section, shall apply.
- (f) *Manufacturing districts, permitted signs, M1 districts.* In the M1-1 and M1-2 districts, the regulations governing

signs in the B3 districts, as set forth in subsection (c) of this section, shall apply.

- (g) *M2-1, M2-2 and M3 districts.* In the M2-1, M2-2 and M3 districts, business and advertising signs are permitted without restriction, except as provided hereafter for signs in the vicinity of public parks and residence districts.

(Code 1960, § 6-1102; Code 1989, § 159.02; Ord. No. 3376; Ord. No. 3439)

Sec. 117-3. - Signs near parks or real estate.

No advertising sign shall be located within 400 feet of any public park of ten or more acres in area if the face of such sign is visible from such park. No advertising sign shall be located within 75 feet of any real estate located in a residence district.

(Code 1960, § 6-1103; Code 1989, § 159.03; Ord. No. 3376)

Sec. 117-4. - Diagonal signs.

Signs placed on corner lots at an angle, so that the face thereof is visible from both frontages, shall be known as diagonal signs. The gross area in square feet of all diagonal signs on a zoning lot shall not exceed one half the total gross square feet area permitted on all frontages.

(Code 1960, § 6-1104; Code 1989, § 159.04; Ord. No. 3376)

Sec. 117-5. - Signs on marquees and canopies.

Signs on marquees and canopies shall be treated as a special use subject to the following conditions in addition to any other conditions as shall be prescribed by the common council. Restrictions imposed by this chapter on the projection of signs across property lines into the public way shall not apply, except in residence districts, to signs located on marquees or canopies; provided that any sign located on a marquee or canopy shall be affixed flat to the surface thereof, and that no such sign shall extend vertically or horizontally beyond the limits of the marquee or canopy, except that individual, freestanding letters may project to a height not exceeding 24 inches above same.

(Code 1960, § 6-1105; Code 1989, § 159.05; Ord. No. 3376)

Sec. 117-6. - Signs on awnings.

Restrictions imposed by this chapter on the projection of signs across property lines into the public way shall not apply except in residence districts to signs located on awnings, provided that any sign located on an awning shall be affixed flat to the surface thereof, shall be nonilluminated and nonflashing and shall indicate only the name and address of the establishment on the premises. Further, no such sign shall extend vertically or horizontally beyond the limits of the awning.

(Code 1960, § 6-1106; Code 1989, § 159.06; Ord. No. 3376)

Sec. 117-7. - Size and space regulations.

- (a) Notwithstanding other provisions in this chapter, where the gross area in square feet of all advertising signs on a zoning lot exceeds 300 square feet, the signs shall be placed at an angle in relation to the frontage so that one end of the exterior of the sign shall be set back not less than seven feet from the other end of the sign.
- (b) No advertising signs facing upon the same frontage shall be installed, constructed, or erected closer than 50 feet apart; provided, however, that advertising signs installed or constructed less than five feet apart shall be

considered a single sign.

- (c) No single advertising sign in B2, B3, B4, B5 and in all M districts shall exceed 600 square feet in area.
- (d) Not more than one single advertising sign shall be erected, constructed, or installed parallel with the frontage on a single zoning lot. The term "parallel sign" is defined to be a sign which is either parallel with the frontage or at an angle in relation to the frontage so that one end of the exterior of the sign shall be set back not more than seven feet from the apex of the angle.
- (e) No sign shall be placed upon any sidewalk, street, or other public way, except upon public convenience benches located at bus stops, in districts zoned for business, manufacturing and floodplain, after approval of the board of public works and safety and subject to the issuance of a zoning clearance certificate for the location in properly zoned districts.

(Code 1960, § 6-1107; Code 1989, § 159.07; Ord. No. 3376; Ord. No. 3439; Ord. No. 4193)

Sec. 117-8. - Special use.

All signs projecting higher than 45 feet above curb level shall be considered as a variance to be governed in accordance with the provisions of section 123-108.

(Code 1960, § 6-1108; Code 1989, § 159.08; Ord. No. 3376; Ord. No. 3439; Ord. No. 4317)

Secs. 117-9—117-34. - Reserved.

ARTICLE II. - ELECTRIC SIGNS

Sec. 117-35. - Definition of electric sign.

An "electric sign" within the meaning of this article, shall be any sign illuminated by electric lights attached thereto by fixtures for illumination or in which glass letters are illuminated or outlined by incandescent electric lamps or any other method of illumination, whether on metal sign face or used to illuminate glass sign panels or letters.

(Code 1960, § 5-1401; Code 1989, § 159.15)

Sec. 117-36. - Wiring; fees.

- (a) All electric signs shall conform in their wiring requirements to the provisions of this article.
- (b) In addition to other fees required, fees in the amount established by chapter 20 shall be charged for electric wiring of signs.

(Code 1960, §§ 5-1402, 5-1403; Code 1989, § 159.16)

Sec. 117-37. - Obstruction of fire escapes; sidewalk clearance.

- (a) Electric signs shall not obstruct or be attached to any part of a fire escape, and where such a sign is hung near a fire escape it shall be so arranged as to swing away from the fire escape.
- (b) There shall be a clearance of at least 12 feet between the sidewalk and the bottom of all electric signs and such signs shall not extend beyond the curbline. A distance of ten feet must be maintained between electric signs

placed or anchored on the face of any building.

(Code 1960, §§ 5-1404, 5-1405; Code 1989, § 159.17)

Sec. 117-38. - Chain supports and fastenings.

- (a) All projecting signs shall have standard chain supports and fastenings to the building as shown in the following table:

	Number of Chains	Trade Size of Chains	Fastenings to Walls
0 to 75	1	4/0	Two expansion bolts.
75 to 150	2	4/0	Two expansion bolts per chain in different places.
150 to 300	2	8/0	One bolt through wall or equivalent.
300 to 400	2	10/0	Two bolts through wall or equivalent.

- (b) No support or guy shall make an angle of less than 30 degrees with the sign to which it is attached except in the case of the rear support of vertical signs. No supporting chain shall be attached back of the center of gravity of the sign. Each chain must be capable of carrying the sign alone, and where two chains are required for supporting a sign each chain shall be independently and securely attached to the sign structure and to the building or other support. Projecting signs with chain or rigid side guys shall be so attached to the building that, should the signs swing due to the loosening of the side guys, no undue strain will be placed on the supporting bolts. This rule requires the main supports to be hinged near the point where they attach to the building.
- (c) Turnbuckles shall be provided for all supporting chains. Side guys may have turnbuckles for one side of a sign only. Turnbuckles shall have a breaking strength equivalent to that of the chain to which they are attached.
- (d) Split links used for connection of chains shall be of standard design and shall have a breaking strength equivalent to that of the chains to which they are attached.
- (e) Machine screws in iron fronts shall be not less than one-half inch in diameter and shall enter clear through the iron work.
- (f) Where supporting chains are attached to bolts through a wall, such bolts shall be not less than five-eighths inch in diameter. The bolt shall be anchored by a washer plate by not less than 24 square inches of surface and not less than one inch thick.
- (g) Expansion bolts shall be not less than one-half inch in diameter and shall enter brick or stone walls not less than 2½ inches.
- (h) Bolts or lag screws shall not be fastened to window frames. Lag bolts in solid woodwork shall not be less than one-half inch in diameter and shall enter such woodwork not less than three inches.

(Code 1960, §§ 5-1406—5-1413; Code 1989, § 159.18)

Sec. 117-39. - Protection, position of supports.

- (a) All chains, turnbuckles, split links, bolts and screws and all other devices which support or form a part of the support of any sign shall be hot galvanized or otherwise suitably protected from corrosion in some manner.
- (b) All sign supports attached to any building shall have at least five feet of wall above them and shall be not less than eight inches from the corners of the structure or building.

(Code 1960, § 5-1415; Code 1989, § 159.19)

Sec. 117-40. - Other methods of support.

The following methods of supporting signs will be considered as equivalent to bolt through the wall; provided, however, that each case is subject to the approval of the electrical inspector.

- (1) Where expansion bolts are so arranged that supports or guys make an angle of about 60 degrees with the sign.
- (2) Where expansion bolts are attached to strong ledges, side walls, posts, or columns so as to avoid outward pull.
- (3) Where machine or lag screws are fastened into strong timber or iron frames.
- (4) Where chains pass onto roofs to strong structures or anchorage.

(Code 1960, § 5-1416; Code 1989, § 159.20)

Chapter 119 - STORMWATER MANAGEMENT

ARTICLE I. - IN GENERAL

Sec. 119-1. - Authority and title.

This chapter is adopted in accordance with statutory authority granted to the common council of the city and, further, is required to be enacted by phase II of the national pollution discharge elimination system stormwater program (FR Doc. 99-29181) as authorized by the 1972 amendments to the Clean Water Act, the Indiana Department of Environmental Management, Rule 13 (327 IAC 15-13), and the Indiana Department of Environmental Management, Rule 5 (327 IAC 15-5).

Based on this authority and these requirements, this chapter regulates:

- (1) Discharges of prohibited nonstormwater flows into the stormwater drainage system.
- (2) Stormwater drainage improvements related to development of lands located within the city.
- (3) Drainage control systems installed during new construction and grading of lots and other parcels of land.
- (4) Erosion and sediment control systems installed during new construction and grading of lots and other parcels of land.
- (5) The design, construction, and maintenance of stormwater drainage facilities and systems.
- (6) The design, construction, and maintenance of stormwater quality facilities and systems.

This chapter shall be known and may be cited as the City of Gary Stormwater Management Ordinance.

(Ord. No. 7931, ch. 1, § 1, 7-3-2006)

Sec. 119-2. - Applicability and exemptions.

- (a) This chapter shall regulate all development and redevelopment occurring within the city and any significant discharge into the city's stormwater conveyance facilities. No building permit shall be issued and no land disturbance started for any construction for any development or redevelopment, until the plans required by this chapter for such construction have been approved in writing by the Gary Stormwater Management District (GSWMD). With the exception of the requirements of article II, divisions 1 and 2, section 119-4, single-family dwelling houses in accepted subdivisions, new buildings (or cumulative building additions) with less than 500 square feet of area, and land disturbing activities affecting less than 10,000 square feet of area shall be exempt from the requirements of this chapter, unless these activities significantly adversely affect the city's stormwater conveyance facilities or water quality of the receiving bodies of water.
- (b) The city municipal projects shall be exempt from fees associated with obtaining a stormwater permit; however, a stormwater permit application must be filed that meets all applicable technical requirements of this chapter and the latest edition of the city "Sanitary/Storm Sewer and City Infrastructure Standards and Specifications Manual," hereafter referred to as the city design standards manual.
- (c) Any construction project which has had its final drainage plan accepted by the GSWMD within a 2-year period prior to the effective date of the ordinance from which this chapter is derived shall be exempt from all requirements of this chapter that are in excess of the requirements of ordinances in effect at the time of acceptance. Such an exemption is not applicable to the requirements detailed in article III of this chapter.
- (d) The GSWMD has the authority, to the extent permitted by law, to modify, grant exemptions, and/or waive any and all the requirements of this chapter. A presubmittal meeting with the GSWMD may be requested by a permit applicant to discuss the applicability of various provisions of the chapter and the city design standards manual regarding unique or unusual circumstances relating to a project. However, any initial determination of such applicability shall not be binding on future determinations of the GSWMD that may be based on the review of additional and/or more detailed information and plans. The GSWMD has the authority to enact rules it deems advisable to implement the provisions of this chapter. Compliance with these rules is a requirement of this chapter.

(Ord. No. 7931, ch. 1, § 2, 7-3-2006)

Sec. 119-3. - Background.

- (a) The common council of the city adopted Ordinance No. 7309 on February 19, 2002, which established "an ordinance establishing a stormwater management and sediment control policy for the City of Gary, Indiana", commonly known as the "The City of Gary Stormwater Management Ordinance," in order to govern the control of runoff of stormwater and to protect, conserve, and promote the orderly development of land in the city and protect its water resources. This chapter was primarily targeted at stormwater discharge quantity and erosion and sediment control.
- (b) On December 8, 1999, phase II of the national pollutant discharge elimination system (NPDES) permit program, was published in the Federal Register. The NPDES program, as authorized by the 1972 amendments to the Clean Water Act, controls water pollution by regulating point sources that discharge pollutants into waters of the United States. Phase II of NPDES requires permit coverage for stormwater discharges from regulated small municipal separate storm sewer systems (MS4s) and for small-site construction activity that results in the disturbance of one

acre or more of land. This federal regulation went into affect March 10, 2003. In response to phase II of NPDES, the state department of environmental management enacted Rule 13 (327 IAC 15-13) and revised Rule 5 (327 IAC 15-5).

- (c) Under these new state and federal regulations, the city is required to establish a regulatory mechanism for regulating stormwater quality as well as stormwater quantity within its jurisdiction. Therefore, the city stormwater management Ordinance No. 7309 has been amended, (by substitution) with this chapter.

(Ord. No. 7931, ch. 1, § 3, 7-3-2006)

Sec. 119-4. - Findings.

The common council of the city finds that:

- (1) Water bodies, roadways, streets, structures, and other property within and downstream of the city are at times subjected to flooding;
- (2) Flooding is a danger to the lives and property of the public and is also a danger to the natural resources of the region;
- (3) Land development alters the hydrologic response of watersheds, resulting in increased stormwater runoff rates and volumes, increased flooding, increased stream channel erosion, increased stream pollution, and increased sediment transport and deposition;
- (4) Soil erosion resulting from land disturbing activities causes a significant amount of sediment and other pollutants to be transported off-site and deposited in ditches, streams, wetlands, lakes, and reservoirs;
- (5) Increased stormwater runoff rates and volumes, and the sediments and pollutants associated with stormwater runoff from future development projects within the city will, absent reasonable regulation and control, adversely affect the city's water bodies and water resources;
- (6) Pollutant contributions from illicit discharges within the city will, absent reasonable regulation, monitoring, and enforcement, adversely affect the city's water bodies and water resources;
- (7) Stormwater runoff frequently contains pollutants that cause or contribute to violation of water quality standards;
- (8) Stormwater runoff, soil erosion, non-point source pollution, and illicit sources of pollution can be controlled and minimized by the regulation of stormwater management;
- (9) Adopting the standards, criteria, and procedures contained and referenced in this chapter and implementing the same will address many of the harmful effects of stormwater runoff and illicit discharges;
- (10) Adopting this chapter is necessary for the preservation of the public health, safety, and welfare, for the conservation of our natural resources, and for compliance with state and federal regulations.

(Ord. No. 7931, ch. 1, § 4, 7-3-2006)

Sec. 119-5. - Purpose.

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of stormwater and nonstormwater discharges to the storm drainage system and to protect, conserve and promote the coordinated development of land and water resources within the city. This chapter establishes methods for

managing the quantity and quality of stormwater entering into the stormwater drainage system in order to comply with state and federal requirements. The objectives of this chapter are:

- (1) To reduce the hazard to public health and safety and water quality caused by excessive stormwater runoff.
- (2) To regulate the contribution of pollutants to the stormwater drainage system from construction site runoff.
- (3) To regulate the contribution of pollutants to the stormwater drainage system and public waters from runoff, including but not limited to, from new development and redevelopment.
- (4) To prohibit illicit discharges into the stormwater drainage system.
- (5) To establish legal authority to carry out all permitting, inspection, monitoring, and enforcement procedures necessary to ensure compliance with this chapter.
- (6) To manage and improve the quality of stormwater runoff for a given set of conditions that minimizes the impact of stormwater runoff in the most cost-effective manner to the maximum extent practicable using the best available technology to capture and reduce the concentration of pollutants such as, but not limited to, BOD (biochemical oxygen demand), TSS (total suspended solids), bacteria and other pathogens, toxics, and oil and grease.

(Ord. No. 7931, ch. 1, § 5, 7-3-2006)

Sec. 119-6. - Abbreviations and definitions.

- (a) *Definitions.* The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Agricultural land disturbing activity means tillage, planting, cultivation, or harvesting operations for the production of agricultural or nursery vegetative crops. The term also includes pasture renovation and establishment, the construction of agricultural conservation practices, and the installation and maintenance of agricultural drainage tile. For purposes of this rule, the term does not include land disturbing activities for the construction of agriculture related facilities, such as barns, buildings to house livestock, roads associated with infrastructure, agricultural waste lagoons and facilities, lakes and ponds, wetlands; and other infrastructure.

Base flow means stream discharge derived from groundwater sources as differentiated from surface runoff. The term "base flow" is sometimes considered to include flows from regulated lakes or reservoirs.

Best management practices means design, construction, and maintenance practices and criteria for stormwater facilities that minimize the impact of stormwater runoff rates and volumes, prevent erosion, and capture pollutants.

Board means the board of directors of the City of Gary Department of Stormwater Management and any subordinate employee, agent or representative to whom it shall specifically delegate a responsibility authorized by this chapter.

Buffer strip means an existing, variable-width strip of vegetated land intended to protect water quality and habitat.

Capacity (of a storm drainage facility) means the maximum flow that can be conveyed or stored by a storm drainage facility without causing damage to public or private property.

Catchbasin means a chamber usually built at the curblin of a street for the admission of surface water to a storm drain or subdrain, having at its base a sediment sump designed to retain grit and detritus below the point of overflow.

Channel means a portion of a natural or artificial watercourse which periodically or continuously contains moving water, or which forms a connecting link between two bodies of water. It has a defined bed and banks which serve to confine the water.

Compensatory storage means an artificial volume of storage within a floodplain used to balance the loss of natural flood storage capacity when artificial fill or substructures are placed within the floodplain.

Comprehensive stormwater management means a comprehensive stormwater program for effective management of stormwater quantity and quality throughout the community.

Constructed wetland means a manmade shallow pool that creates growing conditions suitable for wetland vegetation and is designed to maximize pollutant removal.

Construction activity means land disturbing activities, and land disturbing activities associated with the construction of infrastructure and structures. This term "construction activity" does not include routine ditch or road maintenance or minor landscaping projects.

Construction site access means a stabilized stone surface at all points of ingress or egress to a project site, for the purpose of capturing and detaining sediment carried by tires of vehicles or other equipment entering or exiting the project site.

Contiguous means adjoining or in actual contact with.

Contour means an imaginary line on the surface of the earth connecting points of the same elevation.

Contour line means a line on a map which represents a contour or points of equal elevation.

Contractor or subcontractor means an individual or company hired by the project site or individual lot owner, owners agent, or the individual lot operator to perform services on the project site.

Conveyance means any structural method for transferring stormwater between at least two points. The term "conveyance" includes piping, ditches, swales, curbs, gutters, catchbasins, channels, storm drains, and roadways.

Cross section means a graph or plot of ground elevation across a stream valley or a portion of it, usually along a line perpendicular to the stream or direction of flow.

Culvert means a closed conduit used for the conveyance of surface drainage water under a roadway, railroad, canal or other impediment.

Dechlorinated swimming pool discharge means chlorinated water that has either sat idle for seven days following chlorination prior to discharge to the MS4 conveyance or, by analysis, does not contain detectable concentrations (less than 0.05 milligram per liter) of chlorinated residual.

Design storm means a selected storm event, described in terms of the probability of occurring once within a given number of years, for which drainage or flood control improvements are designed and built.

Detention means managing stormwater runoff by temporary holding and controlled release.

Detention basin means a facility constructed or modified to restrict the flow of stormwater to a prescribed maximum rate, and to detain concurrently the excess waters that accumulate behind the outlet.

Detention storage means the temporary detaining of storage of stormwater in storage facilities, on rooftops, in streets, parking lots, school yards, parks, open spaces or other areas under predetermined and controlled conditions, with the rate of release regulated by appropriately installed devices.

Detention time means the theoretical time required to displace the contents of a tank or unit at a given rate of discharge (volume divided by rate of discharge).

Detritus means dead or decaying organic matter, generally contributed to stormwater as fallen leaves and sticks or as dead aquatic organisms.

Developer means any person financially responsible for construction activity, or an owner of property who sells or leases, or offers for sale or lease any lots in a subdivision.

Development means alterations of a property from its virgin undeveloped state that change its stormwater runoff characteristics.

Discharge means usually the rate of water flow. A volume of fluid passing a point per unit time commonly expressed as cubic feet per second, cubic meters per second, gallons per minute, or millions of gallons per day.

Disposal means the discharge, deposit, injection, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that the solid waste or hazardous waste, or any constituent of the waste, may enter the environment, be emitted into the air, or be discharged into any waters, including groundwaters.

Ditch means a manmade, open watercourse in or into which excess surface water or groundwater drained from land, stormwater runoff, or floodwaters flow either continuously or intermittently.

Drain means a buried slotted or perforated pipe or other conduit (subsurface drain) or a ditch (open drain) for carrying off surplus groundwater or surface water.

Drainage means the removal of excess surface water or groundwater from land by means of ditches or subsurface drains. Also see *Natural drainage*.

Drainage area means the area draining into a stream at a given point. It may be of different sizes for surface runoff, subsurface flow and base flow, but generally the surface runoff area is considered as the drainage area.

Dry well means a type of infiltration practice that allows stormwater runoff to flow directly into the ground via a bored or otherwise excavated opening in the ground surface.

Duration means the time period of a rainfall event.

Environment means the sum total of all the external conditions that may act upon a living organism or community to influence its development or existence.

Erodibility index (EI). The soil erodibility index (EI) provides a numerical expression of the potential for a soil to erode considering the physical and chemical properties of the soil and the climatic conditions where it is located. The higher the index, the greater the investment needed to maintain the sustainability of the soil resource base if intensively cropped. It is defined to be the maximum of $(R \times K \times LS)/T$ (from the universal soil loss equation) and $(C \times I)/T$ (from the wind erosion equation), where R is a measure of rainfall and runoff, K is a factor of the susceptibility of the soil to water erosion, LS is a measure of the combined effects of slope length and steepness, C is a climatic characterization of wind speed and surface soil moisture and I is a measure of the susceptibility of the soil to wind erosion. Erodibility index scores equal to or greater than eight are considered highly erodible land.

Erosion means the wearing away of the land surface by water, wind, ice, gravity, or other geological agents. The following terms are used to describe different types of water erosion:

- (1) *Accelerated erosion* means erosion much more rapid than normal or geologic erosion, primarily as a result of the activities of man.
- (2) *Channel erosion* means an erosion process whereby the volume and velocity of flow wears away the bed and/or banks of a well-defined channel.
- (3) *Gully erosion* means an erosion process whereby runoff water accumulates in narrow channels and, over relatively short periods, removes the soil to considerable depths, ranging from one to two feet to as much as 75 to 100 feet.
- (4) *Rill erosion* means an erosion process in which numerous small channels only several inches deep are formed; occurs mainly on recently disturbed and exposed soils (see *Rill*).
- (5) *Splash erosion* means the spattering of small soil particles caused by the impact of raindrops on wet soils; the loosened and spattered particles may or may not be subsequently removed by surface runoff.
- (6) *Sheet erosion* means the gradual removal of a fairly uniform layer of soil from the land surface by runoff water.

Erosion and sediment control means a practice, or a combination of practices, to minimize sedimentation by first reducing or eliminating erosion at the source and then as necessary, trapping sediment to prevent it from being discharged from or within a project site.

Fill material means any material used for primary purpose of replacing a wetland area with dry land or of changing the bottom elevation of a wetland or a water body. This definition shall be considered to be automatically amended to conform with the definition of fill material established from time to time by the United States of America or United States Army Corps of Engineers.

Filter strip means usually a long, relatively narrow area (usually, 20 to 75 feet wide) of undisturbed or planted vegetation used near disturbed or impervious surfaces to filter stormwater pollutants for the protection of watercourses, reservoirs, or adjacent properties.

Floatable means any solid waste that will float on the surface of the water.

Flood or floodwater means 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 elevation means the elevation at all locations delineating the maximum level high waters for a flood of a given return period.

Flood hazard area means any floodplain, floodway, floodway fringe or any combination thereof which is subject to inundation by the regulatory flood; or any floodplain as delineated by zone A on a flood insurance rate map or a flood hazard boundary map.

Flood protection grade means the elevation of the lowest floor of a building, including the basement, which shall be two feet above the elevation of the regulatory flood.

Floodplain means the channel proper and the areas adjoining the channel which have been or hereafter may be covered by the regulatory or 100-year flood; any normally dry land area that is susceptible to being inundated by water from any natural source. The floodplain includes both the floodway and the floodway fringe districts.

Floodway means 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 flow of the regulatory flood of any river or stream.

Floodway fringe means that portion of the floodplain lying outside the floodway, which is inundated by the regulatory flood.

Footing drain means a drain pipe installed around the exterior of a basement wall foundation to relieve water pressure caused by high groundwater elevation.

Garbage means all putrescible animal solid, vegetable solid, and semisolid wastes resulting from the processing, handling, preparation, cooking, serving, or consumption of food or food materials.

Gary Stormwater Management District means the executive department and special taxing district of the city which has full responsibility for the ownership, operation, and management of the city's stormwater collection, conveyance, treatment, and control facilities and for the implementation of this chapter.

Gasoline outlet means an operating gasoline or diesel fueling facility whose primary function is the resale of fuels. The term applies to facilities that create 5,000 or more square feet of impervious surfaces, or generate an average daily traffic count of 100 vehicles per one 1,000 square feet of land area.

Geographical information system means a computer system capable of assembling, storing, manipulating, and displaying geographically referenced information. This technology can be used for resource management and development planning.

Grade means:

- (1) The inclination or slope of a channel, canal, conduit, etc., or natural ground surface usually expressed in terms of the percentage the vertical rise (or fall) bears to the corresponding horizontal distance.
- (2) The finished surface of a canal bed, roadbed, top of embankment, or bottom of excavation; any surface prepared to a design elevation for the support of construction, such as paving or the laying of a conduit.
- (3) To finish the surface of a canal bed, roadbed, top of embankment, or bottom of excavation, or other land area to a smooth, even condition.

Grading means the cutting and filling of the land surface to a desired slope or elevation.

Grass means a member of the botanical family Graminae, characterized by blade-like leaves that originate as a sheath wrapped around the stem.

Groundwater means accumulation of underground water, natural or artificial. The term does not include manmade underground storage or conveyance structures.

Habitat means the environment in which the life needs of a plant or animal are supplied.

Highly erodible land (HEL) means land that has an erodibility index of eight or more.

Hydrologic unit code means a numeric United States Geologic Survey code that corresponds to a watershed area. Each area also has a text description associated with the numeric code.

Hydrology means the science of the behavior of water in the atmosphere, on the surface of the earth, and underground. A typical hydrologic study is undertaken to compute flow rates associated with specified flood events.

Illicit discharge means any discharge to a conveyance that is not composed entirely of stormwater except naturally occurring floatables, such as leaves or tree limbs.

Impact areas means areas defined and/or mapped by the city engineer which are unlikely to be easily drained because of one or more factors including, but not limited to, any of the following: soil type, topography, land where there is not adequate outlet, a floodway or floodplain.

Impaired waters means waters that do not or are not expected to meet applicable water quality standards, as included on IDEM's CWA section 303(d) List of Impaired Waters.

Impervious surface means surfaces, such as pavement and rooftops, which retard the movement of stormwater into the soil.

Individual building lot means a single parcel of land within a multi-parcel development.

Individual lot operator means a contractor or subcontractor working on an individual lot.

Individual lot owner means a person who has financial control of construction activities for an individual lot.

Infiltration passage or movement of water into the soil. Infiltration practices include any structural BMP designed to facilitate the percolation of runoff through the soil to groundwater. Examples include infiltration basins or trenches, dry wells, and porous pavement.

Inlet means an opening into a stormwater drainage system for the entrance of surface stormwater runoff, more completely described as a storm drain inlet.

Land disturbing activity means any manmade change of the land surface, including removing vegetative cover that exposes the underlying soil, excavating, filling, transporting and grading.

Land surveyor means a person licensed under the laws of the State of Indiana to practice land surveying.

Larger common plan of development or sale means a plan, undertaken by a single project site owner or a group of project site owners acting in concert, to offer lots for sale or lease; where such land is contiguous, or is known, designated, purchased or advertised as a common unit or by a common name. Such land shall be presumed as being offered for sale or lease as part of a larger common plan. The term also includes phased or other construction activity by a single entity for its own use.

Lowest adjacent grade means the elevation of the lowest grade adjacent (abutting) to a structure, where the soil meets the foundation around the outside of the structure (including structural members such as basement walkout, patios, decks, porches, support posts or piers, and rim of the window well).

Lowest floor refers to the lowest of the following:

- (1) The top of the basement floor;
- (2) The top of the garage floor, if the garage is the lowest level of the building;
- (3) The top of the first floor of buildings constructed on a slab or of buildings elevated on pilings or constructed on a crawl space with permanent openings; or
- (4) The top of the floor level of any enclosure below an elevated building where the walls of the enclosure provide any resistance to the flow of floodwaters unless:
 - a. The walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of floodwaters, by providing a minimum of two openings (in addition to doorways and windows) having a total area of one square foot for every two square feet of enclosed area subject to flooding. The bottom of all such openings shall be no higher than one foot above grade.

b. Such enclosed space shall be usable only for the parking of vehicles or building access.

Major drainage system means a drainage system carrying runoff from an area of one or more square miles.

Manhole means a storm drain structure through which a person may enter to gain access to an underground storm drain or enclosed structure.

Measurable storm event means a precipitation event that results in a total measured precipitation accumulation equal to, or greater than 0.5 inch of rainfall.

Minor drainage system means a minor drainage system having an area of less than one square mile.

Mulch means a natural or artificial layer of plant residue or other materials covering the land surface which conserves moisture, holds soil in place, aids in establishing plant cover, and minimizes temperature fluctuations.

Municipal separate storm sewer system means an MS4 that meets all the following criteria:

- (1) Is a conveyance or system of conveyances owned by the state, county, city, town, or other public entity;
- (2) Discharges to waters of the U.S.;
- (3) Is designed or used for collecting or conveying stormwater;
- (4) Is not a combined sewer; and
- (5) Is not part of a publicly owned treatment works (POTW).

National pollution discharge elimination system means a permit developed by the U.S. EPA through the Clean Water Act. In Indiana, the permitting process has been delegated to IDEM. This permit covers aspects of municipal stormwater quality.

Natural drainage means the flow patterns of stormwater runoff over the land in its predevelopment state.

Nutrient means:

- (1) A substance necessary for the growth and reproduction of organisms.
- (2) In water, those substances (chiefly nitrates and phosphates) that promote growth of algae and bacteria.

Off-site means everything not on-site.

On-site means located within the controlled or urbanized areas where runoff originates.

Open drain means a natural watercourse or constructed open channel that conveys drainage water.

Open space means any land area devoid of any disturbed or impervious surfaces created by industrial, commercial, residential, agricultural, or other manmade activities.

Outfall means the point, location, or structure where a pipe or open drain discharges to a receiving body of water.

Outlet means the point of water disposal from a stream, river, lake, tidewater, or artificial drain.

Peak discharge or *peak flow* means the maximum instantaneous flow from a given storm condition at a specific location.

Percolation means the movement of water through soil.

Permanent stabilization means the establishment, at a uniform density of 70 percent across the disturbed area, of vegetative cover or permanent non-erosive material that will ensure the resistance of the soil to erosion, sliding, or other movement.

Pervious surface means surfaces such as sand, grass, or wooded, that allow movement of water into the soil.

Point source means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged (PL 92-500, section 502[14]).

Porous pavement means a type of infiltration practice to improve the quality and reduce the quantity of stormwater runoff via the use of manmade, pervious pavement which allows runoff to percolate through the pavement and into underlying soils.

Professional engineer means a person licensed under the laws of the State of Indiana to practice professional engineering.

Project site means the entire area on which construction activity is to be performed.

Project site owner means the person required to submit a stormwater permit application, and required to comply with the terms of this chapter, including a developer or a person who has financial and operational control of construction activities, and project plans and specifications, including the ability to make modifications to those plans and specifications.

Rain garden means a vegetative practice used to alter impervious surfaces, such as roofs, into pervious surfaces for absorption and treatment of rainfall.

Rainfall intensity means the cumulative depth of rainfall occurring over a given duration, normally expressed in inches per hour.

Reach means any length of river, channel or storm sewer.

Receiving stream, receiving channel or receiving water means the body of water into which runoff or effluent is discharged. The term does not include private drains, unnamed conveyances, retention and detention basins, or constructed wetlands used as treatment.

Recharge means replenishment of groundwater reservoirs by infiltration and transmission from the outcrop of an aquifer or from permeable soils.

Redevelopment means alterations of a property that change a site or building in such a way that there is change in the ratio of pervious to impervious surfaces. The term "redevelopment" does not include such activities as exterior remodeling.

Refueling area means an operating gasoline or diesel fueling area whose primary function is to provide fuel to equipment or vehicles.

Regulated areas means all area within the city's boundaries.

Regulated drain means a drain subject to the provisions of IC 36-9-27.

Regulatory flood means the discharge or elevation associated with the 100-year flood as calculated by a method and procedure which is acceptable to and accepted by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood is also known as the "base flood."

Regulatory floodway. See *Floodway*.

Release rate means the amount of stormwater release from a stormwater control facility per unit of time.

Reservoir means a natural or artificially created pond, lake or other space used for storage, regulation or control of water. Reservoirs may be either permanent or temporary. The term is also used in the hydrologic modeling of storage facilities.

Retention means the storage of stormwater to prevent it from leaving the development site. Retention may be temporary

or permanent.

Retention basin means a type of storage practice that has no positive outlet, used to retain stormwater runoff for an indefinite amount of time. Runoff from this type of basin is removed only by infiltration through a porous bottom or by evaporation.

Return period means the average interval of time within which a given rainfall event will be equaled or exceeded once. A flood having a return period of 100 years has a one percent probability of being equaled or exceeded in any one year.

Riparian habitat means a land area adjacent to a water body that supports animal and plant life associated with that water body.

Riparian zone means of, on, or pertaining to the banks of a stream, river, or pond.

Runoff means that portion of precipitation that flows from a drainage area on the land surface, in open channels, or in stormwater conveyance systems.

Runoff coefficient means a decimal fraction relating the amount of rain which appears as runoff and reaches the stormwater drainage system to the total amount of rain falling. A coefficient of 0.5 implies that 50 percent of the rain falling on a given surface appears as stormwater runoff.

Sediment means solid material (both mineral and organic) that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface.

Sedimentation means the process that deposits soils, debris and other unconsolidated materials either on the ground surfaces or in bodies of water or watercourses.

Sensitive water means a water body in need of priority protection or remediation based on its providing habitat for threatened or endangered species, usage as a public water supply intake, relevant community value, usage for full body contact recreation, or exceptional use classification as found in 327 IAC 2-1-11(b), outstanding state resource water classification as found in 327 IAC 2-1-2(3) and 327 IAC 2-1.5-19(b).

Site means the entire area included in the legal description of the land on which land disturbing activity is to be performed.

Slope means degree of deviation of a surface from the horizontal, measured as a numerical ratio or percent. Expressed as a ratio, the first number is commonly the horizontal distance (run) and the second is the vertical distance (rise) (e.g., 2:1). However, the preferred method for designation of slopes is to clearly identify the horizontal (H) and vertical (V) components (length (L) and width (W) components for horizontal angles). Also note that according to international standards (metric), the slopes are presented as the vertical or width component shown on the numerator (e.g., 1V:2H). Slope expressions in this chapter follow the common presentation of slopes (e.g., 2:1) with the metric presentation shown in parentheses (e.g., (1V:2H)). Slopes can also be expressed in percents. Slopes given in percents are always expressed as (100*V/H) (e.g., a 2:1 (1V:2H) slope is a 50 percent slope).

Soil means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

Soil and water conservation district means a public organization created under state law as a special-purpose district to develop and carry out a program of soil, water, and related resource conservation, use, and development within its boundaries. A subdivision of state government with a local governing body, established under IC 14-32.

Solid waste means any garbage, refuse, debris, or other discarded material.

Spill means the unexpected, unintended, abnormal, or unapproved dumping, leakage, drainage, seepage, discharge, or other loss of petroleum, hazardous substances, extremely hazardous substances, or objectionable substances. The term "spill" does not include releases to impervious surfaces when the substance does not migrate off the surface or penetrate the surface and enter the soil.

Spillway means a waterway in or about a hydraulic structure, for the escape of excess water.

Storm duration means the length of time that water may be stored in any stormwater control facility, computed from the time water first begins to be stored.

Storm event means an estimate of the expected amount of precipitation within a given period of time. For example, a ten-year frequency, 24-hour duration storm event is a storm that has a ten percent probability of occurring in any one year. Precipitation is measured over a 24-hour period.

Storm sewer means a closed conduit for conveying collected stormwater, while excluding sewage and industrial wastes. Also called a storm drain.

Stormwater means water resulting from rain, melting or melted snow, hail, or sleet.

- (1) *Stormwater drainage system* means all means, natural or manmade, used for conducting stormwater to, through or from a drainage area to any of the following: conduits and appurtenant features, canals, channels, ditches, storage facilities, swales, streams, culverts, streets and pumping stations.
- (2) *Stormwater pollution prevention plan* means a plan developed to minimize the impact of stormwater pollutants resulting from construction activities.
- (3) *Stormwater runoff* means the water derived from rains falling within a tributary basin, flowing over the surface of the ground or collected in channels or conduits.
- (4) *Stormwater quality management plan* means a comprehensive written document that addresses stormwater runoff quality.
- (5) *Stormwater quality measure* means a practice, or a combination of practices, to control or minimize pollutants associated with stormwater runoff.

Strip development means a multi-lot project where building lots front on an existing road.

Subdivision means any land that is divided or proposed to be divided into lots, whether contiguous or subject to zoning requirements, for the purpose of sale or lease as part of a larger common plan of development or sale.

Subsurface drain means a pervious backfield trench, usually containing stone and perforated pipe, for intercepting groundwater or seepage.

Surface runoff means a precipitation that flows onto the surfaces of roofs, streets, the ground, etc., and is not absorbed or retained by that surface but collects and runs off.

Swale means an elongated depression in the land surface that is at least seasonally wet, is usually heavily vegetated, and is normally without flowing water. Swales conduct stormwater into primary drainage channels and may provide some groundwater recharge.

Temporary stabilization means the covering of soil to ensure its resistance to erosion, sliding, or other movement. The term "temporary stabilization" includes vegetative cover, anchored mulch, or other non-erosive material applied at a uniform density of 70 percent across the disturbed area.

Tile drain means pipe made of perforated plastic, burned clay, concrete, or similar material, laid to a designed grade and depth, to collect and carry excess water from the soil.

Topographic map means a graphical portrayal of the topographic features of a land area, showing both the horizontal distances between the features and their elevations above a given datum.

Topography means the representation of a portion of the earth's surface showing natural and manmade features of a given locality such as rivers, streams, ditches, lakes, roads, buildings and most importantly, variations in ground elevations for the terrain of the area.

Trained individual means an individual who is trained and experienced in the principles of stormwater quality, including erosion and sediment control as may be demonstrated by state registration, professional certification, experience, or completion of coursework that enables the individual to make judgments regarding stormwater control or treatment and monitoring.

Tributary means contributing stormwater from upstream land areas.

Urban drain means a drain defined as urban drain in Indiana Drainage Code (IC 36-27-9).

Urbanization means the development, change or improvement of any parcel of land consisting of one or more lots for residential, commercial, industrial, institutional, recreational or public utility purposes.

Vegetated swale means a type of vegetative practice used to filter stormwater runoff via a vegetated, shallow-channel conveyance.

Water body means any accumulation of water, surface, or underground, natural or artificial, excluding water features designed and designated as water pollution control facilities.

Water quality refers to a term used to describe the chemical, physical, and biological characteristics of water, usually in respect to its suitability for a particular purpose.

Water resources means the supply of groundwater and surface water in a given area.

Watercourse means any river, stream, creek, brook, branch, natural or manmade drainageway in or into which stormwater runoff or floodwaters flow either continuously or intermittently.

Watershed means the area drained by or contributing water to a specific point that could be along a stream, pond, lake or stormwater facility. Watersheds are often broken down into subareas for the purpose of hydrologic modeling.

Watershed area means all land and water within the confines of a drainage divide. See also *Watershed*.

Wetlands means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. The term "wetlands" shall be considered to be automatically amended to conform with the definition of wetlands established from time to time by the United States of America or United States Army Corps of Engineers.

(b) *Abbreviations*. The following abbreviations, when used in this chapter, shall have the meanings ascribed to them

in this section:

BMP	Best management practice
USACE	United States Army Corps of Engineers
CWA	Clean Water Act
EPA	Environmental Protection Agency
GIS	Geographical information system
GSWMD	Gary Stormwater Management District
IDNR	Indiana Department of Natural Resources
IDEM	Indiana Department of Environmental Management
MS4	Municipal separate storm sewer system
NRCS	Natural Resources Conservation Service
NPDES	National pollution discharge elimination system
POTW	Publicly owned treatment works
SWCD	Soil and water conservation district
SWPPP	Stormwater pollution prevention plan
USDA	United States Department of Agriculture
USFWS	United States Fish and Wildlife Service

(Ord. No. 7931, app. A, 7-3-2006; Ord. No. 7931, ch. 1, § 6, 7-3-2006)

Sec. 119-7. - Responsibility for administration.

The City of Gary Stormwater Management District (GSWMD) through its board and employees, shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the GSWMD may be delegated, in writing, by GSWMD to qualified persons or entities.

(Ord. No. 7931, ch. 1, § 7, 7-3-2006)

Sec. 119-8. - Conflicting ordinances.

The provisions of this chapter shall be deemed as additional requirements to minimum standards required by other city ordinances, and as supplemental requirements to Indiana's Rule 5 regarding Stormwater Discharge Associated with Construction Activity, (327 IAC 15-5), Indiana's Rule 13 regarding Stormwater Runoff Associated with Municipal Separate Storm Sewer System Conveyances (327 IAC 15-13), Indiana's Rule 6 regarding Stormwater Runoff Associated with Industrial Sites (327 IAC 15-6), U.S. EPA Underground Injection control Program Call V Well Requirements (40 CFR 144), chapter 18, article VII, and other city rules, regulations, and guidelines. In case of conflicting requirements, the most restrictive shall apply.

(Ord. No. 7931, ch. 1, § 8, 7-3-2006)

Sec. 119-9. - Disclaimer of liability.

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on historical records, engineering, and scientific methods of study. Larger storms may occur or stormwater runoff amounts may be increased by manmade or natural causes. This chapter does not imply that land uses permitted will be free from stormwater damage. This chapter shall not create liability on the part of the common council of the city or any other agency or department of the city, or any of their officials, employees, consultants, contractors, or agents for any damage which may result from reliance on this chapter or on any administrative decision lawfully made here under.

(Ord. No. 7931, ch. 1, § 12, 7-3-2006)

Secs. 119-10—119-36. - Reserved.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

DIVISION 1. - GENERALLY

Sec. 119-37. - Compliance with this chapter.

In addition to the requirements of this chapter, compliance with the requirements set forth in the local zoning ordinances is also necessary. Compliance with all applicable ordinances of the city as well as with applicable state and federal statutes and regulations shall also be required. Unless otherwise stated, all other specifications referred to in this chapter shall be the most recent edition available. Violations of the requirements of this chapter are subject to the penalties listed below. No building permit shall be issued for the construction, extension, remodeling, alteration or repair of any proposed or existing building in the city, unless all of the applicable provisions of this chapter have been complied with.

(Ord. No. 7931, ch. 8, § 1, 7-3-2006)

Sec. 119-38. - Penalties for violations.

(a) Any person found in violation of any provision of this chapter shall be responsible for a civil infraction and subject

to a maximum fine of \$2,500.00 for a first offense, and a maximum of \$2,500.00 for a subsequent offense, plus costs, damages, and expenses. Each day such violation occurs or continues shall be deemed a separate offense and shall make the violator liable for the imposition of a fine for each day. The rights and remedies provided for in this section are cumulative and in addition to any other remedies provided by law. An admission or determination of responsibility shall not exempt the offender from compliance with the requirements of this chapter.

- (b) Any person who aids or abets a person in a violation of this chapter shall be subject to the penalties provided in this section.
- (c) For purposes of this section, the term "subsequent offense" means a violation of the provisions of this chapter committed by the same person within 12 months of a previous violation of the same provision of this chapter for which said person admitted responsibility or was adjudicated to be responsible.

(Ord. No. 7931, ch. 8, § 2, 7-3-2006)

Sec. 119-39. - Stop work order.

- (a) In addition to the penalties listed above, if land disturbance activities are conducted contrary to the provisions of this chapter or approved final stormwater management plans, the GSWMD may order the work stopped by notice in writing served on any person engaged in the doing or causing of such work to be done, and any such persons shall forthwith stop such work until authorized by the GSWMD to proceed with the work. The GSWMD may also undertake or cause to be undertaken, any necessary or advisable protective measures to prevent violations of this chapter or to avoid or reduce the effects of noncompliance herewith. The cost of any such protective measures shall be the responsibility of the owner of the property upon which the work is being done and the responsibility of any person carrying out or participating in the work.
- (b) Any person who neglects or fails to comply with a stop work order shall, upon conviction, be guilty of an infraction, punishable by a fine of not more than \$5,000.00 per violation. A permit reinstatement fee may be assessed by the GSWMD as well.

(Ord. No. 7931, ch. 8, § 3, 7-3-2006)

Sec. 119-40. - Failure to comply or complete.

In addition to any other remedies, should any owner fail to comply with the provisions of this chapter, the GSWMD may, after giving notice and reasonable opportunity for compliance, have the necessary work performed and the owner shall be required to promptly reimburse the GSWMD for all costs of such work.

(Ord. No. 7931, ch. 8, § 4, 7-3-2006)

Sec. 119-41. - Suspension of access to the storm drain system.

- (a) *Emergency situations.* The GSWMD may, without prior notice, suspend stormwater drainage system discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, property of another, or to the health or welfare of persons or aquatic life, or to the stormwater drainage system of the city or public waters. If the violator fails to comply with a suspension order issued in an emergency, the GSWMD may take such steps as deemed necessary to prevent or minimize damage to the stormwater drainage system or public waters, or to minimize danger to persons, aquatic life, or property.

(b) *Detection of illicit discharge.* Any person discharging to the stormwater drainage system in violation of this chapter r have their stormwater drainage system access terminated if such termination would abate or reduce an illicit discha The GSWMD will notify a violator of the proposed termination of its MS4 access. The violator may petition the GSWM reconsideration and hearing.

(Ord. No. 7931, ch. 8, § 5, 7-3-2006)

Sec. 119-42. - Corrective action.

Nothing herein contained shall prevent the GSWMD from taking such other lawful action as may be necessary to prevent or remedy any violation. All costs connected therewith shall accrue to the person responsible. Costs include, but are not limited to, repairs to the stormwater drainage system made necessary by the violation as well as those penalties levied by the EPA or IDEM or for violation of the city's NPDES permit, attorney fees, and other costs and expenses of cure and/or prosecution.

(Ord. No. 7931, ch. 8, § 6, 7-3-2006)

Sec. 119-43. - Appeals.

Any person to whom any provision of this chapter has been applied may appeal in writing, not later than 30 days after the action or decision being appealed from, to the board of directors of GSWMD the action or decision whereby any such provision was so applied. Such appeal shall identify the matter being appealed, and the basis for the appeal. The board of directors of GSWMD shall consider the appeal and make a decision whereby it affirms, rejects or modifies the action being appealed. In considering any such appeal, the board of directors of GSWMD may consider the recommendations of GSWMD staff, representatives and consultants and the comments of other persons having knowledge of the matter. In considering any such appeal, the board of directors of GSWMD may grant a variance from the terms of this chapter to provide relief, in whole or in part, from the action being appealed, but only upon finding that the following requirements are satisfied:

- (1) The application of the chapter provisions being appealed will present or cause substantial and unreasonable practical difficulties for a development or development site; provided, however, that practical difficulties shall not include the need for the owner or developer to incur additional reasonable expenses in order to comply with the chapter; and
- (2) The granting of the relief requested will not substantially prevent the attainment of the goals and purposes of this chapter, nor result in less effective management of stormwater runoff.

(Ord. No. 7931, ch. 8, § 7, 7-3-2006)

Secs. 119-44—119-74. - Reserved.

DIVISION 2. - PERMIT

Sec. 119-75. - Preliminary drainage plan approval.

In order to establish that an adequate drainage outlet exists for a proposed subdivision seeking a primary plat approval from the plan commission, or for certain commercial developments as determined by the GSWMD, a developer must first apply for a preliminary drainage approval from the GSWMD. As part of the noted preliminary drainage approval application,

a developer shall submit conceptual drainage plans for review by the GSWMD prior to the plan commission hearing. Note that any preliminary drainage approval by the GSWMD as a result of such a review is based on preliminary data and shall not be construed as a final drainage approval or considered binding on either party. The following is a general listing of minimum data requirements for the review of conceptual drainage plans:

- (1) Two complete sets of conceptual plans showing general project layout, including existing and proposed drainage systems and proposed outlets (provide both one-half size and full size drawings).
- (2) General description of the existing and proposed drainage systems in narrative form.
- (3) Watershed boundaries with USGS Contours or best information possible.
- (4) Existing watercourse or regulated drains.
- (5) Letter of Intent for obtaining any needed consents, off-site easements, or right-of-way.

(Ord. No. 7931, ch. 7, § 1, 7-3-2006)

Sec. 119-76. - Permit procedures.

- (a) This section applies to all development, or redevelopment of land, that results in land disturbance of 10,000 square feet or more. Individual lots with land disturbance less than 10,000 square feet that are developed within a larger permitted project site should refer to section 119-78 for plan review requirements and procedures.
- (b) The city stormwater management permitting procedures are detailed in the city design standards manual. These procedures must be followed by the applicant in order to successfully obtain a permit to comply with Rule 5 and Rule 13 stormwater regulations.
- (c) Once a permit has been issued, the project site owner must file a NOI a minimum of 48 hours prior to the commencement of construction activities. Notification shall be in the form of an updated NOI form. The submittal of the NOI must be provided to the GSWMD and, for projects where one acre or more is disturbed, the IDEM. The IDEM submittal must include a proof of publication, verification that GSWMD approved the plan, and a \$100.00 fee. For GSWMD, copies of the final, approved construction plans, stormwater drainage technical report, stormwater pollution prevention plan for construction sites, and post-construction stormwater pollution prevention plan shall also accompany the above-noted written notification and proof of publication. The number of required copies varies from case to case and should be determined by contacting the GSWMD. A pre-construction meeting is required to be held with the participation of the GSWMD and other entities involved prior to any grading activity to ensure that appropriate perimeter control measures have been implemented on the site and the location of any existing subsurface drains has been properly marked.
- (d) Once construction starts, the project owner shall monitor construction activities and inspect all stormwater pollution prevention measures in compliance with this chapter and the terms and conditions of the approved permit. Upon completion of construction activities, record plans must be submitted to the GSWMD. An NOI shall be sent to the GSWMD once the construction site has been stabilized and all temporary erosion and sediment control measures have been removed. The GSWMD, or representative, shall inspect the construction site to verify the requirements for an NOI have been met. Once the applicant receives a verified copy of the NOI, he must forward a copy to IDEM. Permits issued under this scenario will expire five years from the date of issuance. If construction is not completed within five years, the NOI must be resubmitted at least 90 days prior to expiration.

(Ord. No. 7931, ch. 7, § 2, 7-3-2006)

Sec. 119-77. - Secondary (final) stormwater approval requirements.

- (a) Specific projects or activities may be exempt from all or part of the informational requirements listed in this section. Exemptions are detailed in the "Applicability and Exemptions" sections of this chapter. If a project or activity is exempt from any or all requirements of this chapter, an application should be filed listing the exemption criteria met, in lieu of the information requirements listed in this section. This level of detailed information is not required from individual lots, disturbing less than one acre of land, developed within a larger permitted project site. Review and acceptance of such lots is covered under section 119-78.
- (b) The different elements of a permit submittal for a secondary (final) stormwater plan approval include the following:
 - (1) Initial notice of intent.
 - (2) Construction plans.
 - (3) Stormwater drainage technical report.
 - (4) Stormwater pollution prevention plan for construction sites.
 - (5) Post-construction stormwater pollution prevention plan.

Details regarding the components of this subsection (b) are provided in the city design standards manual.

(Ord. No. 7931, ch. 7, § 3, 7-3-2006)

Sec. 119-78. - Review of individual lots within a permitted project.

- (a) For individual lots disturbing less than 10,000 square feet, developed within a larger permitted project, a formal review and issuance of an individual lot plot plan permit will be required before a building permit can be issued. All stormwater management measures necessary to comply with this article must be implemented in accordance with the permitted plan for the larger project.
- (b) The following information must be submitted to the GSWMD, for review and acceptance, by the individual lot operator, whether owning the property or acting as the agent of the property owner, as part of a request for review and issuance of an individual lot plot plan permit that must be obtained prior to the issuance of a building permit:
 - (1) A certified site layout for the subject lot and all adjacent lots showing building pad location, dimensions, and elevations, and the drainage patterns and swales.
 - (2) Erosion and sediment control plan that, at a minimum, includes the following measures:
 - a. Installation and maintenance of a stable construction site access.
 - b. Installation and maintenance of appropriate perimeter erosion and sediment control measures prior to land disturbance.
 - c. Minimization of sediment discharge and tracking from the lot.
 - d. Clean-up of sediment that is either tracked or washed onto roads. Bulk clearing of sediment shall not include flushing the area with water. Cleared sediment must be redistributed or disposed of in a manner that is in compliance with all applicable statutes and rules.
 - e. Adjacent lots disturbed by an individual lot operator must be repaired and stabilized with temporary or permanent surface stabilization.
 - f. Self-monitoring program including plan and procedures.

(3) Name, address, telephone number, and list of qualifications of the trained individual in charge of the mandatory stormwater pollution prevention self-monitoring program for the project site.

(c) The individual lot operator is responsible for installation and maintenance of all erosion and sediment control measures until the site is stabilized.

(Ord. No. 7931, ch. 7, § 4, 7-3-2006)

Sec. 119-79. - Changes to plans.

Any changes or deviations in the detailed plans and specifications after approval of the applicable stormwater management permit shall be filed with, and approved in writing by, the GSWMD prior to the land development involving the change. Copies of the changes, if accepted, shall be attached to the original plans and specifications.

(Ord. No. 7931, ch. 7, § 5, 7-3-2006)

Sec. 119-80. - Fee structure.

(a) *Fee amount.* As a condition of the submittal and the review of an application and associated documents by the GSWMD, the applicant shall agree to pay the GSWMD the applicable fee for the review of all applications, drainage submittals, preliminary plans, final plans, construction plans and accompanying information and data, as well as prepaid inspection fees, which shall be not more than the amount that is determined by the GSWMD to be sufficient to pay for all of the reasonable costs, direct and indirect, to the GSWMD for the performance of those activities. GSWMD shall adopt, publish and disseminate a schedule of said fees.

(b) *Time of payment.* Applicant shall submit the specified fee at the time that the applicant submits its application to the GSWMD. The GSWMD shall have the right to not approve the drainage improvements or to not approve a permit or the advancement of any project for which the applicable fees have not been paid.

(c) *Method of payment.*

(1) Fees shall be paid by one of the following methods:

- a. Certified check.
- b. Cashier's check.
- c. Money order.
- d. Such other methods as may be agreed in writing by the GSWMD.

(2) All checks shall be made payable to the:

Gary Stormwater Management District

3600 West 3rd Avenue

Gary, IN 46404

(d) *Refund of payment.* Fees are refundable only if the GSWMD determines that compliance by the development with this chapter is not necessary.

(Ord. No. 7931, ch. 7, § 6, 7-3-2006)

Sec. 119-81. - Required assurances.

As a condition of approval and issuance of the permit, except for a single-family residence, the GSWMD shall require the applicant to provide assurance in form of an irrevocable letter of credit, a bond, or such other instrument or method of security acceptable in writing by the GSWMD when the stormwater management plan has been accepted, all applicable fees paid, and before construction begins. Said assurance will guarantee a good faith execution of the stormwater drainage plan, the stormwater pollution prevention plan, the stormwater quality management plan, and any permit conditions. The assurance shall be for an amount equal to 110 percent of the total costs of all stormwater management measures for the entire project. The above-mentioned costs shall be based on an estimate as prepared by a registered engineer or registered land surveyor. Said costs shall be for the installation and ongoing monitoring and maintenance of erosion control measures and the construction and ongoing monitoring and maintenance of storm drainage infrastructure, detention/retention facilities, and stormwater quality BMPs, as regulated under this chapter, until the construction is completed, site is stabilized, and as-built plans are accepted by the GSWMD. Assurances shall be for a minimum of \$5,000.00. The intent of this assurance is not only to complete the installation of storm drain infrastructure for the project, but also to assure that adequate stormwater pollution prevention measures are properly installed and maintained. If adequate assurances are set aside by the project site owner for the overall project, proof of total assurance can be submitted in place of an individual stormwater assurance.

(Ord. No. 7931, ch. 7, § 7, 7-3-2006)

Sec. 119-82. - Terms and conditions of permits.

- (a) In granting a stormwater management permit, the GSWMD may impose such terms and conditions as are reasonably necessary to meet the purposes of this chapter and all applicable federal and state laws, rules, and regulations. The project site owner shall ensure compliance with such terms and conditions. Noncompliance with the terms and conditions of permits will be subject to enforcement as described in division 2 of this article.
- (b) The project site owner shall inform all general contractors, construction management firms, grading or excavating contractors, utility contractors, and the contractors that have primary oversight on individual building lots of the terms and conditions of the stormwater management permit and the schedule for proposed implementation. The project site owner is responsible for ensuring compliance with all terms of the permit by anyone working on the project site and may not assign that responsibility without the written consent of the GSWMD.
- (c) In the event that a project site is determined to impact or discharge to a sensitive area or is located in an impact drainage area, the GSWMD may require more stringent stormwater quantity and quality measures than detailed in this division, in the state stormwater quality manual, or in the city design standards manual.
- (d) Determination of sensitive areas. sensitive areas include highly erodible soils, wetlands, threatened or endangered species habitat, outstanding waters, impaired waters, recreational waters, and surface drinking water sources. A listing of highly erodible soils, outstanding water, impaired water, recreation water, and surface drinking water sources can be found in the Gary Stormwater Quality Management Plan (SWQMP), part B, dated April 26, 2004 draft and its updates. If wetlands are suspected on a site, wetland delineation should be completed in accordance with the methodology established by the U.S. Army Corps of Engineers and the wetland addressed in accordance to the requirements of article VII of this chapter. Special terms and conditions for development determined to impact or discharge to any sensitive area shall be included in the stormwater management permit.
- (e) Determination of impact drainage areas. The following areas shall be designated as impact drainage areas, unless good reason for not including them is found to exist by the board of directors of the GSWMD:

(1) A floodway or floodplain as designated by the most updated provisions of this Code dealing with floodplain regu

(2) Land within 25 feet of each bank of any ditch within the city's system.

(3) Land within 15 feet of the centerline of any drain tile or enclosed conduit within the city's system.

(f) The board of directors of the GSWMD is authorized, but is not required, to classify certain additional geographical areas as impact drainage areas. In determining impact drainage areas, the board of directors of the GSWMD shall consider such factors as topography, soil type, capacity of existing drains, and distance from adequate drainage facility.

(g) Land that does not have an adequate outlet, taking into consideration the capacity and depth of the outlet, may be designated as an impact drainage area by the board of directors of the GSWMD. Special terms and conditions for development within any impact drainage area shall be included in the stormwater management permit.

(Ord. No. 7931, ch. 7, § 8, 7-3-2006)

Sec. 119-83. - Certification of record plans.

(a) After completion of construction of the project and before final acceptance of the stormwater management plan, a professionally prepared and certified (by a licensed professional engineer or land surveyor) record set of plans shall be submitted to the GSWMD for review. Additionally, a digital copy of the record plans is required in a form and format acceptable to the GSWMD. These plans shall include all pertinent data relevant to the completed storm drainage system and stormwater management facilities per GSWMD requirements.

(b) In addition to the digital copy of the record plans, digital copies of all reports and plans noted in sections 119-77 and 119-78 shall be submitted in their final approved forms to the GSWMD in a format consistent with the city design standards manual so that they can be electronically filed for any future reference.

(c) The property owner, developer, or contractor shall be required to file a three-year maintenance bond or other acceptable guarantee with the GSWMD, prior to acceptance, in an amount not to exceed ten percent of the cost of the stormwater drainage system located outside the public road rights-of-way, and in a form satisfactory to the GSWMD attorney in order to ensure that such stormwater system installation was done according to standards of good workmanship, that the materials used in the construction and installation were of good quality and construction, and that such project was done in accordance with the accepted plans, and this chapter. The bond or other acceptable guarantee shall be in effect for a period of three years after the date of the final project acceptance by the GSWMD.

(Ord. No. 7931, ch. 7, § 9, 7-3-2006)

Secs. 119-84—119-109. - Reserved.

ARTICLE III. - PROHIBITED DISCHARGES AND CONNECTIONS

Sec. 119-110. - Applicability and exemptions.

(a) This article shall apply to all discharges, liquid or solid, including illegal dumping, entering the stormwater drainage system under the control of the city, regardless of whether the discharge originates from developed, redeveloped, or undeveloped lands, and regardless of whether the discharge is generated from an active

construction site or a stabilized site. These discharges include flows from direct connections to the stormwater drainage system, illegal dumping, and contaminated runoff.

- (b) Any nonstormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written acceptance has been granted by GSWMD for the subject discharge to the stormwater drainage system, is also exempted from this article.

(Ord. No. 7931, ch. 2, § 1, 7-3-2006)

Sec. 119-111. - Prohibited discharges and connections.

- (a) No person shall discharge to a MS4 conveyance, watercourse, or water body, directly or indirectly, any substance other than stormwater or an exempted discharge. Any person discharging stormwater shall effectively minimize, to the maximum extent practicable, pollutants from also being discharged with the stormwater, through the use of, among other things, best management practices (BMPs).
- (b) The GSWMD is authorized to require discharges to implement pollution prevention measures, utilizing BMPs, necessary to prevent or reduce the discharge of pollutants into the city's stormwater drainage system to the maximum extent practicable.

(Ord. No. 7931, ch. 2, § 2, 7-3-2006)

Sec. 119-112. - Exempted discharges and connections.

Notwithstanding other requirements in this chapter, the following categories of nonstormwater discharges or flows are exempted from the requirements of this article:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted streamflows;
- (4) Rising groundwaters;
- (5) Uncontaminated groundwater infiltration;
- (6) Uncontaminated pumped groundwater;
- (7) Discharges from potable water sources;
- (8) Foundation drains;
- (9) Air conditioning condensation;
- (10) Springs;
- (11) Water from crawl-space pumps;
- (12) Footing drains;
- (13) Lawn watering;
- (14) Individual residential carwashing;
- (15) Flows from riparian habitats and wetlands;
- (16) Dechlorinated swimming pool discharges;

(17) Street wash water;

(18) Discharges from firefighting activities.

(Ord. No. 7931, ch. 2, § 3, 7-3-2006)

Sec. 119-113. - Storage of hazardous or toxic material.

Storage or stockpiling of hazardous or toxic material within any watercourse, or in its associated floodway or floodplain, is strictly prohibited. Storage or stockpiling of hazardous or toxic material on active construction sites must include adequate protection and/or containment so as to prevent any such materials from entering any temporary or permanent stormwater conveyance or watercourse. Compliance with any city ordinances associated with surface contaminations is also required.

(Ord. No. 7931, ch. 2, § 4, 7-3-2006)

Sec. 119-114. - Private property maintenance duties.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse located within their property boundaries, free of trash, debris, excessive vegetation, and any other obstacles and/or items that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

(Ord. No. 7931, ch. 2, § 5, 7-3-2006)

Sec. 119-115. - Spill reporting.

- (a) Any discharger who accidentally discharges into a water body any substance other than stormwater or an exempted discharge shall immediately inform HAZMAT, the city department of environmental affairs, health department, GSWMD, and any other entity required by state or federal law, of the details of the discharge. A written report concerning the discharge shall be filed with the GSWMD's office and IDEM, by the dischargers, within five days. The written report shall specify:
 - (1) The composition of the discharge and the cause thereof;
 - (2) The date, time, and estimated volume of the discharge;
 - (3) All measures taken to clean up the accidental discharge and all measures proposed to be taken to prevent any recurrence;
 - (4) The name and telephone number of the person making the report, and the name and telephone number of a person who may be contacted for additional information on the matter.
- (b) A properly reported accidental discharge shall be a mitigating factor in a civil infraction proceeding brought under this article against a discharger for such discharge. It shall not, however, be a defense to a legal action brought to obtain an injunction, to obtain recovery of costs or to obtain other relief because of, or arising out of, the discharge. A discharge shall be considered properly reported only if the discharger complies with all the requirements of this section. This requirement does not relieve a discharger from notifying other entities as required by state or federal regulations.

(Ord. No. 7931, ch. 2, § 6, 7-3-2006)

Sec. 119-116. - Inspections and monitoring.

- (a) *Storm drainage system.* The GSWMD has the authority to periodically inspect the portion of the storm drainage system within the city's jurisdiction in an effort to detect and eliminate illicit connections and discharges into the system. This inspection may include an assessment (preliminary screening) of discharges from outfalls connected to the system in order to determine if prohibited flows are being conveyed into the storm drainage system. It may also include spot testing of waters contained in the storm drainage system itself to detect the introduction of pollutants into the system by means other than a defined outfall, such as dumping or contaminated sheet runoff.
- (b) *Potential polluters.* If, as a result of a storm drainage system inspection or other relevant evidence, there is reason to believe that a discharger has caused or contributed to an illicit discharge, the GSWMD may inspect and/or obtain stormwater samples from stormwater runoff and facilities of the subject discharger to determine compliance with the requirements of this division. Upon request, the discharger shall allow the GSWMD's properly identified representative to enter upon the premises of the discharger at any hour necessary for the purposes of such inspection or sampling. The GSWMD or its properly identified representative may place on the discharger's property the equipment or devices used for such sampling or inspection. Tampering with any equipment placed on the discharger's property for sampling, monitoring, and/or inspection purposes is punishable by a fine of up to \$2,500.00 per violation. Identified illicit connections or discharges shall be subject to enforcement action as described in article II of this chapter.
- (c) *New development and redevelopment.* Following the final completion of construction and the receipt of record drawings by the GSWMD's office, the GSWMD has the authority to inspect new development and redevelopment sites to verify that all on-site stormwater conveyances, installed BMP systems, and connections to the stormwater drainage system are in compliance with this article.

(Ord. No. 7931, ch. 2, § 7, 7-3-2006)

Secs. 119-117—119-145. - Reserved.

ARTICLE IV. - STORMWATER QUANTITY MANAGEMENT

Sec. 119-146. - Applicability and exemptions.

The storage and controlled release rate of excess stormwater runoff shall be required for all new business, commercial and industrial developments, residential subdivisions, planned development, rural estate subdivisions, and any redevelopment or other new construction located within the city. The GSWMD, after thorough investigation and evaluation, may waive the requirement of controlled runoff for minor projects.

(Ord. No. 7931, ch. 3, § 1, 7-3-2006)

Sec. 119-147. - Policy on stormwater quantity management.

- (a) *Detention policy.* It is recognized that most streams and drainage channels serving the city do not have sufficient capacity to receive and convey increased stormwater runoff resulting from continued urbanization. Accordingly, the storage and controlled release of excess stormwater runoff shall be required for all developments and redevelopments located within the city's jurisdictional area.

- (b) *General release rates.* In general, the post-development release rates for developments up to and including the 100-year return period storm may not exceed 0.2 cfs per acre of development. For sites where the predeveloped area has more than one outlet, the release rate should be computed based on predeveloped discharge to each outlet point. The computed release rate for each outlet point shall not be exceeded at the respective outlet point even if the post-developed condition would involve a different arrangement of outlet points. For sites with existing significant depressional storage, the general release rates may have to be reduced to reflect a significantly smaller runoff to the outlet point in existing conditions.
- (c) *Release rates for sites using belowgrade exfiltration methods.* For sites using belowgrade exfiltration methods, the post-development release rates for developments up to and including the 100-year return period storm shall not exceed the ten-year predeveloped peak runoff rate as determined assuming the predeveloped site conditions are virgin soil. Site-specific release rates must be calculated according to a methodology described in the city design standards manual. In no case shall the calculated site-specific release rates be larger than the general release rates provided above.
- (d) *Management of off-site runoff.*
- (1) Runoff from all off-site upstream tributary areas may be bypassed around a detention/retention facility without attenuation. Such runoff may also be bypassed through the detention/retention facility without attenuation, provided that a separate outlet system or channel is incorporated for the safe passage of such flows, i.e., not through the primary outlet of a detention facility. Unless the pond is being designed as a regional detention facility, the primary outlet structure shall be sized and the invert elevation of the emergency overflow weir determined according to the on-site runoff only. Once the size and location of primary outlet structure and the invert elevation of the emergency overflow weir are determined by considering on-site runoff, the 100-year pond elevation is determined by routing the entire inflow, on-site and off-site, through the pond.
 - (2) Note that the efficiency of the detention/retention facility in controlling the on-site runoff may be severely affected if the off-site area is considerably larger than the on-site area. As a general guidance, on-line detention may not be effective in controlling on-site runoff where the ratio of off-site area to on-site area is larger than 5:1. Additional detention (above and beyond that required for the on-site area) may be required by the GSWMD when the ratio of off-site area to on-site area is larger than 5:1.
- (e) *Downstream restrictions.*
- (1) In the event the downstream receiving channel or storm sewer system is inadequate to accommodate the post-developed release rate provided above without adverse consequences, then the allowable release rate shall be reduced to that rate permitted by the capacity of the receiving downstream channel or storm sewer system. Additional detention, as determined by the GSWMD, shall be required to store that portion of the runoff exceeding the capacity of the receiving sewers or watercourses. When such downstream restrictions are suspected, the GSWMD may require additional analysis to determine the receiving system's limiting downstream capacity.
 - (2) If the proposed development makes up only a portion of the undeveloped watershed upstream of the limiting restriction, the allowable release rate for the development shall be in direct proportion to the ratio of its drainage area to the drainage area of the entire watershed upstream of the restriction.
- (f) *Grading and building pad elevations.*
- (1) The 100-year flow paths throughout a development, whether shown on FEMA maps or not, must be shown as hatched area on the plans and 30 feet along the centerline of the flow path contained within permanent

drainage easements. A statement shall be added to the plat that would refer the viewer to the construction plans to see the entire extent of overflow path as hatched areas. No fences or landscaping can be constructed within the easement areas that may impede the free flow of stormwater. These areas are to be maintained by the property owners or be designated as common areas that are to be maintained by the homeowners association. The lowest adjacent grade for all residential, commercial, or industrial buildings shall be set a minimum of one foot above the noted overflow path/ponding elevation.

- (2) It shall be the property owners' responsibility to maintain the natural features on their lots and to take preventive measures against any and all erosion and/or deterioration of natural or manmade features on their lots.

(g) *Acceptable outlet and adjoining property impacts policies.*

- (1) Design and construction of the stormwater facility shall provide for the discharge of the stormwater runoff from off-site land areas as well as the stormwater from the area being developed (on-site land areas) to an acceptable outlet (as determined by the GSWMD) having capacity to receive upstream (off-site) and on-site drainage. The flow path from the development outfall to a regulated drain or natural watercourse (as determined by the GSWMD) shall be demonstrated on an exhibit that includes topographic information. Any existing field tile encountered during the construction shall also be incorporated into the proposed stormwater drainage system or tied to an acceptable outlet.
- (2) Where the outfall from the stormwater drainage system of any development flows through real estate owned by others prior to reaching a publicly regulated drain or watercourse, no approval shall be granted for such drainage system until all owners of real estate and/or tenants crossed by the outfall consent in writing to the use of their real estate through a recorded easement. In addition, no activities conducted as part of the development shall be allowed to obstruct the free flow of floodwaters from an upstream property.
- (3) If an adequate outlet is not located on site, then off-site drainage improvements may be required. Those improvements may include, but are not limited to, extending storm sewers, clearing, dredging and/or removal of obstructions to open drains or natural watercourses, and the removal or replacement of undersized culvert pipes; whatever is required by the GSWMD.

(h) *No net loss floodplain storage policy.*

- (1) Floodplains exist adjacent to all natural and manmade streams, regardless of contributing drainage area or whether they have been previously identified or mapped. Due to potential impacts of floodplain loss on peak flows in streams and on the environment, disturbance to floodplains should be avoided. When the avoidance of floodplain disturbance is not practical, the natural functions of floodplain should be preserved to the extent possible. Streambank stabilization projects are exempt from the requirements of this subsection.
- (2) In an attempt to strike a balance between the legitimate need for economic development within the city and the need to preserve the natural functions of floodplains to the extent possible, compensatory excavation 1.5 times the floodplain storage lost shall be required for all activities within the floodplain of a stream located in the city where the drainage area of the stream is equal or larger than one-half square mile. This requirement shall be considered to be above and beyond the minimum requirements provided in the applicable flood hazard areas ordinance currently in effect in the city. The GSWMD may alter the compensation ratio, based on extenuating circumstances, for a specific project. Any floodplain modification must also be approved by the Indiana Department of Natural Resources (IDNR).
- (3) Note that, by definition, compensatory storage is the replacement of the existing floodplain and, in rare

exceptions, the floodway storage lost due to fill. Compensatory storage is required when a portion of the floodplain is filled, occupied by a structure, or when as a result of a project a change in the channel hydraulics occurs that reduces the existing available floodplain storage. The compensatory storage should be located as near as reasonably possible to the placement of the fill and an unimpeded connection to an adjoining floodplain area must be maintained.

- (4) Computations must show 1.5 times the provision of compensatory floodplain storage for ten-year, 50-year, and 100-year storm events. That is, the post-development ten-year floodplain storage along a stream shall be 1.5 times the ten-year predevelopment floodplain storage along the stream within the property limits, the post-development 50-year floodplain storage along a stream shall be 1.5 times the 50-year predevelopment floodplain storage along the stream within the property limits, and the post-development 100-year floodplain storage along a stream shall be 1.5 times the 100-year predevelopment floodplain storage along the stream within the property limits.
- (5) Calculations for floodplain volume shall be submitted in tabular form showing calculations by cross section. The volume of floodplain storage under the without-project conditions and the with-project conditions should be determined using the average-end-area method with plotted cross sections at a horizontal to vertical ratio of between 5:1 and 10:1, with 10- through 100-year flood elevations noted on each cross section. The scale chosen should be large enough to show the intent of proposed grading. Cross sections should reflect both the existing and proposed conditions on the same plot. The location and extent of the compensatory storage area as well as the location and orientation of cross sections should be shown on the grading plan.

(Ord. No. 7931, ch. 3, § 2, 7-3-2006)

Sec. 119-148. - Calculations and design standards and specifications.

The calculation methods as well as the type, sizing, and placement of all stormwater facilities shall meet the design criteria, standards, and specifications outlined in the city design standards manual. The methods and procedures in the manual are consistent with the policy stated above.

(Ord. No. 7931, ch. 3, § 3, 7-3-2006)

Sec. 119-149. - Drainage easement requirements.

There shall be no trees or shrubs planted, nor any structures or fences constructed, in any drainage easement, unless approved in writing by the GSWMD. All stormwater systems, including detention or retention basins, conveyance systems, structures and appurtenances, located outside of the right-of-way may be incorporated into the city's system at the sole discretion of the GSWMD. The developer shall petition to incorporate the storm system into the city's system. The stormwater management permit shall not be approved until such petition is submitted in a form acceptable to the GSWMD. The following specific areas may be included in a petition:

(1) *Subdivisions.*

- a. All new channels, drain tiles equal to or greater than 12 inches in diameter, inlet and outlet structures of detention and retention ponds, and appurtenances thereto as required by this chapter, that are installed in subdivisions requiring a stormwater management permit from the GSWMD may be petitioned to

become incorporated into the city's system upon completion, proper inspection, and acceptance by the GSWMD. New drain tiles refer to all subsurface stormwater piping, tubing, tiles, manholes, inlets, catchbasins, risers, etc.

- b. New drain tiles or sewers shall be placed in a 30-foot easement (15 feet from centerline on each side) and shall be designated on the record plat as 30-foot drainage easement. Wider easements may be required by the GSWMD when the depth of pipe is greater than six feet, depending on the pipe size. The GSWMD, at its sole discretion, may allow a smaller easement for short distances in order to avoid extreme hardship to the applicant.
- c. A minimum of 25 feet from the top of the bank on each side of a new channel shall be designated on the record plat as a drainage easement.
- d. Rear-yard swales and emergency overflow paths associated with detention ponds shall not be included in a petition for incorporation. However, a minimum of 30-foot width (15 feet from centerline on each side) needs to be designated as a drainage easement.
- e. A minimum of 30 feet beyond the actual footprint (top of the bank) of stormwater detention facilities shall be designated as a drainage easement. A minimum 30-foot width easement shall also be required as access easement, unless the pond is immediately next to a public right-of-way.
- f. The statutory 75-foot (each side) drainage easement for county-regulated drains already within the city's system may be reduced if the drain is reclassified by the county surveyor as an urban drain.
- g. An annual maintenance assessment shall be set up on each new publicly regulated drain established in a new subdivision. The amount of the assessment will be determined by the GSWMD and so certified.
- h. If the GSWMD accepts the petition for incorporation into its system, the following statement shall become part of the restrictive covenants of every platted subdivision and shown on recorded plat: "Channels, tile drains 12-inch or larger, inlets and outlets of detention and retention ponds, and appurtenances thereto within designated drain easements are extensions of the city's stormwater drainage system and are the responsibility of the GSWMD. Drainage swales and tile drains less than 12 inches in inside diameter shall be the responsibility of the owner or homeowner association."
- i. The following statement shall be put on each subdivision plat: "A petition addressed to the GSWMD has been filed in duplicate with the city, requesting that the subdivision's storm drainage system and its easements be accepted into the city's regulated drainage system. The storm drainage system and its easements that are accepted into the city's regulated drainage system are delineated on the plat as drainage easements. Drainage easements are stormwater easements and drainage rights-of-way that are hereby dedicated to the public and to the city for the sole and exclusive purpose of controlling and managing surface water and/or for the installation, operation, and maintenance of storm sewers, tile drains, and other stormwater conveyance and treatment facilities. All other storm drainage easements have not been accepted into the city's system. All drainage improvements performed relative to the conveyance of stormwater runoff and the perpetual maintenance thereof, within the latter easements, shall be the responsibility of the owner or homeowner association. The GSWMD assumes no responsibility relative to said improvements or the maintenance thereof. This subdivision contains ___ linear feet of open ditches and ___ linear feet of subsurface drains that will be included in the city's regulated drainage system." The noted drainage facilities' lengths, broken down by the length of open and subsurface drainageways, shall also be shown in tabular form in a prominent position on the plat.

- j. Any crossing of and/or encroachment upon a drainage easement requires application to and approval by the the county surveyor's office if it is regulated by the county.
- (2) *Nonsubdivisions.* Where the GSWMD is responsible for maintenance of the drainage system, drainage easements of 25 feet from the top of bank on each side of the channel or each side of the tile centerline must be dedicated to the city. In addition, a minimum of 25-foot width of vegetative filter strip must be provided, and maintained by the applicant, along top-of-bank on each side within these easements.
- (3) *State, county, school properties.* All new channels, swales, drain tiles, inlet and outlet structures of detention and retention ponds, and appurtenances thereto as required by this chapter, that are installed on the state, county, or school property will be maintained, repaired, and constructed by the entity and will not become the GSWMD's maintenance responsibility unless contracted for with GSWMD for reasonable compensation. The design must meet all the appropriate permitting requirements and the standards of this chapter for permitting, sizing and installation. Any off-site portion of the drainage system must be within easements and have clearly defined maintenance agreements.

(Ord. No. 7931, ch. 3, § 4, 7-3-2006)

Sec. 119-150. - Placement of utilities.

No utility company may disturb existing storm drainage facilities without the consent of the GSWMD director, whose decision may be appealed to the board of directors of the GSWMD. All existing drainage facilities shall have senior rights, and damage to said facilities shall result in penalties as prescribed in article II of this chapter.

(Ord. No. 7931, ch. 3, § 5, 7-3-2006)

Sec. 119-151. - Structures near county regulated drains.

For regulated drains not located in platted subdivisions, unless otherwise accepted by the county surveyor, no permanent structure (including fences) shall be erected within 75 feet measured at right angles from:

- (1) The existing top edge of each bank of a county-regulated open drain, as determined by the county surveyor;
or
- (2) The centerline of a tiled county-regulated drain. The Indiana Drainage Code (IC 36-9-27) may be consulted for further details.

(Ord. No. 7931, ch. 3, § 6, 7-3-2006)

Sec. 119-152. - Inspection, maintenance, recordkeeping, and reporting.

- (a) After the approval of the stormwater management permit by the GSWMD and the commencement of construction activities, the GSWMD has the authority to conduct inspections of the work being done to insure full compliance with the provisions of this chapter, the city design standards manual, and the terms and conditions of the approved permit.
- (b) The GSWMD also has the authority to perform longterm, post-construction inspection of all public or privately owned stormwater quantity and quality facilities within its jurisdiction. The inspection will cover physical conditions, available storage capacity, and the operational condition of key facility elements. Stormwater facilities shall be maintained in good condition, in accordance with the terms and conditions of the approved stormwater

management permit, and shall not be subsequently altered, revised or replaced except in accordance with the approved stormwater permit, or in accordance with approved amendments or revisions to the permit. If deficiencies are found during an inspection, the owner of the facility will be notified by GSWMD and will be required to take all necessary measures to correct such deficiencies. If the owner fails to correct the deficiencies within the allowed time period, as specified in a written notice, the GSWMD may undertake the work and collect from the owner the cost of performing the work and, if necessary, using lien rights and all other legal methods for recovery of such cost.

- (c) Assignment of responsibility for maintaining facilities serving more than one lot or holding shall be documented by appropriate covenants to property deeds, unless responsibility is formally accepted by a public body, and determined before the final stormwater permit is approved. Stormwater detention/retention basins may be donated to the GSWMD or other unit of government designated by the board of directors of the GSWMD by written agreement for ownership and permanent maintenance, providing the GSWMD or other governmental unit is willing to accept responsibility.

(Ord. No. 7931, ch. 3, § 7, 7-3-2006)

Secs. 119-153—119-172. - Reserved.

ARTICLE V. - STORMWATER POLLUTION PREVENTION FOR CONSTRUCTION SITES

Sec. 119-173. - Applicability and exemptions.

- (a) The GSWMD will require a detailed stormwater pollution prevention plan (SWPPP), which includes erosion and sediment control measures and materials handling procedures, to be submitted as part of the construction plans and specifications. Any project located within the city that includes clearing, grading, excavation, and other land disturbing activities, resulting in the disturbance of one acre or more of total land area, is subject to the requirements of this article. This includes both new development and redevelopment. This article also applies, at the discretion of the GSWMD, to disturbances of less than one acre of land that are a part of a larger development plan if the larger plan will ultimately disturb one or more acres of land. Section 119-175 provides guidelines for calculating land disturbance. Projects meeting the coverage requirements of 327 IAC 15-5 (Rule 5) shall also be in compliance with 327 IAC 15-5. The design and construction plans for all land disturbing activities, for which a detailed SWPPP is not required under this article, would still need to include an erosion and sediment control plan sheet.
- (b) The requirements under this article do not apply to the following activities:
 - (1) Agricultural land disturbing activities; or
 - (2) Forest harvesting activities.
- (c) The requirements under this article do not apply to the following activities, provided other applicable state permits contain provisions requiring immediate implementation of soil erosion control measures:
 - (1) Landfills that have been issued a certification of closure under 329 IAC 10.
 - (2) Municipal solid waste landfills that are accepting waste pursuant to a permit issued by the state department of environmental management under 329 IAC 10 that contains equivalent stormwater requirements, including the expansion of landfill boundaries and construction of new cells either within or outside the original solid

waste permit boundary.

- (d) For an individual lot where land disturbance is expected to be one acre or more, the individual lot owner must complete their own notice of intent (NOI) letter, obtain and complete a stormwater permit application from the GSWMD, and ensure that a sufficient construction and stormwater pollution prevention plan is completed and submitted in accordance with article II, division 2 of this chapter; regardless of whether the individual lot is part of a larger permitted project site.
- (e) An individual lot with land disturbance less than one acre, located within a larger permitted project site, is considered part of the larger permitted project site, and the individual lot operator must comply with the terms and conditions of the stormwater permit approved for the larger project site. The stormwater permit application for the larger project site must include detailed erosion and sediment control measures for individual lots. In addition, these individual lots are required to submit individual lot plot plan permit applications prior to receiving a building permit. Details of the permitting process are contained in article II, division 2 of this chapter.
- (f) It will be the responsibility of the project site owner to complete a stormwater permit application and ensure that a sufficient construction plan is completed and submitted to GSWMD in accordance with article II, division 2 of this chapter. It will be the responsibility of the project site owner to ensure compliance with this chapter during the construction activity and implementation of the construction plan, and in following and implementing all best management practices, and to notify the GSWMD with a sufficient notice of termination letter (NOT) upon completion of the project and stabilization of the site. However, all persons engaging in construction and land disturbing activities on a permitted project site meeting the applicability requirements must comply with the requirements of this article, this chapter and applicable IDEM regulations.

(Ord. No. 7931, ch. 4, § 1, 7-3-2006)

Sec. 119-174. - Policy on stormwater pollution prevention.

Effective stormwater pollution prevention on construction sites is dependent on a combination of preventing movement of soil from its original position (erosion control), intercepting displaced soil prior to entering a water body (sediment control), and proper on-site materials handling. The developer must submit to the GSWMD, a SWPPP with detailed erosion and sediment control plans as well as a narrative describing materials handling and storage, and construction sequencing. The following principles apply to all land disturbing activities and should be considered in the preparation of a SWPPP within the city:

- (1) Minimize the potential for soil erosion by designing a development that fits the topography and soils of the site. Deep cuts and fills in areas with steep slopes should be avoided wherever possible, and natural contours should be followed as closely as possible.
- (2) Existing natural vegetation should be retained and protected wherever possible. Areas immediately adjacent (within 35 feet of top of bank) to watercourses and lakes also should be left undisturbed wherever possible. Unvegetated or vegetated areas with less than 70 percent cover that are scheduled or likely to be left inactive for 15 days or more must be temporarily or permanently stabilized with measures appropriate for the season and the site to reduce erosion potential. Alternative measures to site stabilization may be acceptable if the project site owners or their representative can demonstrate they have implemented and maintained erosion and sediment control measures adequate to prevent sediment discharge from the inactive area.
- (3) All activities on a site should be conducted in a logical sequence so that the smallest practical area of land will be exposed for the shortest practical period of time during development.

- (4) The length and steepness of designed slopes should be minimized to reduce erosion potential. Drainage channels must be designed and adequately protected so that their final gradients and resultant velocities will not cause erosion in the receiving channel or at the outlet.
- (5) Sediment-laden water which otherwise would flow from the project site shall be treated by erosion and sediment control measures appropriate to minimize sedimentation. A stable construction site access shall be provided at all points of construction traffic ingress and egress to the project site.
- (6) Appropriate measures shall be implemented to prevent wastes or unused building materials, including, garbage, debris, packaging material, fuels and petroleum products, hazardous materials or wastes, cleaning wastes, wastewater, concrete truck washout, and other substances from being carried from a project site by runoff or wind. Identification of areas where concrete truck washout is permissible must be clearly posted at appropriate areas of the site. Wastes and unused building materials shall be managed and disposed of in accordance with all applicable state statutes and regulations. Proper storage and handling of materials such as fuels or hazardous wastes, and spill prevention and cleanup measures shall be implemented to minimize the potential for pollutants to contaminate surface or groundwater or degrade soil quality.
- (7) Public or private roadways shall be kept cleared of accumulated sediment that is a result of runoff or tracking. Bulk clearing of accumulated sediment shall not include flushing the area with water. Cleared sediment shall be redistributed or disposed of in a manner that is in accordance with all applicable statutes and regulations.
- (8) Collected runoff leaving a project site must be either discharged directly into a well-defined, stable receiving channel, or diffused and released to adjacent property without causing an erosion or pollutant problem to the adjacent property owner.
- (9) Natural features, including wetlands, shall be protected from pollutants associated with stormwater runoff.

(Ord. No. 7931, ch. 4, § 2, 7-3-2006)

Sec. 119-175. - Calculations and design standards and specifications.

In calculating the total area of land disturbance, for the purposes of determining applicability of this article to the project, the following guidelines should be used:

- (1) Off-site construction activities that provide services (for example, road extensions, sewer, water, and other utilities) to a land disturbing project site, must be considered as a part of the total land disturbance calculation for the project site, when the activity is under the control of the project site owner.
- (2) Strip developments will be considered as one project site and must comply with this article, unless the total combined disturbance on all individual lots is less than one acre and is not part of a larger common plan of development or sale.
- (3) To determine if multi-lot project sites are regulated by this rule, the area of land disturbance shall be calculated by adding the total area of land disturbance for improvements, such as, roads, utilities, or common areas, and the expected total disturbance on each individual lot, as determined by the following:
 - a. For a single-family residential project site where the lots are one-half acre or more, one-half acre of land disturbance must be used as the expected lot disturbance.
 - b. For a single-family residential project site where the lots are less than one-half acre in size, the total lot must be calculated as being disturbed.
 - c. To calculate lot disturbance on all other types of project sites, such as industrial and commercial project

sites, a minimum of one acre of land disturbance must be used as the expected lot disturbance, unless the lots are less than one acre in size, in which case the total lot must be calculated as being disturbed.

The calculation methods as well as the type, sizing, and placement of all stormwater pollution prevention measures for construction sites shall meet the design criteria, standards, and specifications outlined in the state stormwater quality manual and the city design standards manual. The methods and procedures included in these two references are in keeping with the above-stated policy and meet the requirements of IDEM's Rule 5.

(Ord. No. 7931, ch. 4, § 3, 7-3-2006)

Sec. 119-176. - Inspection, maintenance, recordkeeping, and reporting.

- (a) Following approval of the stormwater management permit by the GSWMD and commencement of construction activities, the GSWMD has the authority to conduct inspections of the site to ensure full compliance with the provisions of this article, the state stormwater quality manual, the city design standards manual, and the terms and conditions of the approved permit.
- (b) A self-monitoring program must be implemented by the project site owner to ensure the stormwater pollution prevention plan works effectively. A trained individual, acceptable to GSWMD, shall perform a written evaluation of the project site by the end of the next business day following each measurable storm event. If there are no measurable storm events within a given week, the site should be monitored at least once in that week. Weekly inspections by the trained individual shall continue until the entire site has been stabilized and an NOT has been issued. The trained individual should look at the maintenance of existing stormwater pollution prevention measures, including erosion and sediment control measures, drainage structures, and construction materials storage/containment facilities, to ensure they are functioning properly. The trained individual should also identify additional measures, beyond those originally identified in the stormwater pollution prevention plan, necessary to remain in compliance with all applicable statutes and regulations.
- (c) The resulting evaluation reports must include the name of the individual performing the evaluation, the date of the evaluation, problems identified at the project site, and details of maintenance, additional measures, and corrective actions recommended and completed.
- (d) The SWPPP shall serve as a guideline for stormwater quality, but should not be interpreted to be the only basis for implementation of stormwater quality measures for a project site. The project site owner is responsible for implementing, in accordance with this article, all measures necessary to adequately prevent polluted stormwater runoff. Recommendations by the trained individual for modified stormwater quality measures should be implemented.
- (e) The GSWMD has the right to request complete records of maintenance and monitoring activities involving stormwater pollution prevention measures. All evaluation reports for the project site must be made available to GSWMD, in an organized fashion, within 48 hours upon request.

(Ord. No. 7931, ch. 4, § 4, 7-3-2006)

Secs. 119-177—119-205. - Reserved.

ARTICLE VI. - POST-CONSTRUCTION STORMWATER QUALITY MANAGEMENT

Sec. 119-206. - Applicability and exemptions.

- (a) In addition to the requirements of article V, the SWPPP, which is to be submitted to the GSWMD as part of the stormwater management permit application, must also include post-construction stormwater quality measures. These measures are incorporated as a permanent feature into the site plan and are left in place following completion of construction activities to continuously treat stormwater runoff from the stabilized site. Any project located within the city that includes clearing, grading, excavation, and other land disturbing activities, resulting in the disturbance of one acre or more of total land area, is subject to the requirements of this article. This includes both new development and redevelopment, and disturbances of less than one acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one or more acres of land, within the MS4 area. The requirements also apply to any development or redevelopment that the GSWMD determines will cause more than a de minimis adverse affect on public waters.
- (b) The requirements under this chapter do not apply to the following activities:
 - (1) Agricultural land disturbing activities;
 - (2) Forest harvesting activities;
 - (3) Construction activities associated with a single-family residential dwelling disturbing less than one-half acre, when the dwelling is not part of a larger common plan of development or sale;
 - (4) A single-family residential project;
 - (5) A single-family residential strip development where the developer offers for sale or lease without land improvements and the project is not part of a larger common plan of development of sale; or
 - (6) Individual building lots within a larger permitted project.
- (c) The requirements under this article do not apply to the following activities, provided other applicable regulatory permits contain provisions requiring immediate implementation of soil erosion control measures:
 - (1) Landfills that have been issued a certification of closure under 329 IAC 10.
 - (2) Municipal solid waste landfills that are accepting waste pursuant to a permit issued by the state department of environmental management under 329 IAC 10 that contains equivalent stormwater requirements, including the expansion of landfill boundaries and construction of new cells either within or outside the original solid waste permit boundary.
- (d) It will be the responsibility of the project site owner to complete a stormwater permit application and ensure that a sufficient construction plan is completed and submitted to the GSWMD in accordance with article II, division 2 of this chapter. It will be the responsibility of the project site owner to ensure proper construction, installation, and maintenance of all stormwater BMPs in compliance with this chapter and with the approved stormwater management permit, and to notify the GSWMD with a sufficient NOT letter upon completion of the project and stabilization of the site. However, all eventual property owners of stormwater quality facilities meeting the applicability requirements must comply with the requirements of this chapter.

(Ord. No. 7931, ch. 5, § 1, 7-3-2006)

Sec. 119-207. - Policy on stormwater quality management.

- (a) It is recognized that developed areas, as compared to undeveloped areas, generally have increased imperviousness, decreased infiltration rates, increased runoff rates, and increased concentrations of pollutants, including, but not limited to, fertilizers, herbicides, greases, oil, salts and metals. There are four major sources of

pollutants for a stabilized construction site:

- (1) Deposition of atmospheric material, including wind-eroded material and dust.
 - (2) General urban pollution (thermal pollution, litter).
 - (3) Pollutants associated with specific land uses.
 - (4) Suspended solids.
- (b) It should be noted that some pollutants accumulate on impervious surfaces. This accumulated material is then subject to being washed into watercourses during storm events. It is for this reason that fish kills often occur during a rain event with a substantial prior rainless period. This is also the reason that the most hazardous driving conditions are realized after the initial onset of a storm event, when deposited oil has not yet washed into adjacent conveyance systems. Post-construction pollutants of concern include:
- (1) Toxic chemicals from illegal dumping and poor storage and handling of materials. Industrial sites pose the most highly variable source of this pollution due to the dependency of the specific process to the resulting pollution amounts and constituents. As during construction, these chemicals can pose acute (short-term) or chronic (longterm) risk to aquatic life, wildlife and the general public.
 - (2) Pathogens from illicit sanitary connections to storm sewer systems, combined sewers, leaking septic systems, and wildlife and domestic animal waste. Pathogens may pose a direct health risk to humans and animals.
 - (3) Nutrients can be released from leaking septic systems, canine parks or applied in the form of fertilizers. Golf courses, manicured landscapes and agricultural sources are the primary land uses associated with excess fertilization. Excessive nutrients in the local ecosystem are the source of algal blooms in ponds and lakes. These excessive nutrients also lead to acceleration of the eutrofication process, reducing the usable lifespan of these water bodies. Nitrogen and phosphorous are the primary nutrients of concern.
 - (4) Oxygen demand can be impacted by chemicals transported on sediment, by nutrients, and other pollutants, such as, toxic chemicals. Reduced levels of oxygen impair or destroy aquatic life.
 - (5) Oils and hydrocarbons accumulate in streets from vehicles. They can also be associated with fueling stations and illicit dumping activities. Oils and hydrocarbons pose health risk to both aquatic and human health.
 - (6) Litter can result in a threat to aquatic life. The aesthetic impact can also reduce the quality of recreational use.
 - (7) Metals can be associated with vehicular activity (including certain brake dusts), buildings, construction material storage, and industrial activities. Metals are often toxic to aquatic life and threaten human health.
 - (8) Chlorides (salts) are historically associated with deicing activities. Chlorides are toxic to native aquatic life (verses saltwater aquatic life). Communities should consider a combination of cinders or sand to replace or supplement their deicing activities with chlorides. In addition, chloride should always be stored in enclosed structures.
 - (9) Thermal effects can be introduced by the removal of shade provided by riparian trees, as well as impervious channel linings, such as concrete, which release stored heat to water passing over them. Other sources of elevated temperature include effluent from power plant and industrial activities. Thermal pollution can threaten aquatic habitat, including fish species and beneficial water insects. Of particular concern are salmonoid streams, due to the effect of thermal pollution on spawning for this particular species.
- (c) As new development and redevelopment continues in the city, measures must be taken to intercept and filter pollutants from stormwater runoff prior to reaching creeks, streams, rivers, lakes, and other public water bodies. Through the use of best management practices (BMP), stormwater runoff will be filtered and harmful amounts of

sediment, nutrients, and contaminants will be removed, to the maximum extent practicable. The city has adopted a policy that the control of stormwater quality will be based on the management of total suspended solids (TSS), with additional quantification of BOD, P, N, and heavy metal impacts.

- (d) The project site owner must submit to the GSWMD an SWPPP that would show placement of appropriate BMPs from a pre-approved list of BMPs specified in the city design standards manual. The noted BMPs must be designed, constructed, and maintained according to guidelines provided or referenced in the city design standards manual. In addition to 80 percent TSS removal, BMPs should be selected based on their ability to address, to the extent possible, the specific pollutants of concern for the development, as identified above, that may affect the site. Each development should quantify the proposed loading effects of the development for BOD, TSS, P, N, and metals. GSWMD reserves the right to require additional measures and testing if any of the proposed pollutant loadings are expected to increase significantly due to the proposed development, if there are known water quality problems in the receiving water, or for discharges to pristine wetlands or other sensitive receiving waters.
- (e) Practices other than those specified in the pre-approved list may be utilized. However, the burden of proof as to whether the performance minimum 80 percent TSS removal and addressing the impacts on other pollutants of concern and ease of maintenance of such practices will be according to guidelines provided in the city design standards manual is with the applicant. Details regarding the procedures and criteria for consideration of acceptance of such BMPs are provided in the city design standards manual.
- (f) Gasoline outlets and refueling areas must install appropriate practices to prevent lead, copper, zinc, and hydrocarbons from being in stormwater runoff from these areas. These requirements will apply to all new facilities and existing facilities.

(Ord. No. 7931, ch. 5, § 2, 7-3-2006)

Sec. 119-208. - Calculations and design standards and specifications.

- (a) Calculation of land disturbance should follow the guidelines discussed in section 119-175.
- (b) The calculation methods as well as the type, sizing, and placement of all stormwater quality management measures, or BMPs shall meet the design criteria, standards, and specifications outlined in the state stormwater quality manual or the city design standards manual. The methods and procedures included in these two references are in keeping with the stated policy in subsection (a) of this section and meet the requirements of IDEM's Rule 13. All above-ground fuel and chemical tanks must have a secondary containment method with the capacity of at least the volume of the tank.

(Ord. No. 7931, ch. 5, § 3, 7-3-2006)

Sec. 119-209. - Easement requirements.

All stormwater quality management systems, including detention or retention basins, filter strips, pocket wetlands, in-line filters, infiltration systems, conveyance systems, structures and appurtenances located outside of the right-of-way shall be incorporated into permanent easements. For developments occurring within the city and at the discretion of the GSWMD, the developer may petition to establish the noted system as a portion of the city's drainage system but the drainage plan shall not be accepted until such petition is submitted in a form acceptable to the GSWMD. For the purposes of monitoring, inspection, and general maintenance activities, the petition should include a drainage easement with a minimum width determined through the application process.

Sec. 119-210. - Inspection, maintenance, recordkeeping, and reporting.

- (a) After the approval of the stormwater management permit by the GSWMD and the commencement of construction activities, the GSWMD has the authority to conduct inspections of the work being done to ensure full compliance with the provisions of this article, the city design standards manual, and the terms and conditions of the approved permit.
- (b) Stormwater quality facilities shall be maintained in good condition, in accordance with the operation and maintenance procedures and schedules listed in the state stormwater quality manual and the city design standards manual, and the terms and conditions of the approved stormwater permit, and shall not be subsequently altered, revised, or replaced except in accordance with the approved stormwater permit, or in accordance with approved amendments or revisions in the permit. Following construction completion, inspection and maintenance of stormwater quality facilities shall be the longterm responsibility of the owner. Stormwater detention/retention basins may be donated to the city or other unit of government approved by the GSWMD, for ownership and permanent maintenance providing the GSWMD or other governmental unit is willing to accept such responsibility.
- (c) The GSWMD also has the authority to perform longterm, post-construction inspection of all public or privately owned stormwater quality facilities. The inspections will follow the operation and maintenance procedures included in the city design standards manual and/or the permit application for each specific BMP. The inspection will cover physical conditions, available water quality storage capacity and the operational condition of key facility elements. Noted deficiencies and recommended corrective action will be included in an inspection report.

Secs. 119-211—119-228. - Reserved.

ARTICLE VII. - WETLAND DEVELOPMENTS

Sec. 119-229. - Applicability and exemptions.

- (a) This chapter shall apply to all land disturbing activities regulated by this chapter. No building permit shall be issued and no land disturbance started for any construction in a development, as defined in section 119-6, identified as containing wetlands until the owner thereof has obtained all required state and federal permits or releases related to the dredging or filling of wetlands. As a pre-condition to receiving a building or land disturbance permit for a development identified as containing wetlands where the applicant for the permit does not intend to fill a wetland, such unaffected wetland must be identified in one of the methods enumerated in section 119-231, shown on the proposed development plans, and submitted to the GSWMD along with plans to protect and avoid any disturbance to such unaffected wetland.
- (b) The requirements under this article do not apply to the following:
 - (1) For the purpose of city's regulations, artificially constructed ponds, drainage ditches, stormwater retention/detention basins, gravel pits, stone quarries, and treatment lagoons that exist at the site and that may appear to display wetland-like properties. However, the applicant would need to independently contact

IDEM or the U.S. Army Corps of Engineers for appropriate federal and state requirements;

(2) Wetlands or portions thereof for which federal or state permits for fill were issued prior to the enactment of this article; or

(3) To any area or use excluded from local planning and zoning jurisdiction by federal or state law.

(c) It will be the responsibility of the project site owner to complete a stormwater permit application and ensure that all wetlands identified to be present at the project site are sufficiently protected and preserved as set forth in this article.

(Ord. No. 7931, ch. 6, § 1, 7-3-2006)

Sec. 119-230. - Policy on wetlands disturbance prevention.

It is the public policy of the city to preserve, protect, and conserve freshwater wetlands, and the benefits derived therefrom, to prevent the despoliation and destruction of freshwater wetlands, and to regulate use and development of such wetlands to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial to the economic and social development of the city.

(Ord. No. 7931, ch. 6, § 2, 7-3-2006)

Sec. 119-231. - Wetlands identification.

In implementing the terms of this chapter, any of the following materials shall be prima facie evidence which may be relied upon by the GSWMD for the identification, delineation, and existence of a wetland:

(1) National wetlands inventory maps produced or maintained by the United States Fish and Wildlife Service.

(2) Maps produced, or maintained and utilized, by the United States Corps of Engineers for identification and/or delineation of wetlands.

(3) Maps produced, or maintained and utilized, by the United States Natural Resources Conservation Service for the identification and/or delineation of wetlands.

(4) Field investigations performed by the United States Army Corps of Engineers or private consultants using the latest U.S. Corps of Engineers methodology.

(Ord. No. 7931, ch. 6, § 3, 7-3-2006)

Chapter 121 - SUBDIVISION REGULATIONS

Footnotes:

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State Law reference— *Subdivision control, IC 36-7-4-700 et seq.*

ARTICLE I. - IN GENERAL

Sec. 121-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alley means a public right-of-way primarily for vehicular traffic, along the side or in the rear of properties, which affords only a secondary means of access to abutting properties.

Block means a tract of land bounded by streets or by a combination of streets and public parks, cemeteries, railroad rights-of-way, bulkhead lines or shorelines of waterways or corporate boundary lines of the city.

Building setback line means a line within a lot or other parcel of land so designated on the plats of the proposed subdivision, between which and the adjacent boundary of the street upon which the lot abuts, the erection of a building is prohibited.

Commission. Whenever the term "commission," "plan commission," or "city plan commission" is used in this chapter they shall mean the plan commission of the city.

Crosswalk means a public right-of-way of land located across a block to provide pedestrian access to adjacent streets or areas.

Cul-de-sac means a minor street having one open end and being permanently terminated by a vehicle turnaround.

Easement means 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.

Lot means a portion of a subdivision or other parcel of land intended for transfer of ownership or for building development. The term "lot" includes the term plot, piece, parcel, or tract.

May means permissive.

Parkway means a route intended to be used primarily by passenger vehicles which may have a varying width of right-of-way and which right-of-way is or is intended to be developed with a park-like character.

Plat means a plan, map, drawing, or chart on which the subdivider's plan of the subdivision is presented and which he submits for approval and intends to record in final form.

(1) *Primary plat* means the drawings and documents presented for primary approval and as described in section 121-32.

(2) *Secondary plat* means the drawings and documents presented for secondary approval and as described in sections 121-33 and 121-34.

Roadway means the paved area for vehicular traffic existing on a street right-of-way and not the street right-of-way width.

Street means an area which primarily serves or is intended to serve as a vehicular and pedestrian access to abutting lands or to other streets. The term "street" refers to the width of the street right-of-way or easement, whether public or private, and shall not be considered as the width of the roadway or paving or other improvement on the street right-of-way.

(1) *Accepted public street* means any street duly accepted for maintenance by the city.

(2) *Approved street* means any street, whether public or private, meeting standards and specifications of the city.

(3) *Collector street* means a street which is used to carry traffic from minor streets to primary and secondary streets.

(4) *Major street*. See *Primary street*.

- (5) *Marginal access street* means a minor street which is parallel and adjacent to primary streets and expressways and which provides access to abutting properties and protection to local traffic from fast, through-moving traffic on the primary streets and expressways.
- (6) *Minor street* means a street intended primarily as access to abutting properties.
- (7) *Primary street* means a street of considerable continuity which serves or is intended to serve as a major traffic artery between the various sections of the Gary area, as shown on the general development plan.
- (8) *Private street* means any street which is under the jurisdiction of an individual, corporation, or board of trustees, or any street which is privately owned or established and has not been dedicated for public use.
- (9) *Public street* means all primary, secondary, collector, and minor streets which are shown on the subdivision plat and are to be dedicated for public use.
- (10) *Secondary street* means a street which carries traffic from minor and collector streets to the primary street system, designated as secondary streets on the general development plan.

Subdivider means the person, partnership, or corporation or other legal entity responsible for preparing and recording the plats of the subdivision and for carrying out all appropriate requirements outlined in this chapter.

Subdivision means the division of unplatted or unsubdivided land into two or more lots, sites, or parcels for building development. The term "subdivision" includes the resubdivision of heretofore platted or subdivided land and, when appropriate to the content, shall relate to the process of subdividing or to the land subdivided.

Used for includes arranged for, designed for, intended for, maintained for, and occupied for.

(Code 1960, § 6-1606; Code 1989, § 160.05; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.05), 11-20-1990)

Sec. 121-2. - Regulations to be part of city master plan.

This chapter is hereby made a part of the official plan (master plan) of the city.

(Code 1960, § 6-1602; Code 1989, § 160.02; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.02), 11-20-1990)

Sec. 121-3. - Purpose.

This chapter is adopted for the following purposes:

- (1) To insure sound, harmonious subdivision development and community growth and to safeguard the interests of the homeowner, the subdivider, the investor, and the city;
- (2) To provide permanent assets to the locality and to the city;
- (3) To prevent excessive development costs;
- (4) To assure the development of land for the highest possible use with all the necessary protection against deterioration and obsolescence;
- (5) To provide common grounds of understanding and a sound working relationship between the city and the developer.

(Code 1960, § 6-1603; Code 1989, § 160.03; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.03), 11-20-1990)

Sec. 121-4. - Application of regulations.

- (a) In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements adopted for the protection of the public health, safety, and welfare.
- (b) Where the conditions imposed by any provision of this chapter upon the use of land are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this chapter or of any other law, ordinance, resolution, rule, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall govern.
- (c) This chapter is not intended to abrogate any easement, covenant, or any other private agreement, provided that where the regulations of this chapter are more restrictive or impose higher standards or requirements than such easements, covenants, or other private agreements, the requirements of this chapter shall govern.

(Code 1960, § 6-1605(H); Code 1989, § 160.04; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.04), 11-20-1990)

Sec. 121-5. - Plan commission, city engineer to enforce regulations.

The plan commission shall have exclusive control over the approval of all plats and replats within the corporate limits of the city. No plat or replat of a subdivision located within the city shall be recorded until it shall have been examined and approved by the city engineer and the plan commission. Such approval shall be in writing on the original tracing of the final plat which shall also bear the plan commission's seal.

(Code 1960, § 6-1604; Code 1989, § 160.55; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.55), 11-20-1990)

Sec. 121-6. - Vacation.

- (a) The plan commission in accordance with IC 36-7-3 has exclusive control over the vacation of plats or parts of plats.
- (b) A decision of the plan commission is a final appealable decision.

(Ord. No. 6492, § 1(160.14), 11-20-1990)

Secs. 121-7—121-30. - Reserved.

ARTICLE II. - PLAT APPROVAL

Footnotes:

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State Law reference— *Plat approval, IC 36-7-4-702 et seq.*

Sec. 121-31. - Primary and secondary plats required.

- (a) *Plats and plans.* Wherever any subdivision of land shall hereafter be laid out with the city, the subdivider thereof or his agent shall submit a primary and a secondary subdivision plat to the plan commission. The plats and plans of proposed improvements and all procedures relating thereto shall in all respects be in full compliance with these regulations.
- (b) *Prior to approval.* Until primary plats and plans for the subdivision are approved:
 - (1) No land shall be subdivided nor any street laid out nor any improvements made to the natural land.

- (2) No lot, tract, or parcel of land within any subdivision shall be offered for sale, nor shall any sale, contract for sale be made or given.
- (3) No improvements, such as sidewalks, water supply, stormwater drainage, sanitary sewerage facilities, gas service, electric service or lighting, grading, paving or surfacing of street, shall hereafter be made by any owner or their agent or by any public service corporation at the request of such owners or their agent.
- (c) *Permits.*
 - (1) The building commissioner shall not issue building or repair permits for any structure on a lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed herein.
 - (2) The city health officer shall not issue a permit for the installation of wells and septic tanks upon any lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed herein.
- (d) *Public uses.* All lands offered to the city for use as streets, highways, alleys, schools, parks, playgrounds, and other public use, shall be referred to the plan commission for review and recommendation before being accepted by the common council or by any other governing authority of the city.
- (e) *Parts of larger subdivisions.* Where a tract of land proposed for subdivision is a part of a larger, logical subdivision unit in relation to the city as a whole, the plan commission may, before approval, cause to be prepared a plan for the entire area or neighborhood, such plan to be used by the plan commission as an aid in judging the proposed plat.
- (f) *Provision for additional streets.* Whenever an area is subdivided into lots of 20,000 square feet or more and there are indications that such lots will eventually be resubdivided into small building lots, consideration shall be given to the street and lot arrangement of the original subdivision so that additional minor streets can be located which will permit a logical arrangement of smaller lots.
- (g) *Flood hazard.* No plat will be approved for a subdivision which is subject to periodic flooding or which contains poor drainage facilities and which would make adequate drainage of the lots and streets impossible. However, if the subdivider agrees to make improvements which will, in the opinion of the city engineer, make the area completely safe for residential occupancy and provide adequate lot and street drainage, the preliminary plat of the subdivision may be approved.

(Code 1960, § 6-1605; Code 1989, § 160.10; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.10), 11-20-1990)

Sec. 121-32. - Procedure for primary plat approval.

- (a) Twelve copies of the primary plat and supplementary material specified shall be submitted to the plan commission with written application for primary approval at least two weeks prior to the meeting at which it is to be considered.
- (b) At the time of filing an application for primary approval, the application shall be accompanied by a certified check or money order payable to the city in the amount prescribed by chapter 20. Upon the acceptance of the application by the plan commission, the secretary shall surrender the check or money order to the city controller for deposit in the general fund of the city.
- (c) Application for primary approval of subdivision shall be in writing and shall state the following:
 - (1) The map, plan or plat shall be drawn accurately to scale. The minimum scale shall be 100 feet to the inch.
 - (2) The title of the map, plan or plat shall include the name or designation of the development or subdivision, accurate indication of its location with respect to existing properties or street intersection scale of the plan,

date of its preparation, name of the owner of the mapped premises, appropriate place for its certifications and the name and address of the engineer or surveyor who prepared the same.

- (3) All maps, plans or plats shall have designated the direction of north thereon.
- (4) All measurements and dimensions of lots shown on any map, plan or plat shall be legibly inscribed thereon. Also, all lengths of outside boundaries of tracts, distances along streets and other essential measurements must be shown to the nearest hundredths of a foot. All bearings shall be similarly indicated to within ten seconds.
- (5) Municipal limits or boundaries crossing any map, plan or plat shall be accurately located thereon, legibly indicating names of the municipalities.
- (6) Street lines and their names, bearings, angles of intersections, widths and established or proposed building lines.
- (7) The lengths of all arcs, radii and tangents of any curved streets, lines or curved corner intersections must be shown to the nearest hundredths of a foot, and the central angle to the nearest ten seconds.
- (8) All easements or rights-of-way provided for, proposed or owned by public utilities, and limits of easement rights, shall be stated and shown.
- (9) All lots shall be numbered and indicated with accurate dimensions in feet, to the hundredth part, all bearings accurately stated, and in addition, each lot shall be numbered in accordance with the general street number plan of the city.
- (10) All property shown on any map, plan or plat which is to be dedicated as public property in the tract shall be accurately outlined and described thereon.
- (11) The location and boundaries of all property reserved for the use of all property owners shall be shown, and the use shall be noted on the map.
- (12) All existing facilities for the lighting or illumination of existing streets shall be designated only on the copies of the map, plan or plat and, in addition, the location of proposed facilities for the lighting or illumination of proposed streets shall be designated only on the copies of the map, plan or plat.
- (13) All watercourses, drainage ditches, rights-of-way, location of existing pipelines, sewers, water mains and other known or recorded matters of note or importance shall be noted only on the copy, and in addition, such map, plan or plat shall show in detail the location of any street, alley, curb, sewer or sidewalk proposed to be constructed in the subdivision.
- (14) Additional maps, plans, statements, specifications or information as in the commission's opinion are useful, necessary or pertinent to complete understanding and just determination of the matter, may be required by the commission.
- (15) The subdivider shall supply or shall defray all expenses incurred by the city in supplying the subdivision with a street lighting system and shall pay for the first year's operating costs. Lights shall be installed at each street intersection, at dead ends of cul-de-sac streets and midway in blocks over 660 feet in length, or such additional lights as the plan commission of the city determines necessary after consultation with Northern Indiana Public Service Commission and receipt of recommendation therefrom. The proposed location of all street lights shall be shown on a street lightings plan which will be part of the required improvement plan.
- (16) The plan commission shall review all proposed subdivisions to determine whether they lie in a floodprone area as defined elsewhere by ordinance. If they find the subdivision to be so located, they shall require the

applicant to forward pertinent plans and materials to the state department of environmental management and/or Army Corps of Engineers for review and comment. They may require appropriate changes and modifications in order to assure that it is consistent with the need to minimize flood damages; all public utilities such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage; adequate drainage is provided so as to reduce exposure to flood hazards; and that on-site waste disposal systems, if provided, will be so located as to avoid impairment of them or contamination from them during the occurrence of the regulatory flood.

- (17) All subdivision plats containing lands identified elsewhere by ordinances as floodprone areas shall have the elevation of the 100- year flood listed thereon.
- (d) Upon receipt of an application for primary approval, the plan commission staff shall review the application for technical conformity with the standards fixed in this chapter. Within 30 days after receipt, the staff shall announce the date for a hearing before the plan commission and provide for notice in accordance with IC 36-7-4-706. The plan commission shall by rule, prescribe procedures for setting hearing dates and for the conduct of hearings.
- (e) If, after the hearing, the plan commission determines that the application and plat comply with the standards and this chapter, it shall make written findings and a decision granting primary approval to the plat. This decision must be signed by the chairperson of the plan commission and the executive secretary of the planning department.
- (f) If after the hearing the plan commission disapproves the plat, it shall make written findings that set forth its reasons and a decision denying primary approval and shall provide the applicant with a copy. This decision must be signed by the chairperson of the plan commission and the executive secretary of the planning department.
- (g) The primary approval or disapproval of a plat by the plan commission or the imposition of a condition on primary approval is a final decision of the plan commission that may be reviewed as provided in IC 36-7-4-1016.

(Ord. No. 6492, § 1(160.11), 11-20-1990)

State Law reference— Primary approval of plats, IC 36-7-4-705 et seq.

Sec. 121-33. - Secondary approval of plats.

- (a) The plan commission shall have the authority to grant secondary approvals. They may direct the planning staff to perform such duties.
- (b) Secondary approval may be granted, after expiration of the time provided for appeals as provided in section 121-32.
- (c) No notice or hearing is required, and the provisions of this article concerning notice and hearing do not apply to secondary approvals.
- (d) A plat of a subdivision may not be filed with auditor, and the recorder may not record it, unless it has been granted secondary approval and signed and certified by the executive director of the plan commission. The filing and recording of the plat is without legal affect unless approved by the commission.
- (e) After all approvals and signatures have been obtained, the original approved copy shall be recorded in the office of the recorder of the county by the petitioner, and the recorded copy shall be placed on file in the office of the engineer of the city of and planning director within 90 days of such secondary approval by the plan commission. If

the final approved plat is not recorded within 90 days, the building commissioner shall not issue any building permits for any building construction and said subdivision without first obtaining prior approval thereof of the plan commission.

- (f) No building permit shall be issued to any person for building construction in any subdivision, the plan of which has not been recorded in the recorder's office of the county, and the recorded copy thereof placed on file in the office of the engineer of the city without first obtaining a special permit from the plan commission.

(Ord. No. 6492, § 1(160.12), 11-20-1990)

State Law reference— Secondary approval of plat, IC 36-7-4-709 et seq,

Sec. 121-34. - Secondary approval of plat before completion of improvement.

- (a) Secondary approval under this article may be granted to a plat for a subdivision in which the improvements and installments have not been completed as required by this chapter if:
- (1) The applicant provides a surety, escrow arrangement or other acceptable and recognized proof of financial ability of the person required to construct such public facilities to complete the construction to the city engineer's satisfaction as well as the satisfaction of the plan commission and will be constructed within the time period for which deferment is granted.
 - (2) With respect to the installation or extension of water, sewer, or other utility service:
 - a. The applicant shows by written evidence that it has entered into a contract with the political subdivision or utility providing the service; and
 - b. The plan commission determines based on written evidence that the contract provides satisfactory assurance that the service will be installed or extended in compliance with this chapter.
 - (3) Any monies received from a surety, escrow or other financial arrangement may only be used to make the improvements and installments for which the surety or other proof of financial responsibility was provided. This money may be used for these purposes without appropriation. The improvement or installation must conform to the standards provided for such improvements or installations by the municipality as well as this chapter.
- (b) The plan commission shall, by rule, prescribe the procedure for determining whether all improvements and installations have been constructed and completed as required by this chapter. The rule must designate the person or persons responsible for making the determination.

(Ord. No. 6492, § 1(160.13), 11-20-1990)

Sec. 121-35. - Certificate and covenant forms to be used in connection with approval of primary plats.

The following forms shall be used in connection with approval of the primary plats:

- (1) *Certificates.*

- a. By the plan commission:

Approved by the plan commission of the City of Gary, at a meeting held _____.

President

Executive Director

SEAL

- b. By the city engineer:

Approved by the city engineer this _____ day of _____, 20__.

City Engineer

- c. By the professional engineer: Each primary plat submitted for approval shall carry a certificate signed by a registered professional engineer (or land surveyor) in substantially the following form:

I _____ hereby certify that I am a registered professional engineer (or land surveyor) licensed under the laws of the State of Indiana, that I have made a survey of the land shown and described hereon and subdivided same, as shown on the plat hereon drawn, that this plat correctly represents said survey and that all dimensions, linear and angular, are correctly shown, all monuments or markers shown thereon actually exist, and that their location, size, type and description are accurately shown.

WITNESS my hand and seal this _____ day of _____, 20__.

Signature

Indiana Registration No.

SEAL

- d. By the owner, deed dedication: Each final plat submitted to the plan commission for approval shall carry a deed of dedication in substantially the following form:

I (or we) the undersigned _____, owner or owners of the real estate shown and described herein, do hereby certify that I (or we) have laid out, platted and subdivided, and do hereby lay out, plat and subdivide said real estate in accordance with this plat.

This subdivision shall be known and designated as _____. All streets, alleys and crosswalks shown and not heretofore dedicated are hereby dedicated to the public.

(2) *Covenants.*

Building setback lines are hereby established as shown on this plat, between which lines and the property lines of the streets there shall be erected or maintained no building or structure. Strips of land of various widths as shown on this plat and marked easement are reserved for the use of public utilities for the installment of water and sewer mains, drainage channels, poles, ducts, conduits, electric power lines and wires, subject at all times to the property authorities and to the easement herein served.

No permanent structures are to be erected or maintained upon said strips of land, but owners of lots in this subdivision shall take their titles subject to the rights of the City of Gary and the utility companies. (Additional dedications and protective covenants or private restrictions should be inserted here upon the subdivider's initiative or the recommendation of the plan 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.)

The foregoing covenants (or restrictions) are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 20____, (a 25-year period is suggested) at which time said covenants shall become automatically extended for successive periods of ten years; unless, by a vote of a majority of the then owners of the building sites covered by these covenants (or restrictions), it is agreed to change such covenants (or restrictions) in whole or in part. Invalidation of any one of the foregoing covenants (or restrictions), by judgment or court order, shall in no way affect any of the other covenants (or restrictions) which shall remain in full force and effect.

The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law or any structure or part thereof erected or maintained in violation hereof, is hereby dedicated to the public and reserved to the several owners of the several lots in this subdivision and to their heirs and assigns.

WITNESS our hand and seals this ____ day of _____, 20__.

SEAL

(Signature)

(Signature)

(Signature)

STATE OF INDIANA

COUNTY OF LAKE

BEFORE ME, the Undersigned Notary Public, in and for the County and State, personally appeared _____, _____, _____, and each separately and severally acknowledged the execution of the foregoing instrument (s) as his or her voluntary act and deed; for the purpose therein expressed.

WITNESSED by my hand and seal this ____ day of _____, 20__.

NOTARY PUBLIC

(Ord. No. 6492, § 1(160.13), 11-20-1990)

Secs. 121-36—121-58. - Reserved.

ARTICLE III. - DESIGN STANDARDS

Sec. 121-59. - Conformance to city general development plan.

The subdivision of land, including the arrangement, character, extent, width, grade, and location of all expressways, streets, alleys, crosswalks, easements, sites for parks, playgrounds, and schools, or other land to be dedicated for public use shall conform to the general development of the city as approved by the plan commission and adopted by the common council and other responsible governmental bodies of the city as a part of the official plan (master plan) of the city.

(Code 1960, § 6-1608; Code 1989, § 160.25; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.25), 11-20-1990)

Sec. 121-60. - Streets.

- (a) All streets shall be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety and in their appropriate relation to the proposed uses of the land to be served by such streets.
- (b) Where such is not shown in the general development, the arrangement of streets in a subdivision shall either:
 - (1) Provide for the continuation or appropriate projection of existing principal streets in surrounding areas: or
 - (2) Conform to a plan for the area or neighborhood approved or adopted by the plan commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impracticable.
- (c) Minor streets shall be so laid out that their use by through traffic will be discouraged. Such layout should not create dangerous traffic hazards within the subdivision.
- (d) Where a subdivision abuts or contains an existing or proposed expressway or primary street, as shown on the general development plan, the plan commission may require marginal access streets, reverse frontage with screen planting contained in a non-access reservation at least ten feet wide along the rear property line, deep lots with rear service alleys, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- (e) Where a subdivision borders on or contains a railroad or expressway, the plan commission may require a street approximately parallel to and on each side of such railroad or expressway, at a distance suitable for the appropriate use of the intervening land, as for park purposes in residential districts or commercial or industrial purposes in appropriate districts. Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.
- (f) Reserve strips controlling access to streets or alleys shall be prohibited.
- (g) All street intersections and confluences should encourage safe traffic flow.
- (h) Street jogs with centerline offsets of less than 125 feet shall be avoided.
- (i) When connecting street lines deflect from each other at any one point by more than ten degrees, they shall be connected by a curve with a radius adequate to insure clear sight distances.
- (j) Streets shall be laid out so as to intersect as nearly as possible at right angles.

- (k) Property lines at street intersections shall be rounded with a minimum radius of 25 feet for primary streets and 15 feet for secondary and other minor streets. The plan commission may permit comparable cutoffs or chords in place of rounded corners.
- (l) Street right-of-way widths shall be as shown in the general development plan; and where not shown therein, the minimum width shall be 60 feet for residential streets unless otherwise approved by the plan commission and the city engineer.
- (m) Half streets shall be prohibited, except where essential to the reasonable development of the subdivision in conformity with the other requirements of these regulations or where the owner of the adjoining property agrees to dedicate the other half of the street and does so before the approval of the final plat.
- (n) Dead-end streets (culs-de-sac), designed to be so permanently, shall not be longer than 500 feet from the intersection of the origin through the center of the circle to the end of the right-of-way; and they shall be provided at the closed end with a turn-around having an outside pavement diameter of at least 90 feet and a street property line diameter of at least 120 feet.
- (o) No street names shall be used which will duplicate or be confused with the names of existing streets. Existing street names shall be projected wherever possible. Street names shall be subject to the approval of the plan commission.
- (p) Street gradients and vertical curves shall be as approved by the city engineer.
- (q) Street grades shall provide proper relation between the street and the first floor elevation of the houses or buildings to permit convenient and economical access to and drainage of the lots.

(Code 1960, § 6-1608(A); Code 1989, § 160.26; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.26), 11-20-1990)

Sec. 121-61. - Alleys.

- (a) Alleys shall be provided in commercial and industrial districts, except that the plan commission may waive this requirement where other definite and assured provision is made for service access, such as off-street loading, unloading, and parking consistent with and adequate for the uses proposed.
- (b) Alleys in residential areas shall not be permitted except where deemed necessary and at the discretion of the plan commission.
- (c) The width of an alley shall not be less than 20 feet in residential areas and not less than 30 feet in commercial and industrial areas.
- (d) Sharp-angled intersections or sharp changes in alignment shall be avoided; but, where unavoidable, corners shall be cut off sufficiently to permit safe vehicular movement.
- (e) Dead-end alleys shall not be permitted unless provided with adequate turn-around facilities as determined by the city engineer.

(Code 1960, § 6-1608(B); Code 1989, § 160.27; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.27), 11-20-1990)

Sec. 121-62. - Easements.

- (a) Easements across lots or centered on rear or side lot lines shall be provided for utilities where necessary and shall be at least 20 feet wide.
- (b) Easements shall be designed to provide continuity from block to block.
- (c) Where a subdivision is traversed by a watercourse, drainageway, channel, or stream, there shall be provided a

stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourse; and there shall be such further width or construction or both as will be adequate for the purpose and as determined by the plan commission. Parallel streets or parkways may be required in connection therewith.

(Code 1960, § 6-1608(C); Code 1989, § 160.28; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.28), 11-20-1990)

Sec. 121-63. - Blocks.

- (a) The lengths, widths, and shapes of blocks shall be determined with due regard to the following:
 - (1) Provision of adequate building sites suitable to the special needs of the type of use contemplated.
 - (2) Zoning requirements as to lot sizes and dimensions.
 - (3) Needs for convenient access, circulation, control, and safety of street traffic.
 - (4) Limitations and opportunities of topography.
- (b) Block lengths shall not exceed 1,500 feet.
- (c) Pedestrian crossings, not less than eight feet wide, shall be provided for access to schools, playgrounds, shopping centers, transportation, and other community facilities when the subdivision layout does not provide other convenient access.
- (d) Blocks or portions thereof, intended for commercial and industrial use, shall be designated as such; and the plan shall show adequate off-street parking areas and areas for loading docks and such other facilities as are required by chapter 123, zoning.

(Code 1960, § 6-1608(D); Code 1989, § 160.29; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.29), 11-20-1990)

Sec. 121-64. - Lots.

- (a) The lot size, width, depth, shape, and orientation shall be appropriate for the location of the subdivision and for the type of development and use contemplated.
- (b) Lot dimensions and areas shall conform to the requirements of the zoning chapter; however:
 - (1) Residential lots, where not served by public or private sanitary sewers, shall have not less than 1,500 square feet of areas.
 - (2) Where unusual soil conditions or other physical factors exist which may impair the health and safety of the residents of the neighborhood in which a subdivision may be located, upon recommendation of the state department of health, the plan commission may increase lot area requirements as may be necessary.
 - (3) Lots abutting a watercourse, drainageway, 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 zoning chapter for front, rear, and side yards.
 - (4) Depth and width of lots or properties reserved or laid out for commercial and industrial uses shall be adequate to provide for off-street service and parking facilities required by the zoning chapter for the type of use and development contemplated.
- (c) Corner lots for residential use shall have extra width to permit appropriate building setback from and orientation to both streets.
- (d) All lots shall abut on a publicly dedicated street.
- (e) Double frontage and reverse frontage lots should be avoided except where essential to provide separation of

residential development from expressways or primary streets or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least ten feet across, through which there shall be no right of access, shall be provided along the lines of lots abutting such expressways and primary streets or other disadvantageous use.

- (f) Side lot lines shall be substantially at right angles or radial to street lines.
- (g) The orientation of platted lots in any existing subdivision shall not be changed without the approval of the plan commission; and, if approved, it shall provide the necessary setback lines and easements for utilities as herein required.

(Code 1960, § 6-1608(E); Code 1989, § 160.30; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.30), 11-20-1990)

Sec. 121-65. - Building setback lines.

Except for the following, building setback lines in residential areas of new subdivisions shall conform to the front yard provisions of the zoning chapter: Corner lots shall maintain not less than the minimum building setback lines on both streets.

(Code 1960, § 6-1608(F); Code 1989, § 160.31; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.31), 11-20-1990)

Sec. 121-66. - Public sites and open spaces.

- (a) Where a proposed park, playground, school, or other public use shown on the general development plan is located in whole or in part in a subdivision, the plan commission may require the reservation of such area within the subdivision in those cases in which the plan commission deems such requirements to be reasonable. However, in no case shall the total amount of required public areas to be reserved, in addition to public streets and alleys, exceed ten percent of the total gross acreage owned or controlled by one developer. The areas needed for parks, playgrounds, schools, or other public uses, other than streets and alleys, shall be acquired by the proper governing body for a mutually agreed upon consideration within a period of three years from the date of approval of the preliminary subdivision plat. After that period of time, if not so acquired, such required reservation shall be deemed to have been waived by the proper governing body.
- (b) Where deemed essential by the plan commission, upon consideration of the particular type of development proposed in the subdivision and especially in large scale neighborhood unit developments not anticipated in the general development plan, the plan commission may require reservation of such other areas or sites of a character, extent and location suitable to the needs created by such development to schools, parks and other neighborhood purposes; and the acquisition of such areas shall be as provided for in subsection (a) of this section.
- (c) In the subdividing of any land within the city, due regard shall be shown for all natural features such as tree growth, watercourses, historic spots or similar conditions which, if preserved, will add attractiveness and value to the proposed development.

(Code 1960, § 6-1608(G); Code 1989, § 160.32; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.32), 11-20-1990)

Secs. 121-67—121-90. - Reserved.

ARTICLE IV. - REQUIRED IMPROVEMENTS

Footnotes:

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State Law reference— *Required improvements, IC 36-7-4-702.*

Sec. 121-91. - Compliance required before subdivision plat may be approved.

Before a subdivision plat shall be secondarily approved, the city engineer shall certify that the improvements described in the subdivider's plans and specifications, together with agreements, meet the minimum requirements of all ordinances of the city and that they comply with the sections in this article.

(Code 1960, § 6-1609; Code 1989, § 160.45; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.45), 11-20-1990)

Sec. 121-92. - Monuments and markers.

Monuments shall be placed at all corners and angle points of the outside boundary, but no further than one-fourth-mile apart. The monuments shall be of concrete not less than six inches in diameter and 36 inches deep with a copper dowel three inches long and one-half inch in diameter cast in place. Wrought iron steel bars or pipe three-fourths inches in diameter and 48 inches long shall be set in concrete at the corners of all street intersections. The monuments, bars, or pipes shall be set level with the finished grade.

(Code 1960, ;s 6-1609(A); Code 1989, § 160.46; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.46), 11-20-1990)

Sec. 121-93. - Utility and street improvements.

Utility and street improvements shall be provided in each new subdivision in accordance with the following requirements:

- (1) Gas, water, and electric utility service shall be made available for all lots.
- (2) Streets and alleys shall be improved with the kind of paving and of such width as shall meet the city's standard requirements.
- (3) Sanitary sewers or septic systems shall be provided for all lots and of such sizes and grades and materials as are required by law, and they shall be subject to the approval of the city board of health and the city sanitary district.
- (4) Systems of street drainage and disposal of stormwaters as to prevent flooding of streets shall be provided in accordance with the requirements of the city engineer.
- (5) Sidewalks not less than five feet in width along right-of-way lines of streets shall be provided on both sides of all improved streets unless otherwise agreed to by the city engineer.
- (6) All parkway strips between curbs and sidewalks shall be graded and planted with grass seed according to city standards.
- (7) Street name signs at all intersections shall be provided and installed by the developer according to city standards.
- (8) Finished grade of lots shall be such that no basement floor shall be less than three feet above the top of sanitary and combined sewers.
- (9) Detailed plans of all paving and sewer improvements shall be submitted to the city engineer for approval by

the city, and such approval shall be in writing before any construction of streets or sewers is begun. The plans shall be prepared by a registered civil engineer of the state and shall bear his seal and certifying signature. In the case of sewers, the plans therefor shall bear or have attached thereto the approval of the state board of health before same are approved by the city.

- (10) All street and alley paving, all sanitary sewers which will become part of the city's public sewer system, all storm sewers and appurtenances and all public sidewalks shall be subject to the requirement that the city, by its board of public works and safety, makes formal acceptance of same, in writing, for the maintenance of such improvements after the city engineer shall have certified that such improvements have been properly made in accordance with the city's requirements and that they are deemed satisfactory. However, no acceptance of such improvements shall be made by the city engineer or any other official of the city until a maintenance bond, in proper form by an approved surety company and in an amount determined by the city engineer but not less than 30 percent of the actual cost of said improvements, shall have been accepted by the city. The maintenance bond shall bind the principal and the surety company to clean, maintain, repair, replace, or renew any part of such improvements declared unsatisfactory by reason of defective workmanship or materials within a period of three years from the date of formal acceptance. Any failure, disintegration, or other collapse of such improvements shall be deemed to be caused by defective workmanship or materials or both except such failures as can be shown to have been caused by conditions beyond the developer's or contractor's control or by conditions which could not have been reasonably foreseen.

(Code 1960, § 6-1609(B); Code 1989, § 160.47; Ord. No. 3445, 1959; Ord. No. 6492, § 1(160.47), 11-20-1990)

Chapter 123 - ZONING

Footnotes:

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State Law reference— *Zoning, IC 36-7-4-600 et seq.*

ARTICLE I. - IN GENERAL

Sec. 123-1. - Definitions.

- (a) In those instances whereas a word or term as it applies to development, zoning and/or enforcement of this chapter is not defined as presented herein, the commission shall interpret each word or term in its applicability to the intent of this chapter with deference to the following reference materials, but not limited to, as generally accepted by the American Planning Association as providing standard definitions as determined by federal and state government agencies and national organizations involved in planning and land-use development:
- (1) *The Latest Illustrated Book of Development Definitions - New Expanded Edition* (2004), Harvey S. Moskowitz and Carl G. Lindbloom, ISBN: 0882851772;
 - (2) American Planning Association's *Land Use Law and Zoning Digest*;
 - (3) American Planning Association's *Zoning News*, a monthly publication on current planning and zoning matters;
 - (4) *A Glossary of Zoning, Development and Planning Terms* (1999), American Planning Association's Planning Advisory Service (PAS) Report Number 491/492, ISBN: 1-88482935-X;

- (5) The *Standard Industrial Classification Manual* (1987), Executive Office of the President, Office of Budget and Man
- (6) Urban Land Use Institute publications related to shopping centers, industrial parks, recreational development, and other planned developments.
- (7) United States Environmental Protection Agency ("USEPA") publications related to sustainable development and smart growth principles.

(b) The definitions contained under this chapter shall be observed and applied in the interpretation of all titles and sections of this chapter, except where the context clearly indicates otherwise. Furthermore, words used in the present tense, singular number, and masculine gender, shall also mean the future, plural, and feminine. Anything not specifically included in a definition presented herein is automatically excluded.

Access management means the systematic control of the location, spacing, design and operation of driveways, median openings, interchanges, and street connections to a roadway to minimize conflicts between turning and through vehicles, bicyclists and pedestrians. The purpose of access management is to provide vehicular access to land development in a manner that preserves the safety and efficiency of the transportation system. Public facility measures to support access management include roadway design applications, such as median treatments and auxiliary lanes, and the appropriate spacing of traffic signals. Measures that may be included as conditions of approval for development decisions include but are not limited to: (i) standards such as minimum spacing of driveways and onsite vehicle storage requirements, (ii) mitigations related to site conditions such as right-of-way-out only approach, medians, dedicated turn lanes and shared access approaches, and (iii) provision for future opportunities for mitigation by land dedication or easement.

Accessory building or use means one which is subordinate to and serves a principal building or principal use; is subordinate in area, extent, or purpose to the principal building or principal use served; contributes to the comfort, convenience, or necessity of the occupants of the principal building or principal use served; and is located on the same zoning lot as the principal building or principal use served, with the single exception of any accessory off-street parking facilities that are permitted to locate elsewhere than on the same zoning lot with the building or use served. The term "accessory building or use" includes, but is not limited to, the following:

- (1) A children's playhouse, garden house, or private greenhouse.
- (2) A garage, shed, or building for domestic storage.
- (3) Decks, fences, arbors, gazebos and swimming pools.
- (4) Storage of goods used in or produced by manufacturing activities, unless this storage is excluded by the district regulations.
- (5) The production, processing, cleaning, servicing, altering, testing, repair, or storage of merchandise normally incidental to a retail service or business use conducted by the same ownership as the principal use. In a business district, all these activities shall conform with the performance standards for the MI manufacturing districts in section 123-217, applied at the boundaries of the lot on which the use is located.
- (6) Off-street motor vehicle parking spaces or areas and loading facilities.
- (7) Signs, other than advertising signs, as permitted and regulated in each district incorporated in this chapter.
- (8) Carports.

Accessory dwelling unit means a secondary independent dwelling unit constructed on a lot with a primary dwelling unit. The secondary independent dwelling unit is constructed auxiliary to and smaller than the primary dwelling unit.

Adult arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing specified sexual activities or specified anatomical areas.

Adult bookstore means an establishment having as a substantial or significant portion of its stock in trade, books, magazines, films for sale or viewing on premises by use of motion picture devices or any other coin-operated means, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities," or "specified anatomical areas," or establishment with a segment or section devoted to the sale or display of such material.

Adult business means any commercial activity, whether conducted intermittently or full time, which primarily involves the sale, display, exhibition, or viewing of books, magazines, films, photographs or other materials, distinguished or characterized by an emphasis on matter depicting, describing, or relating to human sex acts, or by an emphasis on male or female genitals, buttocks, or female breasts.

Adult cabaret means a nightclub, bar, juice bar, restaurant bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

- (1) Persons who appear semi-nude;
- (2) Live performances which are characterized by the exposure of specified anatomical areas or specified sexual activities; or
- (3) Films, motion pictures, videocassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas.

Adult mini motion picture theater means an enclosed building with a capacity of 75 persons or less used for presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein.

Adult motel means a motel, hotel, or similar commercial establishment which:

- (1) Offers public accommodations, for any form of consideration, and which regularly provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas and which regularly advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; and
- (2) Offers a sleeping room for rent for a period of time less than ten hours.

Adult motion picture arcade means any place to which the public is permitted or invited wherein coin- or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to three or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing sexual conduct or specified anatomical areas.

Adult motion picture theater means an enclosed building with a capacity of 75 or more persons used regularly and routinely for presenting material having as a dominant theme material distinguished or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult theater means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of semi-nudity or live performances which are characterized by their emphasis upon the exposure of specified anatomical areas or specified sexual activities.

Affordable housing means housing which is priced or valued for purchase, rent, or lease by a certain percentage of the population earning a specified level of income and spending no more than 30 percent of their household income on housing expenses (for more information or detail, contact the United States Department of Housing and Urban Development).

Alley means a public right-of-way not more than 30 feet wide which affords only a secondary means of access to abutting property.

Apartment means a room or suite of rooms in a multiple-family structure which is arranged, designed, used, or intended to be used as a single housekeeping unit. Complete kitchen facilities, permanently installed, must always be included for each apartment.

Arterial street means a major street for carrying a large volume of traffic between neighborhoods and intra-community travel, normally controlled by traffic signalization with speed parameters between 30 and 40 miles per hour.

Attached duplex means a duplex located on its own lot that shares one or more common or abutting walls between the dwelling units. A common or abutting wall must be shared by at least 50 percent of the length.

Attached home means a dwelling unit located on its own lot which shares one or more common abutting walls between independent dwelling units. The common or abutting wall must be shared by at least 50 percent of the length. An attached house does not share common floor/ceiling with other dwelling units. An attached home is similar to townhouses or row houses.

Automobile-dependant means primary or accessory land uses servicing motor vehicles or patrons in motor vehicles, such as motor vehicle repair centers, fuel (gasoline) stations, car washes, auto and truck sales or any land use with a drive-up window, kiosk, and similar communication instrument or panel.

Automobile laundry means a building or portion thereof where the principal activity is the washing of automobiles, including the use of chain conveyors and blowers or steam-cleaning devices.

Automobile-orientated means development in which the site layout and design gives preference to automobiles and other motorized vehicles as the primary mode of transportation. This type of development usually has more than the minimum required number of parking spaces. The main entrance is typically orientated to the main parking area and between the public right-of-way and the primary building.

Automobile repair, major, means engine rebuilding or major reconditioning of worn or damaged motor vehicles or trailers; collision service, including body, frame, or fender-straightening or repair; and overall painting of vehicles.

Automobile repair, minor, means incidental repairs, replacement of parts and motor service to automobiles, but not including any operation specified under "automobile repair, major."

Automobile service station means a place where gasoline, stored only in underground tanks, kerosene, lubricating oil, or grease for operation of automobiles, are offered for sale directly to the public on the premises, including minor accessories and services for automobiles but not including major automobile repairs, and including washing of automobiles where no

chain conveyor, blower, or steam-cleaning device is employed. When the dispensing, sale, or offering for sale of motor fuels or oil is incidental to the conduct of a public garage, the premises shall be classified as a public garage.

Automobile wrecking yard means any land, building, or structure used for the open storage, keeping, or abandonment of any worn out, cast off, inoperative, discarded, or abandoned vehicle, automobile, or parts thereof, which is not being restored to operation; or vehicles or automobiles without a valid current state registration and license plate issued to the vehicle or automobile or to the occupant, owner, purchaser, lessor, lessee, or tenant of the place; or used for wrecking of motor vehicles or parts thereof, including the commercial or salvaging of any other goods or articles.

Awning means a rooflike cover, temporary in nature, which projects from the wall of a building and overhangs a public way or a required yard.

Block means a tract of land bounded by streets or by a combination of streets and public parks, cemeteries, railroad rights-of-way, bulkhead lines or shore lines of waterways, or corporate boundary lines of the city.

Building means any structure designed, built, or intended for the shelter, enclosure, or protection of persons, animals, chattels, or movable property of any kind, and which is permanently affixed to the land. This includes all other structures of every kind, regardless of similarity to buildings.

- (1) *Building, completely enclosed*, means a building separated on all sides from the adjacent open space or from other buildings or other structures by a permanent roof and by exterior walls or party walls, pierced only by windows and normal entrance or exit doors.
- (2) *Building coverage*, on a zoning lot, means the proportion of the total area of the zoning lot occupied by the ground area of all buildings located thereon, with the exception of garage buildings enclosing accessory off-street parking facilities and not exceeding a building height of ten feet; garage buildings may be ignored for purposes of determining building coverage.
- (3) *Building, detached*, means a building surrounded by open space on the same zoning lot.
- (4) *Building height* means the vertical distance from the curb level, or its equivalent, opposite the center of the front of a building to the highest point of the under side of the ceiling beams in the case of a flat roof; to the top level of a mansard roof; and to the mean level of the under side of the rafters between the eaves and the ridge of a gable, hip, or gambrel roof. Where no curb level has been established, the height of the building may be measured from the mean elevation of the finished lot grade at the front of the building.
- (5) *Building, principal* means a non-accessory building in which a principal use of the lot on which it is located is conducted.
- (6) *Building, residential* means a building which is arranged, designed, used for residential occupancy by one more families or lodgers and which includes, but is not limited to, the following types:
 - a. One-family detached dwellings.
 - b. Two-family dwellings.
 - c. Multiple-family dwellings.
 - d. A row of one- or two-family attached dwellings developed initially under single ownership or control.

Bulk means the term used to indicate the size and setbacks of buildings or structures and their location with respect to one another, and includes the following.

- (1) Size and height of buildings.

- (2) Location of exterior walls at all levels in relation to lot lines, streets, or to other buildings.
- (3) Gross floor area of buildings in relation to lot area (floor area ratio).
- (4) All open spaces allocated to buildings.
- (5) Amount of lot area per dwelling unit.

Bus terminal, depot, or station means any place, building, or portion thereof where inter-city buses make their major or only stop, whether the stop is off-street or on the public way adjacent thereto, for the purpose of loading or unloading passengers, baggage, or freight, and also where minor repairs to buses may be provided. The bus terminal, bus depot, or bus station may serve as a stop for intra-city buses for the purpose of loading or unloading passengers and baggage but shall not be deemed to include the corner-to-corner passenger pick-up and discharge service normally provided by intra-city buses.

Cabaret means a nightclub, theater, or other establishment which is licensed to serve food and/or alcoholic beverages which feature live performances by topless and/or bottomless dancers, "go-go" dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on sexual conduct or specified anatomical areas.

Cellular or wireless communications antenna means any structure or device used to receive or transmit electromagnetic waves between cellular phones, pagers, commercial mobile services, wireless services and ground-wired communications systems including both directional antennas, such as panels, microwave dishes, and satellite dishes, and all-direction antennas such as whips and other equipment used to serve personal communication services.

Cellular or wireless communications site means a tract, lot or parcel of land that contains the cellular or wireless communications tower, antenna, support structure, parking, and any other uses associated with and ancillary to cellular or wireless communications transmission.

Cellular or wireless communications support structure means any building or structure accessory to but necessary for the proper functioning of the cellular or wireless communications antenna or tower.

Cellular or wireless communications tower means any freestanding structure used to support a cellular or wireless communications antenna.

Cellular or wireless communications tower, height of, means the height from the base of the structure to its top and include any antenna located thereon.

Club or lodge, private, means a nonprofit association of persons who are bona fide members, electing a board of directors and paying annual dues, which owns, hires, or leases a building or portion thereof, the use of the premises being restricted to members and their guests. It shall be permissible to serve food and meals on the premises provided adequate dining room space and kitchen facilities are available. The sale of alcoholic beverages to members and their guests shall be allowed in conjunction with the operation of a dining room for the purpose of serving food and meals, though these beverages may be served in a separate room or rooms, provided the sale of alcoholic beverages is in compliance with the applicable federal, state, and municipal laws.

Collector street means a street designed to facilitate the collection of traffic from local streets and to provide circulation within neighborhood areas and convenient ways to reach arterial streets.

Commercial means land use involving buying/selling of goods or services as the primary activity.

Common green means a courtyard that provides for pedestrian and bicycle access, but not vehicle access, to abutting property and generally provides a common area for use by residents. A common green may function as a community yard. Hard and soft landscape features may be included in a common green, such as groundcover, trees, shrubs, surfaced paths, patios, benches or gazebos.

Controlling interest means the power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote 20 percent or more of any class of voting securities of a business. The ownership, control, or power to vote 20 percent or more of any class of voting securities of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business.

Cottage means a small dwelling unit, generally containing not more than 1,200 but no less than 950 square feet of floor area that may be used as an accessory dwelling unit.

Curb level means, for any building, the level of the established curb in front of the building measured at the center of that building measured at the center of the front. Where no curb elevation has been established, the mean elevation of the finished lot grade immediately adjacent to a building shall be considered the curb level.

Decibel means a unit of measurement of the intensity or loudness of sound. Sound level meters which are employed to measure the intensity of sound are calibrated in decibels.

Development means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved (or gravel) areas, and areas devoted to exterior display, storage, or activities. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved land.

Distinguished or characterized by an emphasis upon refers to the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films which are distinguished or characterized by an emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or principal character and theme are the exhibition or description of specified anatomical areas or specified sexual activities.

Drive-through/drive-up facility means a facility or structure that is designed to allow drivers to remain in their vehicles before and during an activity on the site. A drive-through facility is a type of site development that is usually found in conjunction with a quick automobile orientated servicing uses, retail sales or commercial service use. A drive-through/drive-up facility also includes facilities designed for the rapid servicing of vehicles, where the driver may or not remain in their vehicles, but whether the drivers usually either perform the service for themselves, or wait on the site for the service to be rendered. A drive-through facility may serve the primary use of the site or may serve accessory uses. Examples include, but are not limited to: drive-up windows, automatic teller machines (ATMs); coffee kiosks, and similar vendors; menu boards, order boards, or boxes, gas pump islands, car wash facilities, auto service facilities such as air compressors, water, and windshield washing stations quick lube or quick lube or quick oil change facilities, and drive-in theaters.

Duplex means a building that contains two primary dwelling units on one lot. The units must share a common wall or common floor/ceiling.

Dwelling means a building or portion thereof, but not an automobile house trailer, designed or used exclusively for residential occupancy, including one-family dwellings, two-family dwellings, and multiple-family dwellings, but not including hotels or lodginghouses.

- (1) *Dwelling, attached*, means one which is joined to another dwelling at one or more sides by a party wall or walls.

- (2) *Dwelling, detached*, means one which is entirely surrounded by open space on the same lot.
- (3) *Dwelling, multiple-family*, means a building or portion thereof containing three or more dwelling units.
- (4) *Dwelling, one-family*, means a building designed or used exclusively for occupancy by one family, and includes one-family detached dwellings and row houses.
- (5) *Dwelling, row*, means any one of three or more one-family attached dwellings in a continuous row or rows.
- (6) *Dwelling, two-family*, means a building designed or used exclusively for occupancy by two families.
- (7) *Dwelling unit* consists of one or more rooms which are arranged, designed, used, or intended for use as living quarters for one family. Individual bathrooms are not necessarily provided, but complete kitchen facilities, permanently installed, shall always be included for each dwelling unit.
- (8) *Dwelling unit, efficiency*, means a dwelling unit consisting of one room exclusive of bathroom, kitchen, hallway, closets, or dining alcove directly off the principal room, provided the dining alcove does not exceed 100 square feet in area.

Ecologically/scientifically significant natural areas means land and water that has substantially retained its natural character, but is not necessarily completely natural or undisturbed, and which is significant for historical, scientific, paleontological, archeological or natural features.

Employ, employee, and employment describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a fulltime, parttime, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. The term "employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Establish or establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

Establishment, business, means a separate place of business having the following three characteristics:

- (1) The ownership and management of all operations conducted within the establishment is separate and distinct from the ownership and management of operations conducted within other establishments on the same or adjacent zoning lots.
- (2) Direct public access to the business establishment is separate and distinct from direct access to any other business establishment.
- (3) There is no direct public access from within the establishment to any other establishment

When adjacent places of business lack any one of the aforesaid characteristics with respect to one another, they shall then be considered as a single business establishment for the purposes of this chapter.

Exterior improvement, accessory, means any improvement except buildings or other roofed structures on a lot, which includes: surface parking and loading areas; paved and graveled areas; areas devoted to exterior display, storage, or similar activities; and improved open areas such as plazas and walkways, but does not include vegetative landscaping, natural geologic forms, or unimproved land.

Family consists of one or more persons related by blood, marriage, or adoption or a group of not more than five persons who need not be related by blood, marriage, or adoption (excluding servants), who are living together in a single dwelling unit and maintaining a common household conforming with all city and state health and housing codes.

Fish and wildlife habitat areas means lands that contain significant food, water, or cover for native terrestrial and aquatic species of animals (examples include, but are not limited to, forests, fields, riparian areas, wetlands and water bodies).

Floodplain refers to land subject to inundation by the maximum flood of reasonable regional expectancy as determined by the state flood control and water resources commission.

Floor area for determining floor area ratio means the sum of the gross horizontal areas of the several floors of the building measured from the exterior faces of the exterior walls or from the center line of walls separating two buildings. The floor area of a building shall include basement floor area when more than one-half of the basement height is above the established curb level or above the finished lot grade level where curb level has not been established; elevator shafts and stairwells at each floor; floor space used for mechanical equipment, open or enclosed, located on the roof or penthouses; attic space having headroom of seven feet, ten inches or more; interior balconies, mezzanines, and enclosed porches; and floor area devoted to accessory uses. However, any space devoted to off-street parking or loading shall not be included in floor area.

Floor area for determining off-street parking and loading requirements, when prescribed as the basis of measurement for off-street parking spaces and loading berths for any use, means the sum of the gross horizontal areas of the several floors of the building or portion thereof devoted to that use, including accessory storage areas located within selling or working space, such as counters, racks, or closets, and any basement floor area devoted to retailing activities, to the production of processing of goods, or to business or professional offices. However, "floor area" for purpose of measurement for off-street parking spaces shall not include "floor area" devoted primarily to storage purposes, except as otherwise noted herein; "floor area" devoted to off-street parking or loading facilities, including aisles, ramps, and maneuvering space; or basement floor area other than area devoted to retailing activities, to the production or processing of goods, or to business or professional offices.

Floor area ratio (FAR) means the floor area of the building or buildings on that zoning lot divided by the area of the zoning lot, or in the case of planned developments, by the net site area.

Frequency means the number of oscillations per second in a sound wave and is an index of the pitch of the resulting sound.

Group living structure means a residential dwelling that receives 50 percent or more of its short- or long-term residents under a contract or other agreement with a state or local government human services agency to provide basic living arrangements and possibly treatment specific to its residents, including facilities that are further defined herein:

- (1) Residential facility/group care facility;
- (2) Residential home/group care home;
- (3) Residential home/group home private secure care institution.

Hazardous substance means any substance, material or waste listed below:

- (1) Nuclear or radioactive materials or waste;
- (2) Chemicals subject to reporting under Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986, published July 1987, U.S. Environmental Protection Agency; and

(3) Hazardous Materials Table, in 49 CFR 172.101.

Health center, government-operated, means a government supported and operated institution where physicians and other medical professionals provide outpatient health service to the public, and where additional facilities and services, including but not limited to laboratories, diagnostic testing, analytical and clinical research, and administrative offices may be located, the additional facilities and services being operated as an integral part of the institution and related directly to the outpatient health services provided.

Hearing officer means the mayor or a designee of the mayor.

Home occupation means a gainful occupation or profession customarily 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, and therefore not involving the conduct of a retail business, manufacturing business, or a repair shop of any kind on the premises. The term "home occupation" shall not include the employment of any additional persons in the performance of these services, nor shall there be any mechanical or electrical equipment used, other than is usual for purely domestic or hobby purposes. There shall be no exterior display or sign, except as allowed in the sign regulations for the districts in which the "home occupations" may be located; and there shall be no exterior storage of equipment or materials used in connection with the "home occupation." The term "home occupation":

- (1) Includes but is not limited to the following: art studio, custom dressmaking, professional office of a clergyman, lawyer, physician, dentist, architect, engineer, realtor, accountant, teaching of music, dancing, and other instruction when limited to one pupil at a time and when located in a dwelling unit occupied by the same.
- (2) Shall not be construed to include such uses as the following: medical clinic or hospital, beauty parlor or barber shop, tea room or restaurant, gift shop or millinery shop, machine shop or automobile repair shop, tourist homes, or commercial stable or kennel, unless hereafter provided as a specifically recognized exception.

Hospital means an institution where physicians and other medical professionals provide health services primarily for inpatient nursing, and medical or surgical care and treatment of persons suffering from injuries or from physical or mental ailments, and where additional facilities and services, including but not limited to laboratories, diagnostic testing, analytical and clinical research, outpatient departments, training facilities, and administrative and staff offices and living quarters may be located, these additional facilities and services being operated as an integral part of the institution and related directly to the health services provided. The term "hospital" shall include sanitariums and institutions for the care of the insane or feeble-minded, except in determining the applicable off-street parking and loading requirements specified in this chapter.

Hotel means a building in which lodging is provided along with other ancillary services (kitchen facilities, sitting rooms, bedrooms, suites, restaurants, meeting rooms, entertainments, and recreational facilities) and offered to the general public for compensation, and which is open to transient guests intended for short-term stays and is not a rooming or boardinghouse.

Hotel, apartment, means a hotel which contains dwelling units or dwelling units and lodging rooms, and in which at least 50 percent of the gross floor area devoted to residential use shall be allocated to the dwelling units.

Human-scale design/development means site and building design elements that are dimensionally related to pedestrians, such as: small building spaces with individual entrances (for example: as is typical of downtowns and main street developments); larger buildings that have articulation and detailing to break up large masses; narrower streets with tree canopies; smaller parking areas or parking areas broken up into small components with landscaping; and pedestrian

amenities, such as sidewalks, plazas, sidewalk furniture, lighting, weather protection (awnings or canopies), and similar features. These features are all generally small in scale than those that are primarily intended to accommodate automobile traffic.

Impervious surface means surface area that does not allow water infiltration, or has a runoff coefficient of 0.90 or more (for example: non-permeable pavement, solid rock, roofs, foundations, underground tanks and vaults, and similar areas).

Infill means the development of vacant land located in an area that is mainly developed.

Junkyard means an open area where waste or scrap metals or materials are kept, discarded, abandoned, bought, sold, exchanged, sorted, baled, packed, disassembled, or handled, for disposition. The term "junkyard" includes an auto wrecking yard but does not include uses established entirely within enclosed buildings. May also be referred to as a salvage yard.

Kenel means any lot or premises or portion thereof on which more than four dogs, cats, and other household domestic animals over four months of age are kept, or on which more than two such animals are boarded for compensation or kept for sale.

Landscaping means any combination of living plants such as trees, shrubs, vegetative ground cover or turf grasses, and may include structural features such as walkways, fences, benches, plazas works of art, reflective pools, fountains for the like. Also includes irrigation systems, mulches, topsoil and re-vegetation or the preservation.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an employee, it shall mean the person in whose name the sexually oriented business employee license has been issued.

Lifestyle center means a shopping center designed as a mixed-use retail and commercial service development that combines the traditional retail and commercial functions of a shopping mall but with leisure and pedestrian amenities generally oriented towards consumers with a higher than average percentage of disposable income, sometimes labeled "boutique malls."

Lodginghouse means a dwelling containing one or more lodging rooms and in which lodging or meals are provided for compensation on a weekly or monthly basis to one or more persons who are not of the keeper's family.

Lodgingroom means a room rented as sleeping and living quarters, without cooking facilities and with or without an individual bathroom. In a suite of rooms without cooking facilities, each room which provides sleeping accommodations shall be counted as one lodgingroom for the purposes of this chapter.

Lot means a zoning lot except as the content shall indicate a lot of record, in which case a lot is a lot of record. The term "lot" includes plot, price, and parcel of land.

- (1) *Lot area* means the area of a horizontal plane bounded by the front, side, and rear lot lines.
- (2) *Lot, corner*, means a lot situated at the intersection of two streets, the interior angle of the intersection not exceeding 135 degrees.
- (3) *Lot depth* means the mean horizontal distance between the front lot line and the rear lot line of a lot measured within the lot boundaries.
- (4) *Lot line, front*, means that boundary of a lot which is along an existing or dedicated public street or, where no public street exists, is along a public way. The owner of a corner lot may select either street lot line as the front lot line.
- (5) *Lot line, rear*, means that boundary of a lot which is most distant from, or is most nearly parallel to the front

lot line.

- (6) *Lot line, side*, means any boundary of a lot which is not a front lot line or rear lot line.
- (7) *Lot of record* means an area of land designated as a lot on a plat of subdivision recorded or registered pursuant to statute with the county recorder.
- (8) *Lot, reversed corner*, means a corner lot of which the side lot line adjoining the street is substantially a continuation of the front lot line of the first lot to its rear.
- (9) *Lot, through*, means a lot other than a corner lot having a pair of opposite lot lines along two more or less parallel public streets. Both street lines shall be considered as front lot lines.
- (10) *Lot width* means the mean horizontal distance between the side lot lines of a lot measured within the lot boundaries.
- (11) *Lot, zoning*, means a single tract of land located within a single block, which, at the time of filing for a building permit, is designated by its owner or developer as a tract to be used, developed, or built upon as a unit under single ownership or control. Therefore, a zoning lot may or may not coincide with a lot of record.

Manufactured home means a type of dwelling unit that is largely assembled in a factory and then transported to a site, constructed in accordance with federal manufactured housing construction and safety standards (United States Department of Housing and Urban Development Code) in effect after June 15, 1976.

Marquee or canopy means a rooflike structure of a permanent nature which projects from the wall of a building and overhangs the public way, and is designed and intended to protect pedestrians from adverse weather conditions.

Massage parlor means any place where for any form of consideration of gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body occurs as part of or in connection with sexual conduct, or where any person providing such treatment, manipulation or service related thereto exposes specified anatomical areas.

Medical or dental clinic means a facility operated by two or more physicians and other employees, and providing health services for the outpatient treatment of persons suffering from injuries or from physical or mental ailments. The term "medical or dental clinic" shall include the term group medical center.

Medical or dental office means a facility operated by one physician and not more than two other employees, and providing health services for the outpatient treatment of persons suffering from injuries or from physical or mental ailments.

Mitigation means to avoid through negotiation or to rectify, repair or compensate for negative impacts that result from the actions of others deemed liable or responsible (for example, improvements to a street may be required to mitigate for transportation impacts resulting from the development).

Mixed-use development means the combination of more than one type of land use in a single building or a single development of more than one building and land use, meaning some combination of residential, commercial, industrial, office, institutional, or other land uses are in close proximity planned as a unified complementary whole and functionally integrated to the use of shared vehicular and pedestrian access including shared-parking areas.

Mobile home means a type of dwelling unit built in a factory, rather than on site, and then taken to the place where they will be occupied. They are usually transported by tractor-trailers over public highways and are often associated with rural areas and high-density developments, sometimes referred to as "trailer parks" or "mobile home parks." Mobile homes are

usually placed in one location, often a rented lot within a trailer park or mobile home park, and left there permanently. However, they do retain the ability to be moved, as this is a requirement in many areas. Behind the cosmetic work fitted at installation to hide the base, there are strong trailer frames, axles, wheels and tow-hitches. Reference "residential trailer."

Motor freight terminal means a building in which freight brought by motor truck is assembled and sorted for routing in intrastate and interstate shipment.

Motor vehicle repair, major, includes engine rebuilding or major reconditioning of worn or damaged motor vehicles or trailers; collision service, including body, frame, or fender straightening; or repair and overall painting of vehicles.

Motor vehicle repair, minor, includes incidental repairs, replacement of parts and motor service to motor vehicles, but does not include any operation specified under major motor vehicle repairs.

Multi-dwelling development means a grouping of individual structures where each structure contains 2 or more dwelling units. The land on which the structures are constructed is not subdivided into separate lots but rather under one real property key number for tax purposes and single ownership. There is no requirement for the structures on the sites to be attached.

Nameplate means a sign indicating the name or address of a building or the name of an occupant thereof, and the practice of a permitted occupation therein.

Neighborhood means a residential area usually having a distinguished character or geography with a corresponding name for said area.

Net site area means the entire land area within the boundaries of a site, less one half the area of any vacated streets or alleys.

New development means development on a site which is absent of prior real property or accessory exterior improvements, that may include redevelopment of a site previously improved or that has had existing buildings demolished or razed to accommodate development, and therefore not a remodel or reuse of a building or structure.

Nonconforming building or structure means any building or structure which does not comply with all of the regulations of this chapter or any amendment governing bulk for the zoning district in which the building or structure is located; or is designed or intended for a nonconforming use.

Nonconforming use means any use of land, buildings, or structures which does not comply with all the regulations of this chapter or any amendment governing use for the zoning district in which the use is located.

Noxious matter means material which is capable of causing injury to living organisms by chemical reaction or is capable of causing detrimental effects upon the physical or economic well-being of individuals.

Nudity or a state of nudity means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple.

Octave band refers to a means of dividing the range of sound frequencies into octaves in order to classify sound according to pitch.

Octave band filter means an electrical frequency analyzer designed according to standards formulated by the American Standards Association and used in conjunction with a sound level meter to take measurements in specific octave intervals.

Off-street parking means all off-street areas designated, used, required or intended to be used for the parking of motor vehicles.

On-street parking means parking in the street right-of-way, typically in parking lanes or bays. Parking may be "parallel" or "angled" in relation to the edge of the right-of-way or curb and in accordance with parking standards and requirements.

Open space means land within a public, common, private, active or passive development that has been dedicated in common ownership within a development or to the public specifically for the purpose of providing places for recreation, conservation or other open space land use.

Operate or cause to be operated or operator means to cause to function or to put or keep in a state of doing business. The term "operator" means any person on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

Orientation means to cause to face toward a particular point of reference (e.g., a building is orientated to the street).

Outdoor commercial use means a use supporting a commercial activity that provides goods or services, either wholesale or retail, where the amount of site area used for outdoor storage of materials for display of merchandise exceeds the floor area of all buildings on the site. Examples of outdoor commercial uses include, but are not limited to: automobile sales or service, nurseries, home improvement centers, lumberyards, or equipment rental businesses.

Overlay zone/district. Overlay zones impose stricter standards and/or requirements than the underlying land use zone or district. Such a zone or district exhibits unique characteristics of land or neighborhood or the types of development existing or planned that require special regulations or standards unique to the area.

Parking facility means any facility or combination of facilities for motor vehicle parking which contains six or more parking spaces.

Pedestrian amenities means areas and objects that serve as places for public socialization and enjoyment and area usually closed to motorized vehicles (examples include: plazas; building frontage areas - extra wide sidewalks; street furnishings - benches, drinking fountains, bus waiting shelters; and pocket parks adjacent to a street; and similar areas and objects (sidewalks designed to meet the minimum sidewalk width standards for the city are not amenities for the purposes of this chapter.

Pedestrian-oriented development means development that is designed with an emphasis primarily on the street sidewalk and on pedestrian access to the site and building, rather than on auto access and parking areas. The building is generally placed close to the street and the main entrance is oriented to the street sidewalk. There are generally windows or display cases along building facades which face the street. Typically, buildings cover a large portion of the site. Although parking areas may be provided, they are generally limited in size and they are not emphasized by the design of the site.

Performance standard means a criterion established to control noise, odor, smoke, toxic or noxious matter, vibration, fire, explosive hazards, and glare or heat generated by or inherent in uses of land or buildings.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Physically handicapped person means a person who has been issued a special registration plate for a motor vehicle by the state bureau of motor vehicles.

Planned development means a tract of land which is developed as a unit under single ownership or control, which

includes two or more principal buildings and which is at least four acres in area, except for planned developments operated by a municipal corporation which shall be at least two acres in area, and manufacturing planned developments which shall be at least ten acres in area.

Planter strip means a landscape area for street trees and other plantings within the public right-of-way, usually a continuous planter are between the street and a sidewalk.

Plaza means an area open to the public on a controlled basis and used for passive recreational activities and relaxation. Plazas are paved areas typically provided with amenities, such as seating, dining and ornamental fountains, art, trees, and landscaping for use by pedestrians.

Railroad right-of-way means a strip of land with tracks and auxiliary facilities for track operation, but not including depots, loading platforms, stations, train sheds, warehouses, car shops, car yards, locomotive shops, or water towers.

Redevelopment means the cooperative public-private process of clearing away existing improvements on a property and replacing them with new development or improvements designed to promote government policy goals.

Regularly featured or *regularly shown* means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

Residential facility/group care facility means a short-term residence (less than 60 days) for a maximum of ten youths and for staff persons in a building originally constructed as a one- or two-family dwelling. The residence may provide emergency shelter care as certified by the state department of child services (DCS) as a group home under Rule 465 IAC 13.

Residential home/group home care means a long-term residence (over 60 days) for a maximum of ten youths and for staff persons in a building originally constructed as a one- or two-family dwelling. The residence may provide residential care alone, or in conjunction with training or treatment and must be certified by the state department of child services (DCS) as a group home under Rule 465 IAC 12.

Residential home/group home private secure care institution means a long-term residence (over 60 days) that may exceed ten youths but no more than 15 youths and for staff persons in a structure meeting the I-3 building code. The residence shall provide residential care in conjunction with training or treatment for youths gravely disabled with behaviors capable of being harmful to themselves or others which may require a locked facility. Such a facility must be certified by the state department of child services (DCS) as a group home under Rule 465 IAC 12.

Residential trailer means a mobile home that was not constructed in accordance with federal manufactured housing construction and safety standards (United States Department of Housing and Urban Development), in effect after June 15, 1976.

Restaurant means any land, building, or part thereof other than a boarding house, where meals are prepared and sold to the public for consumption on the premises, including a cafe, cafeteria, coffee shop, lunch room, drive-in stand, tea room, and dining room.

Rest home, nursing home, convalescent home or institution for the aged or for children means an institution where children or aged or infirm persons reside, where inpatient nursing care may be provided to persons suffering from physical or mental ailments, where daily outpatient nursing care may be provided, and where administrative and staff offices and living quarters operated as an integral part of the institution may be provided. The term "rest home" shall include day care centers, and institutions where daily outpatient nursing care is provided.

Right-of-way means an area that allows for the passage of people or vehicles. The term "right-of-way" includes passageways such as freeways, parking lanes, parkways, pedestrian connections, alleys, streets, and sidewalks. A right-of-way may be dedicated or deeded to the public for public use and under the control of a public agency, or it may be privately owned. A right-of-way that is not dedicated or deeded to the public will be in a tract of land.

Semi-nude or *state of semi-nudity* means a state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple of the female breast, as well as portions of the body covered by supporting straps or devices.

Semi-nude model studio means any place where a person, who regularly appears in a state of semi-nudity is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. It is a defense to prosecution for any violation of this article that a person appearing in a state of nudity or semi-nudity or semi-nudity did so in a modeling class operated:

- (1) By a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (3) In a structure:
 - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
 - b. Where, in order to participate in a class a student must enroll at least three days in advance of the class.

Senior housing means housing designated and/or managed for persons over a specified age, for which age restrictions may apply.

Sensible growth means the concept of sensible growth has evolved from interest in "smart growth" that began in the 1980s and is the confluence of two compatible but different planning initiatives for sustainable development and growth:

- (1) The need for sound planning as a basis for decisions about growth; and
- (2) The application of common sense to many of the growth issues facing communities today.

Sexual conduct includes the following:

- (1) The fondling or other touching of human genitals, pubic region, buttocks, or female breasts;
- (2) Ultimate sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, sodomy;
- (3) Masturbation; and
- (4) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3) of this definition.

Sexual encounter establishment means a business or commercial establishment, that as one of its principle business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of specified sexual activities or when one or more of the persons is semi-nude.

Sexually oriented business means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, or adult entertainment out-call service in the form of semi-nude dancing or exhibition, adult motion picture theater, adult theater, semi-nude model studio, or sexual encounter establishment. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

Sexually oriented entertainment activity means the sale, rental, or exhibition for any form of consideration, of books, films, videocassettes, magazines, periodicals, or live performances which are characterized by an emphasis on the exposure or display of specific sexual activity.

Shared parking means required parking facilities for two or more land uses, structures, or lots or parcels, which are satisfied jointly with the same facilities.

Shopping street means a driveway in a commercial development that is designed to mimic a public street with sidewalks, tree wells, pedestrian lighting, street furnishings or pedestrian amenities. A shopping street may also have on-street parking.

Sign means a name, identification, description, display, or illustration which is affixed to, painted, or represented directly or indirectly upon a building, structure, or piece of land and which directs attention to an object, product, place, activity, person, institution, organization, or business. However, the term "sign" shall not include any display of official court or public office notices, nor shall it include the flag, emblem, or insignia of a nation, political unit, school, or religious group. The term "sign" shall not include a sign located completely within an enclosed building. Each display surface of a sign shall be considered to be a sign.

- (1) *Sign, advertising*, means a sign which directs attention to a business, commodity, service, or entertainment conducted, sold or offered elsewhere than upon the premises where the sign is located or to which it is affixed.
- (2) *Sign, business*, means an accessory sign which directs attention to a business or profession conducted or to a commodity, service, or entertainment sold or offered upon the premises where the sign is located or to which it is affixed.
- (3) *Sign, flashing*, means any illuminated sign on which the artificial light is not maintained stationary or constant in intensity and color at all times when the sign is in use. Any revolving, illuminated signs shall be considered a "flashing sign."
- (4) *Sign, gross surface area of*, means the entire area within a single continuous perimeter enclosing the extreme limits of the sign and in no case passing through or between any adjacent elements of same. However, 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.

Sound level meter means an instrument standardized by the American Standards Association for measurement of intensity of sound.

Specified anatomical area.

- (1) The term "specified anatomical area" includes the following:
 - a. Less than completely and opaquely covered: human genitals, pubic region, buttocks 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.
- (2) Specified anatomical areas means human genitals, anus, cleft of the buttocks, or the female breast.

Specified sexual activity means any of the following:

- (1) Sex acts, normal or perverted, including intercourse, oral copulation, masturbation or sodomy; or
- (2) Excretory functions as a part of or in connection with any of the activities described in subsection (1) of this definition.

Storefront character means the character expressed by buildings placed close to the street with ground-floor display windows, weather protection (awnings or canopies), corner building entrances or recessed entrances, and similar features.

Story means that portion of a building included between the surface of any floor and the surface of the floor next 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 for the purposes of this chapter when more than one-half of the basement height is above the established curb level, or above the finished lot grade level where curb level has not been established.

Street means a public right-of-way which affords a primary means of access to abutting property.

Street furniture/furnishings means benches, lighting, bicycle racks, drinking fountains, mail boxes, kiosks, or similar pedestrian amenities; may be located within a street furnishing zone or building from zone of a sidewalk or in a plaza (see also "pedestrian amenity").

Street line means a line separating a zoning lot or parcel from a street.

Structural alteration means any change, other than incidental repairs, which would prolong the life of the supporting members of a building, such as bearing walls, columns, beams or girders.

Structure.

- (1) The term "structure means anything constructed or erected which is attached to the ground and shall include signs of all kinds.
- (2) The term "structure" means any object constructed in or on the ground. The term "structure" also includes buildings, decks, fences, towers, flag poles, signs and other similar objects. The term "structure" does not include paved areas or vegetative materials.

Sustainable growth/development means land use development that maintains or enhances economic opportunity and community well-being while protecting and restoring the natural environment upon which people and economies depend without compromising the ability of future generations to meet their own needs.

Tavern means a building wherein intoxicating liquors are sold to be consumed on the premises, not including restaurants where the principal business is serving food.

Tourist court, motel means a group of attached or detached buildings located on a single zoning lot and containing individual sleeping or living units designed for or used by transient automobile tourists.

Tourist home means a dwelling in which meals or lodgings or both are provided or offered to transient guests for compensation.

Toxic and infectious materials means those materials, compounds, or mixtures used in the manufacturing process or generated as a product or waste which as discharged and upon exposure, ingestion, or inhalation may be dangerous, hazardous or injurious to any organism or the environment. Those materials identified as toxic in any of the following:

- (1) The most recent edition of the United States Department of Transportation's Guidebook for Hazardous Material Incidents;
- (2) Any material safety data sheet (MSDS) that is available for that material, compound or mixture;
- (3) The most recent edition of Hawley's Condensed Chemical Dictionary; or
- (4) The most recent of Sax's Dangerous Properties of Industrial Materials (Ordinance No. 7394, 11-20-2002).

Trailer park, house, means any premises on which are parked one or more vehicles designed, intended, arranged or used for living or sleeping purposes, or any premises used or held out for the purpose of supplying to the public a parking space for two or more such vehicles, whether such vehicles stand on wheels or rigid supports.

Transfer of ownership or control (of a sexually oriented business) means any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Truck stops, motor freight terminals or truck fuel sales means any place, building, site, or portion thereof, where trucks, trailer trucks, buses, tankers, and other vehicles, primarily used for freight transport and cartage make their stop for the purpose of loading and unloading freight; dispatching, storage of cargo; and also any place, building, site or portion thereof dispensing gasoline, diesel fuel, kerosene, stored only in underground tanks; lubricating oil or grease for operation of freight vehicles offered for sale directly to the public on the premises including minor accessories and services such as restaurants or lounge, weight scales, showers, convenient stores, and any other ancillary services.

Use means the purpose or activity for which the land or building thereon, is designed, arranged or intended, or for which it is occupied or maintained, and shall include any manner or performance of such activity with respect to the performance standards of this chapter.

Use, principal, means the main use of land or buildings as distinguished from a subordinate or accessory use.

Used for includes the phrases arranged for, designed for, intended for, maintained for, and occupied for.

Vehicle areas means all of the areas on a site where vehicles may circulate or park including parking areas, driveways, drive-through lanes, and loading areas.

Viewing room means the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

Waste collection areas means areas set aside or designed to be used for garbage collection and collection of materials for recycling. Waste collection areas include areas occupied by dumpsters and other solid waste receptacles.

Wireless communication equipment means cellular towers, antennae, monopoles and related facilities used for telecommunication and radio signal transmission and receiving.

Yard means an open space on a zoning lot which is unoccupied and unobstructed from ground level or lowest level otherwise specified, to the sky, except as otherwise allowed in section 123-333. A yard extends along a lot line and at right angles to the lot line to a depth or width specified in the yard regulations for the zoning district in which the zoning lot is located.

- (1) *Yard, front*, means a yard extending along the full length of the front lot line between the side lot lines.
- (2) *Yard, rear*, means a yard extending along the full length of the rear lot line between the side lot lines.
- (3) *Yard, side*, means a yard extending along a side lot line from the front yard, or front lot line when there is no front yard, to the rear yard, or rear lot line when there is no rear yard.

(Code 1960, §§ 6-402, 6-403; Code 1989, § 163.003; Ord. No. 3376; Ord. No. 3764; Ord. No. 3786; Ord. No. 3925; Ord. No. 3926; Ord. No. 4059; Ord. No. 6110, 3-18-1986; Ord. No. 6221, 12-22-1987; Ord. No. 6236, 4-5-1988; Ord. No. 6246, 6-22-1988; Ord. No. 6894, § 1, 5-20-1997; Ord. No. 7233, § 1, 5-15-2001; Ord. No. 7394, § 1, 11-6-2002; Ord. No. 8256, § 1(163.003), 2-17-2009)

Sec. 123-2. - Purpose.

This chapter is adopted for the following purposes:

- (1) To promote the public health, safety, comfort, morals, convenience, and general public welfare.
- (2) To protect the character and the stability of the residential, business, and manufacturing areas within the city and to promote the orderly and beneficial development of these areas.
- (3) To provide adequate light, air, privacy and convenience of access to property, and safety from fire, flood, and other danger.
- (4) To regulate the intensity of use of land and lot areas and to determine the area of open spaces surrounding buildings necessary to provide adequate light and air and to protect the public health.
- (5) To lessen or avoid congestion in the public ways.
- (6) To provide for the needs of residential, business and industrial land use development and future growth that concurrently achieves economic development and jobs, strong neighborhoods and healthy communities consistent with accepted planning and development principles and initiatives.
- (7) To promote healthy surroundings for family life in residential areas that establishes strong residential neighborhoods with a range of housing options while maintaining and enhancing the values of property and creating a sense of community.
- (8) Establish and designate zoning district classifications, which may be for agricultural, commercial, industrial, residential, special or unrestricted uses and any subdivision or combination of zoning district classifications which shall each regulate how real property is developed, maintained and used.
- (9) To fix reasonable standards to which buildings or structures shall conform.
- (10) To prohibit land uses, buildings, or structures which are incompatible with the character of development or to allow land uses authorized within specified zoning districts.
- (11) To prevent additions, alterations, or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations imposed by this chapter.
- (12) To protect against fire, explosion, noxious fumes, and other hazards in the interest of the public health, safety, comfort, and general welfare.
- (13) To prevent the overcrowding of land and undue concentration of structures, so far as is possible and appropriate in each zoning district, by regulating the use and bulk of buildings in relation to the land surrounding them.
- (14) To conserve the taxable value of land and buildings throughout the city.
- (15) To provide for the gradual elimination of nonconforming uses of land, buildings, and structures which adversely affect the character and value of desirable land use development in each district.
- (16) To define and limit the powers and duties of the administrative officers and bodies, as provided in this chapter.

(Code 1960, § 6-201; Code 1989, § 163.002; Ord. No. 3376; Ord. No. 8256, § 1(163.002), 2-17-2009)

Sec. 123-3. - Application of chapter provisions.

In interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, morals, and welfare. Where the conditions imposed by any provisions of this chapter upon the use of land or buildings or upon the bulk of buildings are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this chapter or of any other law, ordinance, resolution, rule, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall govern. This chapter is not intended to abrogate any easement, covenant, or any other private agreement; however, where the regulations of this chapter are more restrictive or impose higher standards or requirements than the easements, covenants, or other private agreements, the requirements of this chapter shall govern.

(Code 1960, § 6-501; Code 1989, § 163.004; Ord. No. 3376; Ord. No. 8256, § 1(163.004), 2-17-2009)

Sec. 123-4. - Scope.

Except as may otherwise be provided in sections 123-81 through 123-88, all buildings erected, all uses of land or buildings established, all structural alteration or relocation of existing buildings, and all enlargements of or additions to existing uses, shall be subject to all regulations of this chapter which are applicable to the zoning districts in which the buildings, uses, or land shall be located. However, where a building permit for a building or structure has been issued in accordance with law prior to the effective date of the ordinance from which chapter is derived, and the construction has begun within one year of said effective date and diligently prosecuted to completion, the building or structure may be completed in accordance with the approved plans on the basis of which the building permit has been issued, and, upon completion, may be occupied under a certificate of occupancy by the use for which originally designated, subject to the provisions of sections 123-81 through 123-88.

(Code 1960, § 6-502; Code 1989, § 163.005; Ord. No. 3376; Ord. No. 8256, § 1(163.005), 2-17-2009)

Sec. 123-5. - Zoning of annexed land.

Prior to the annexation of any territory to the city, a plan for zoning the area to be annexed shall be forwarded to the common council by the city plan commission.

(Code 1960, § 6-503; Code 1989, § 163.006; Ord. No. 3376; Ord. No. 8256, § 1(163.006), 2-17-2009)

Sec. 123-6. - Amendments.

- (a) Amendments to the zoning code may be proposed by the common council, or petitions, duly signed, may be presented to the city clerk requesting an amendment, supplement, or change of the regulations of the zoning code by the plan commission, or the owners of 50 percent or more of the area involved in the petition. The term "amendment" shall include the terms supplement, change or repeal, as applied to the regulations of the zoning code. Any proposed ordinance for the amendment of this zoning code not originating from petition of the plan commission shall be referred to the plan commission for consideration and report before any final action is taken by the common council.
- (b) Before submission to the common council of a plan commission petition or report on a proposed ordinance

referred to the plan commission for an amendment to the zoning code, the plan commission shall hold a public hearing thereon. At least ten days prior to the date set for hearing, the plan commission shall publish in a newspaper of general circulation in the city a notice of the time and place of the hearing.

- (1) In the event that the report of the plan commission is adverse to a proposed amendment referred to it, the amendment shall not be passed except by an affirmative vote of at least 75 percent of the members of the common council.
 - (2) When a lot, lots, or parcel of land has less than 100 feet of frontage, or less than 10,000 square feet of area, no amendment shall be passed to change the zoning district in which the lot, lots, or parcel of land is located except where, in the event of passage of the amendment, the lot, lots, or parcel of land would be in the same zoning district as an adjoining lot, lots, or parcel of land.
- (c) Public hearing before common council. Before any action can be taken by the common council on a proposed ordinance for an amendment to this chapter, the common council shall hold a public hearing thereon. At least ten days prior to the date set for hearing, the common council shall publish in a newspaper of general circulation in the city a notice of the time and place of the hearing. The common council may require the petitioner the same kind of evidentiary material required by the plan commission, or such additional information as the common council may deem necessary. Adequate notice shall be given to the petitioner whenever the common council shall require additional information.

(Code 1960, § 6-1311; Code 1989, § 163.040; Ord. No. 3376; Ord. No. 5704, 2-24-1981; Ord. No. 8256, § 1(163.040), 2-17-2009)

Secs. 123-7—123-28. - Reserved.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

DIVISION 1. - GENERALLY

Sec. 123-29. - Department of development and planning.

- (a) There is established an executive department of the municipal government of the city which shall be known as the department of development and planning. The department shall include, as its department head, the director of development and planning who shall be appointed by the mayor. The department shall also include other employees that may be designated by the director, and provided for by the mayor and the common council in an annual appropriation ordinance. All officers and employees of the department shall be under the direction and supervision of the director of development and planning and shall perform all duties required by the director or by the provisions of this chapter.
- (b) It shall be the duty of the director of development and planning to coordinate the formulation of physical improvement projects and programs affecting the present and future development of the city, including those projects and programs proposed by the respective executive departments of city government; to create, maintain, and expand a comprehensive general master plan of the city; to keep the city zoning code under constant review and to recommend amendments as necessary to keep pace with changing conditions; and to coordinate the development of a long range capital improvement program.
- (c) The department of development and planning shall include those divisions that may be necessary or desirable to

enable the performance of the duties of the director of development and planning as herein set forth in this section, and as provided in the annual appropriation ordinance approved by the mayor and the common council. (Code 1960, § 6-1301; Code 1989, § 163.020; Ord. No. 3376; Ord. No. 4126; Ord. No. 4929, 9-3-1974; Ord. No. 8256, § 1(163.020), 2-17-2009)

Sec. 123-30. - Board of zoning appeals (BZA).

- (a) A board of zoning appeals is created, as set forth in IC 36-7-4-901 and 36-7-4-902. None of the members may hold other elective or appointive office, except as set forth in IC 36-7-4-902. A member must be a resident of the jurisdictional area of the board.
- (b) The members of the board shall be appointed for the following terms: one for a term of one year; one for a term of two years; one for a term of three years; and two for a term of four years. The terms shall expire on the first day of January of the first, second, third, or fourth year, respectively, following the appointment. Thereafter, as the terms expire, each new appointment shall be for a term of four years. If a vacancy occurs, by resignation or otherwise, among the members of the board, the mayor shall appoint a member for the unexpired term.
- (c) At the first meeting of each year, the board 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. The presence of three members of the board shall be necessary to constitute a quorum. No action of the board is official, however, unless authorized by a majority of the board. The board may appoint and fix the compensation of a secretary and any other employees that are necessary for the discharge of its duties, all in conformity to and compliance with salaries and compensations fixed by the common council.
- (d) The common council shall provide suitable offices for the holding of hearings and the preservation of records, documents, and accounts. The common council may appropriate funds to carry out the duties of the board and the board shall have the authority to expend, under regular city or county procedure, all sums appropriated to it for the purposes and activities authorized herein.
- (e) The members of the board shall serve without salary.
- (f) The board shall adopt all rules concerning the filing of appeals and applications for variances and exceptions, giving of notice, and conduct of hearings, as shall be necessary to carry out its duties as defined herein. The board shall keep minutes of its proceedings, keep records of its examinations and other official acts, and shall record the vote on all actions taken. All minutes and records shall be filed in the office of the board and shall be a public record.
- (g) The board of zoning appeals shall have the powers and duties as set forth in IC 36-7-4-918.1 et seq., and as follows:
 - (1) Hear and determine appeals from and review any order, requirement, decision, or determination made by the director of the department of development and planning under this chapter, and as set forth under IC 36-7-4-918.1.
 - (2) Hear and pass upon applications for variations from the district regulations provided in this chapter, and as set forth under IC 36-7-4-918.3.
 - (3) Authorize upon appeal the variations from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the chapter will result in unnecessary hardship, so that the spirit of the chapter shall be observed and substantial justice done.

(4) Hear and decide special exceptions to the terms of this chapter upon which the board is required to act.

(5) The board of zoning appeals shall forward to the common council a listing of all new petitions which are scheduled for hearing before the board, said listing to include the names, addresses, and requests of all petitioners. The listing shall be forwarded on a monthly basis.

(h) All decisions and findings of the board of zoning appeals, on appeal or upon application for a variation after a hearing, shall be subject to review by court as by law may be provided.

(Code 1960, § 6-1302; Code 1989, § 163.021; Ord. No. 3376; Ord. No. 5737, 7-21-1981; Ord. No. 7414, § 1, 12-17-2002; Ord. No. 8256, § 1(163.021), 2-17-2009)

State Law reference— Authority to establish, IC 36-7-4-901 et seq.

Sec. 123-31. - City plan commission; powers and duties.

The city plan commission, as established under chapter 2, is hereby vested with the following jurisdiction and authority:

- (1) Receive from the city clerk copies of all proposed ordinances, other than those originating from petition of the plan commission, for the amendment, supplement, change, or repeal of the zoning code or for the authorization of special uses as set forth in this chapter.
- (2) Consider all proposed ordinances referred to it and to hold public hearings thereon in the manner prescribed in section 123-6.
- (3) Following public hearings, to submit to the common council a report and recommendations on each proposed ordinance for the amendment, supplement, change, or repeal of the zoning code or for the authorization of a special use.
- (4) On its own initiative, to petition the common council requesting an amendment, supplement, change, or repeal of the zoning code, provided it has first held public hearings thereon in the manner prescribed in section 123-6.
- (5) Initiate, from time to time, a comprehensive review of the provisions of the zoning code, and make a report of its findings and recommendations to the common council at least once every two years.
- (6) The plan commission shall forward to the common council a listing of all new petitions which are scheduled for hearing before the commission, said listing to include the names, addresses, and requests of all petitioners. The listing shall be forwarded on a monthly basis.

In addition, the city plan commission shall have the duties and powers authorized under IC 36-7-4-400.

(Code 1960, § 6-1303; Code 1989, § 163.022; Ord. No. 3376; Ord. No. 5739, 7-21-1981; Ord. No. 8256, § 1(163.022), 2-17-2009)

Sec. 123-32. - Fee schedule.

The intent and purpose of this section is to reimburse the city for planning services, reviews, and inspections, and to defray the city's expense involved with preparation, mailing, and publication of notices. Fees in the amount established in chapter 20 shall be charged by the city and collected by the city controller.

(Code 1989, § 163.014; Ord. No. 5978, 7-3-1984; Ord. No. 8256, § 1(163.014), 2-17-2009)

Sec. 123-33. - Fees.

Any application for an amendment or special use filed by or on behalf of the owner of the property affected shall be accompanied by a fee in the amount established in chapter 20.

(Code 1960, § 6-1315; Code 1989, § 163.044; Ord. No. 3376; Ord. No. 4128)

Sec. 123-34. - Zoning certificates.

- (a) Except as hereinafter provided, no permit pertaining to the use of land or buildings shall be issued by an officer, department, or employee of the city unless the application for the permit has been examined by the director of the department of development and planning and has affixed to it a certificate of his office that the proposed building or structure and use thereof complies with all the provisions of this chapter.
 - (1) However, with respect to the performance standards of this chapter for manufacturing and other specified uses, the director shall accept as proof of compliance with these standards the certificate of an architect or structural engineer, licensed by the state, stating that the building or structure and proposed use thereof does conform with the performance standards for the district in which it is located. Upon receipt of the certificate, and if all other relevant requirements of this chapter are met, the director shall without further delay approve and authorize the issuance of a zoning certificate; within 15 days from the date of the approval, the director shall examine the application and shall advise the architect or structural engineer, in writing, if the building, structure, or use thereof does not in fact comply with the performance standards of this chapter for the district in which it is or is to be located. Failure of the architect or structural engineer to show compliance within 30 days of the notification shall be cause for revocation of the zoning certificate.
 - (2) Any permit, zoning certificate, or certificate of occupancy issued in conflict with the provisions of this chapter shall be null and void.
- (b) Every application for a new building permit in addition to an existing building shall be accompanied by the following:
 - (1) A plat of the piece or parcel of land, lot, lots, block, blocks, or parts or portions thereof, drawn to scale, showing the actual dimensions and certified by a land surveyor or civil engineer, licensed by the state, as a true copy of the piece or parcel, lot, lots, block, blocks, or portions thereof, according to the registered or recorded plat of the land when required or considered necessary by the director.
 - (2) A plat drawn to scale in the form that may from time to time be prescribed by the director, showing the ground area, height and bulk of the building or structure, the building lines in relation to lot lines, the use to be made of the building or structure of land, and other information as may be required by the director for the proper enforcement of this chapter.
 - (3) Each of the two plats shall be attached to the application for a building permit when it is submitted for a zoning certificate and shall be retained by the director as a public record.

(Code 1960, § 6-1304; Code 1989, § 163.023; Ord. No. 3376; Ord. No. 8256, § 1(163.023), 2-17-2009)

Sec. 123-35. - Certificates of occupancy.

- (a) No building, or alteration, modification, or addition thereto, constructed or made after the effective date of the ordinance from which this chapter is derived; no alteration, modification, or addition to a previously existing building; and no land vacant on the effective date of the ordinance from which this chapter is derived shall be used or occupied for any purpose until a certificate of occupancy is issued by the office of the director of the

department of development and planning. Further, no changes in any residential, business, or manufacturing principal or accessory use or uses of a lot or building, or any portion thereof, shall be made or affected until a certificate of occupancy has been issued by the office of the director of the department of development and planning. Such changes, for the purposes of this section, shall include but are not limited to changes in type, nature, or classification of a dwelling or dwelling unit; type or nature of goods dispensed; type or nature of goods resulting from or materials used in production, processing, or storage; and changes resulting in reclassification or amended performance standards to uses enumerated in this chapter. Every certificate of occupancy shall state that the use or occupancy complies with all provisions of this chapter.

- (b) Every application for a building permit shall be deemed to be an application for an occupancy certificate. Every application for an occupancy certificate for a new use of land where no building permit is required shall be made directly to the office of the director of the department of development and planning.
- (c) No occupancy certificate shall be issued until construction has been completed or the use established, and has been inspected and certified by the office of the director to be in compliance with all the provisions of this chapter. Pending the issuance of a regular certificate, a temporary certificate may be issued to be valid for a period not to exceed six months from its date during the completion of any addition or during the partial occupancy of the premises. An occupancy permit shall be issued or written notice shall be given to the applicant stating the reasons why a certificate cannot be issued later than 14 days after the office of the director is notified in writing that the building or premises is ready for occupancy.

(Code 1960, § 6-1305; Code 1989, § 163.024; Ord. No. 3376; Ord. No. 4035; Ord. No. 8256, § 1(163.024), 2-17-2009)

Secs. 123-36—123-58. - Reserved.

DIVISION 2. - SPECIAL USES AND PLANNED UNIT DEVELOPMENTS

Sec. 123-59. - Special uses.

- (a) The formulation and enactment of this chapter is based on the division of the entire city into zoning districts, in each of which are authorized specified land uses that are permitted as mutually compatible, special exceptions, or transitional uses. It is recognized that special exceptions are land uses which it may be necessary or desirable to allow in a given zoning district but which on account of their potential impact upon neighboring land uses or public facilities need to be carefully regulated with respect to location or operation for the protection of the community. These land uses and fall into two categories:
 - (1) Uses either municipally operated or operated by publicly regulated utilities, or uses traditionally affected by public interest.
 - (2) Uses entirely private in character which on account of their peculiar locational need or the nature of the service they offer to the public may have to be established in a zoning district or districts in which they cannot reasonably be allowed as a permitted use under the zoning regulations.

It is also recognized that transitional land uses may be appropriate for those areas along a zoning district border to allow for a mix of land uses from each zoning district that share a common border to provide for an overlap of zoning district land use activities and implement sustainable growth principles and initiatives to overcome strict

traditional zoning boundary delineations. Transitional uses may be permitted when located on a lot that is tangential to a zoning district boundary delineation or separated by a right-of-way, alley or public, private or railroad easement.

- (b) An application for a special use shall be filed with the planning department upon the form and accompanied by the information established from time to time by the planning department. The city clerk shall forward to the planning department without delay a copy of each ordinance proposed for authorizing a special use.
- (c) Special uses shall be authorized by the board of zoning appeals. No special use shall be granted by the board of zoning appeals unless the special use meets the following:
 - (1) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, or general welfare.
 - (2) The special use will not be injurious to the use and enjoyment of other properties in the immediate vicinity for the purposes already permitted.
 - (3) The establishment of the special use will not impede or substantially alter the normal and orderly development and improvement of surrounding property for uses permitted in the district.
 - (4) Adequate utilities, access roads, drainage, and other necessary facilities have been or are being provided.
 - (5) Adequate measures have been or will be taken to provide for access management, ingress and egress so designed as to minimize traffic congestion on the public roads.
 - (6) The special use will be located in a district where such a use is authorized and all other requirements set forth in this chapter which are applicable to such special use will be met.
 - (7) The petitioner documents and presents to the commission that proposed special use provides for the implementation of sustainable growth principles and initiatives as approved by the commission.
- (d) The board of zoning appeals provides conditions or restrictions upon the construction, locations, operation, and time limit that construction must begin or the special use is null and void, including but not limited to provisions for off-street parking and loading, as necessary to secure the general objectives of this chapter and to reduce injury to the value of property in the neighborhood.

(Code 1960, § 6-1312; Code 1989, § 163.041; Ord. No. 3376; Ord. No. 4255; Ord. No. 4266; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.041), 2-17-2009)

Sec. 123-60. - Planned developments.

Planned developments, as defined in section 123-1 are of such substantially different character from other special uses that specific and additional standards and exceptions are hereby set out to govern the recommendations of the plan commission and the action of the board of zoning appeals.

- (1) *Use exceptions.* In the case of residential, business, or manufacturing planned developments, the plan commission may recommend and the board of zoning appeals may authorize that there be, in part of the area of the development and for the duration of the development, specified uses not permitted by the use of regulations of the district in which the development is located, provided the plan commission makes the following findings:
 - a. The uses permitted by the exception are necessary or desirable and are appropriate with respect to the primary purpose of the development.

- b. The uses permitted by the exception are not of such a nature or so located as to exercise a detrimental influence on the surrounding neighborhood.
 - c. Not more than 20 percent of the ground area or of the gross floor area of the development shall be devoted to the uses permitted by the exception.
 - d. In a manufacturing planned development, additional uses allowed by exception shall conform with the performance standards of the district in which the development is located, as set forth in sections 123-216 through 123-219.
 - e. Uses permitted provide for the implementation of sustainable growth principles and initiatives as approved by the commission;
 - f. Residential and business planned unit developments provide for pedestrian-orientated and/or transit-orientated developments that include pedestrian amenities and transportation mode options where necessary and as required by the commission; and are developed as human-scale design/developments; and include appropriate landscaping along public right-of-ways, open spaces, plazas, planter strips and common green areas.
- (2) *Bulk regulations.* In the case of any planned development, the plan commission may recommend and the board of zoning appeals may authorize exceptions to the applicable bulk regulations of this chapter within the boundaries of the development, provided the plan commission makes the following findings:
- a. Bulk regulation exceptions provide for the implementation of sustainable growth principles and initiatives as approved by the commission;
 - b. The exception shall be solely for the purpose of promoting an integrated site plan no less beneficial to the residents or occupants of the development, as well as of neighboring properties, than would obtain under the bulk regulations of this chapter for buildings developed on separate zoning lots.
 - c. The over-all floor area ratio of the development shall not exceed that prescribed in this chapter for the district in which it is located.
 - d. The minimum lot area per dwelling unit requirements of this chapter shall be adhered to in any development containing residential uses, and that there shall be available to each residential building and immediately adjacent thereto, including the land area upon which it is erected, the minimum amount of land area required for the building under the lot area per dwelling unit provisions of this chapter.
 - e. Spacing between principal buildings shall be at least equivalent to spacing required between, buildings similarly developed under the terms of this chapter on separate zoning lots, due consideration being given to the openness normally afforded by intervening streets and alleys.
 - f. Along the periphery of the planned developments, yards shall be provided as required by the regulations of the district in which the development is located.

(Code 1960, § 6-1313; Code 1989, § 163.042; Ord. No. 3376; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.042), 2-17-2009)

Sec. 123-61. - Special manufacturing uses, M1 districts.

- (a) In order to protect areas devoted to residential, business, and light manufacturing uses from annoying or dangerous classes of industrial nuisances and hazards, the city has been divided into three manufacturing zoning districts, M1, M2, and M3, graduated respectively in terms of industrial performance standards from high to

intermediate to low. For practical purposes, the performance standards in the M1 and M3 districts have been supplemented by lists of the uses permitted in these zoning districts.

- (1) It is recognized, however, that among the uses first permitted in an M2 zoning district there may be individual establishments having such high performance standards that they could safely be permitted in the M1 zoning district even though engaged in operations not listed as permitted in the M1 zoning district. It is consistent with the purposes of this chapter and with the welfare of the community that the provision be made to allow these individual establishments of high performance to be located in the M1 zoning districts. The board of zoning appeals is empowered, therefore, to authorize as a special use in an M1 zoning district any individual establishment engaged in production, processing, cleaning, testing, or repair which is first permitted in an M2 zoning district under the terms of this chapter, but not first permitted in the M3 district, if the board of zoning appeals is satisfied beyond a reasonable doubt that all performance standards for the M1 zoning district, as well as all other regulations, will be complied with.
- (2) In authorizing this special use, the board of zoning appeals may, on advice of the plan commission, require the posting of a performance bond by the owners or operators of the proposed establishment, the bond to be subject to forfeiture and the money to be applied to the cost of any remodeling or other alterations necessary to ensure compliance with the M1 performance standards should the establishment in fact fail to so comply.
- (b) Preliminary to making its report to the board of zoning appeals, the plan commission shall require the applicant for a special manufacturing use to furnish it with a certificate of an architect or structural engineer licensed by the state, which shall include the following:
 - (1) A complete inventory of all machinery and fuel-burning equipment to be used in the conduct of the enterprise, together with any performance ratings which may be available from the manufacturers thereof.
 - (2) A statement that the proposed operations will conform with the performance standards for the M1 zoning district, and a description of the methods, structural and mechanical, which will be employed to keep any potential sources of nuisance in conformity with the performance standards.
 - (3) A statement and finding that the petition for a special manufacturing use will not negatively impact or effect adjacent residential or business zoning districts, ecologically/scientifically significant natural areas, fish and wildlife habitat areas, or identified natural features or mitigate any negative impacts; or any negative impacts documented by the petitioner or the commission with be mitigated prior to development.
 - (4) Other pertinent information as the plan commission shall deem necessary to assist it in making its findings and report.

(Code 1960, § 6-1314; Code 1989, § 163.043; Ord. No. 3376; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.043), 2-17-2009)

Secs. 123-62—123-80. - Reserved.

DIVISION 3. - NONCONFORMING USES

Footnotes:

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State Law reference— *Nonconforming agricultural uses, IC 36-7-4-616.*

Sec. 123-81. - Continuation.

A lawfully established use, building or structure which becomes nonconforming with respect to this chapter on the effective date thereof or as a result of any subsequent amendment thereto may be continued except as otherwise provided in this chapter.

(Code 1960, § 6-1201; Code 1989, § 163.120; Ord. No. 3376; Ord. No. 8256, § 1(163.120), 2-17-2009)

Sec. 123-82. - Change.

- (a) The nonconforming use of any building, structure, or portion thereof, which is designed or intended for a use not permitted in the district in which it is located, may be changed to another nonconforming use thereof, but only if such other use is permitted in every zoning district in which the use presently occupying the building, structure or portion thereof is permitted. However, when the aforesaid building or structure or portion thereof is located in a residence district, the following additional regulations shall apply:
 - (1) Uses first permitted in a business or manufacturing district may be changed only to uses permitted in a residence or B1 district.
 - (2) No nonconforming residential use shall be changed to nonconforming, nonresidential use.
- (b) Except for those uses classified and regulated in subsection (a) of this section, no nonconforming use shall be changed to any other use except a use which conforms to the use regulations of the district in which it is located.
- (c) No change of use shall extend or otherwise modify any provision for the elimination of a nonconforming building or structure and the use thereof as set forth in section 123-88.

(Code 1960, § 6-1202; Code 1989, § 163.121; Ord. No. 3376; Ord. No. 8256, § 1(163.121), 2-17-2009)

Sec. 123-83. - Discontinuation.

- (a) When the nonconforming use of a building, structure, or portion thereof, which is designed or intended for a use not permitted in the district in which it is located, is discontinued for a continuous period of two years, such building, structure, or portion thereof shall thereafter be occupied only by a use which conforms to the use regulations of the district in which it is located.
- (b) Except for those uses classified and regulated in subsection (a) of this section, any nonconforming use which is discontinued for a continuous period of six months shall not thereafter be resumed, and the premises shall thereafter be occupied only by a use which conforms to the use regulations of the district in which it is located.

(Code 1960, § 6-1203; Code 1989, § 163.122; Ord. No. 3376; Ord. No. 8256, § 1(163.122), 2-17-2009)

Sec. 123-84. - Extensions or enlargements.

- (a) In districts other than an M3 district, there shall be no extension or enlargement of a nonconforming use, except in the following instances:
 - (1) When a use first permitted in the M3 district is a nonconforming use in an M2 district, provided that any expanded portion of such use shall conform with the performance standards for the M2 districts.
 - (2) When a use first permitted in the M2 district is a nonconforming use in an M1 district, provided that any expanded portion of such use shall conform with the performance standards for the M1 districts.
 - (3) When a use first permitted in one of the business districts is a nonconforming use in a manufacturing district. However, no nonconforming use shall be expanded to the extent of more than 50 percent of the land area or

floor area occupied by such use on the date it became nonconforming.

- (b) When a building, structure, or portion thereof is designed or intended for a use not permitted in the district in which it is located, it shall not be enlarged, added to or structurally altered in any manner except as may be required by law, unless the building or structure and use thereof shall be made to conform to the use regulations of the district in which it is located, provided that this restriction shall not apply to a building or structure occupied by a nonconforming use which is permitted to expand under the terms of subsection (a) of this section. A building or structure which is nonconforming with respect to yards, floor area ratio, or any other element of bulk regulated by this chapter shall not be altered or expanded in any manner which would increase the degree or extent of its nonconformity with respect to the bulk regulations for the district in which it is located.

(Code 1960, § 6-1204; Code 1989, § 163.123; Ord. No. 3376; Ord. No. 8256, § 1(163.123), 2-17-2009)

Sec. 123-85. - Repairs.

Ordinary repairs and alterations may be made to a nonconforming building or structure provided that no structural alterations shall be made in or to a building or structure, all or substantially all of which is designed or intended for a use not permitted in the district in which it is located, except those required by law or except to make the building or structure and use thereof conform to the regulations of the district in which it is located. For the purpose of this section, repairs shall include the replacement of storage tanks, where the safety of the operation of the installation requires such replacement, and of other equipment located within such buildings and structures, except as hereinabove provided.

(Code 1960, § 6-1205; Code 1989, § 163.124; Ord. No. 3376; Ord. No. 8256, § 1(163.124), 2-17-2009)

Sec. 123-86. - Damage or destruction.

A building or structure which is designed or intended for a use not permitted in the district in which it is located and which is damaged or destroyed by any means to the extent of 50 percent of its replacement value, shall not thereafter be restored unless the building or structure and the use thereof shall conform to all the regulations of the district in which is located.

(Code 1960, § 6-1206; Code 1989, § 163.125; Ord. No. 3376; Ord. No. 8256, § 1(163.125), 2-17-2009)

Sec. 123-87. - Moving.

No nonconforming building or structure shall be moved in whole or in part to any other location on the lot, except as required by law, unless every portion of such building or structure which is moved and the use thereof made to conform to all the regulations of the district in which it is located.

(Code 1960, § 6-1207; Code 1989, § 163.126; Ord. No. 3376; Ord. No. 8256, § 1(163.126), 2-17-2009)

Sec. 123-88. - Termination.

- (a) For the purposes of this section, the valuation of a nonconforming building or structure or use shall be its assessed valuation or, where no assessed valuation exists, its appraised valuation at the time it became nonconforming with respect to this chapter. However, at the end of any period prescribed hereinafter for the termination, removal, or remodeling of a nonconforming building, structure, or use, if the valuation of same shall have increased to a figure for which a longer period is prescribed hereinafter, then such longer period shall be

substituted as the prescribed period for termination, removal or remodeling in lieu of the original period based on the valuation of the building, structure or use at the time it became nonconforming. When the provisions of this section affect only a portion of a building or structure and when there is no separate valuation for such portion, the director of the department of development and planning shall determine the valuation of same on the basis of an equitable prorating of the valuation of the entire building or structure.

- (b) In a residence district, any building, structure, or portion thereof which is designed or intended for a use permitted only in a business or manufacturing district and which has a valuation of less than \$2,000.00, shall be demolished, removed or remodeled and converted for a use permitted in the residence district within two years from the date the building, structure or portion thereof became nonconforming with respect to this chapter, as indicated herein, or four years from the date of issuance of the building permit for same, or from the date construction was completed if no building permit was issued, whichever period shall terminate last.
- (c) In a residence district, any building, structure or portion thereof which is designed or intended for a use permitted only in a business or manufacturing district and which has a valuation of at least \$2,000 but no more than \$5,000, shall be demolished, removed, or remodeled and converted for a use permitted in the residence district within four years from the date the building, structure, or portion thereof became nonconforming with respect to this chapter as indicated herein, or eight years from the date construction was completed if no building permit was issued, whichever period shall terminate last.
- (d) In a residence district, any building, structure, or portion thereof which is designed or intended for a use permitted only in a business or manufacturing district, and which has a valuation of more than \$5,000, shall be demolished, removed, or remodeled and converted for a use permitted in the residence district after the termination of the respective periods of time set out hereinafter, which periods are hereby established as a reasonable amortization of the normal, useful life of each class of building and type of construction above the foundation walls or piers.
 - (1) Solid brick, stone, reinforced concrete, or similar materials with structural members of steel or similar materials: 30 years from the date the building, structure, or portion thereof became nonconforming with respect to this chapter as hereinbefore indicated, or 40 years from the date of issuance of the building permit for the construction of either the whole structure or the initial building or initial part thereof, whichever period shall terminate last.
 - (2) Solid brick, stone, reinforced concrete, or similar materials, with structural members of reinforced concrete, masonry, timber, or similar materials: 20 years from the date the building, structure, or portion thereof became nonconforming with respect to this chapter as hereinbefore indicated, or 30 years from the date of issuance of the building permit for the construction of either the whole structure or the initial building or initial part thereof, whichever period shall terminated last.
 - (3) Timber and all other construction and physical improvements to land all or substantially all of which are below or at ground level: ten years from the date the building, structure, or portion thereof became nonconforming with respect to this chapter as hereinbefore indicated, or 20 years from the date of issuance of the building permit for the construction of either the whole structure or the initial building or initial part thereof, whichever period shall terminate last.
 - (4) If, prior to the adoption of this chapter, substantially all of a nonconforming building has been reconstructed, rebuilt or structurally altered, or if an addition at least equal in size or valuation has been structurally attached thereto, then for purposes of determining the normal useful life of such building the date of issuance of the

building permit therefore shall be taken to be the date of issuance of the building permit for such reconstruction, alteration or addition.

- (e) In a residence district, the nonconforming business or manufacturing use of a building or portion thereof which is designed or intended for residential purpose or for a residential accessory purpose, shall be entirely discontinued within one year and shall thereafter cease operation and not be reestablished.
- (f) The nonconforming use of land:
 - (1) In a residence district shall be terminated not later than two years from the date the use became nonconforming with respect to this chapter in each of the following instances:
 - a. Where no buildings or structures are employed in connection with such use, or where the only buildings, structures or other physical improvements employed are accessory or incidental to such use or have an assessed valuation of less than \$2,000; or
 - b. Where such use is maintained in connection with a conforming building or structure; except that inadequate off-street parking facilities accessory to a building or structure located in the residence district and occupied by a use conforming with the requirements of the district may be continued for as long a time as the premises are used for a permitted use.
 - (2) Which is accessory to the nonconforming use of a building or structure shall be discontinued on the same date the nonconforming use of the building or structure is discontinued.
 - (3) Which has in connection therewith physical improvements, all or substantially all of which are underground or at ground level, shall be deemed to be a nonconforming structure and shall be subject to the applicable provisions of this section.
- (g) In accordance with the provisions of section 123-86 the board of zoning appeals may, in a specific instance and after public hearing, extend the period of time prescribed hereinbefore for termination of nonconforming use or building.
- (h) Exemptions.
 - (1) No lawfully established building, structure or use shall be subject to the termination provision of section 123-88 solely for reason of being nonconforming with respect to the standards prescribed in the chapter for any of the following:
 - a. Floor area ratio.
 - b. Yards, front, side, rear, or transitional.
 - c. Off-street parking or loading.
 - d. Lot area.
 - e. Building height.
 - f. Gross floor area.
 - (2) No nonconforming residential use or building lawfully established in a residence district shall be subject to the termination provisions of this section.
 - (3) No public utility installation service, a public necessity and convenience lawfully established, shall be subject to the termination provisions of this section.

(Code 1960, §§ 6-1208, 6-1209, 6-1210; Code 1989, §§ 163.127, 163.128; Ord. No. 3376; Ord. No. 8256, § 1(163.127, 163.128), 2-17-2009)

Sec. 123-89. - Existing special uses.

Where a use is classified as a special use under this chapter, and exists as a special or permitted use at the date of the adoption of this chapter, it shall be without further action of the city council, the zoning administration, or the board of zoning appeals, a legal use.

(Code 1960, § 6-509; Code 1989, § 163.011; Ord. No. 3376; Ord. No. 8256, § 1(163.011), 2-17-2009)

Secs. 123-90—123-106. - Reserved.

DIVISION 4. - VARIANCES AND SPECIAL EXCEPTIONS

Footnotes:

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State Law reference— *Variances and special exceptions, IC 36-7-4-918.3 et seq.*

Sec. 123-107. - Application.

- (a) In order that the spirit of this chapter may be observed and substantial justice done, the board of zoning appeals may, upon application or appeal, grant the variations enumerated in section 123-108. The board of zoning appeals shall make a finding of fact that, owing to special conditions, a literal enforcement of the provision of this chapter would result in unnecessary hardship.
- (b) In making its determination as to whether there is unnecessary hardship, the board of zoning appeals shall take into consideration the extent to which the following conditions, all favorable to the applicant or appellant, have been established by the evidence:
 - (1) The particular physical surroundings shape or topographical conditions of the specific property involved would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.
 - (2) The conditions upon which the requested variation is based would not be applicable, generally, to other property within the same zoning classification.
 - (3) The alleged difficulty or hardship has not been created by any person presently having an interest in the property.
 - (4) The granting of the variation will not be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
 - (5) The proposed variation is within the purposes of this chapter (section 123-2) and but more specifically, but not limited to the following: will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, substantially diminish or impair property values within the neighborhood; improves access management; or will not negatively impact or effect ecologically/scientifically significant natural areas, fish and wildlife habitat areas, or identified natural features or mitigate any negative impacts.
- (c) The board of zoning appeals may impose conditions and restrictions upon the premises benefited by a variation as may be necessary to prevent injurious effects therefrom upon other property in the neighborhood and better to carry out the general intent of this chapter.

Sec. 123-108. - Standards for granting variances.

Variations from the regulations of this chapter shall be granted by the board of zoning appeals only in accordance with the standards set forth in section 123-107, and may be granted in the following instances only, and in no others:

- (1) Permit the use of a temporary building for the business of manufacturing, in any district, for a use otherwise excluded from that district, provided the use is incidental to the construction of new buildings and facilities and the development of that district and that the use shall not continue for a period of more than one year.
- (2) Permit the reconstruction within 12 months of a building located in a district restricted against the use, which has been damaged by fire or other causes to the extent of not more than 50 percent of its replacement value, exclusive of foundations and land; however, when the reconstruction becomes involved in litigation, the time involved shall not be counted as a part of the 12 months allowed for reconstruction.
- (3) Permit the extension of any district where the boundary line of a district divides a zoning lot, provided the zoning lot is in single ownership on May 19, 1964.
- (4) Permit any yard of less dimension than required by the applicable regulations.
- (5) Permit any building or structure to exceed the height limitations imposed by the applicable regulations.
- (6) Permit the use of a lot for a use otherwise prohibited because of insufficient lot dimensions or area, but in no event shall the area of the lot be less than 90 percent of the required lot area.
- (7) Permit the alteration or enlargement of an existing building or use located on premises in a district which prohibits the use of land or buildings, the height and area of buildings existing on December 3, 1957, where the alteration or enlargement is a necessary incident to the use of the structure existing on December 3, 1957. However, the alteration or enlargement shall in no case be extended more than 50 feet from a structure existing at the time of adoption or amendment of this chapter.
- (8) Extend the period within which a nonconforming business or manufacturing use is to be removed from a dwelling district when the owner or owners can furnish substantial proof that the building was so extensively remodeled, reconstructed, or structurally altered after the original construction that it practically resulted in a new building having a valuation of more than \$5,000. However, the extension of the period shall not exceed the termination periods, established in section 123-88 from the date of the remodeling, reconstruction, or structural alteration.
- (9) Interpret the provisions of this chapter where the ground varies from the street layout as shown on the zoning map.
- (10) Reduce the applicable off-street parking or loading facilities required.
- (11) Increase by not more than 25 percent the maximum distance that required parking spaces are permitted to be located from the use served.
- (12) Permit the same off-street parking facilities to qualify as a required facility for two or more uses, provided the substantial use of the facility by each user does not take place at approximately the same hours of the same days of the week.
- (13) Permit front yard fences.
- (14) Permit other variances, not provided for in this section, which are required to expand, alter, or renovate institutions of public service, religious, philanthropic, or eleemosynary use existing on May 24, 1964.

(15) Permit the use of a lot of record which is less than the prescribed zoning lot in lineal and area dimensions but whose frontage is greater than 50 percent in width of every improved zoning lot on the same block on the same side of the street at the time of construction. However, if the lot of record is in the same ownership on or after the effective date of the ordinance from which this chapter is derived as an adjoining unimproved lot on the same street, it shall not be improved with a residential use unless both lots are combined in a single zoning lot for this purpose or unless further subdivision produces the requisite minimum lot width.

(16) Permit signs to exceed height limitations.

(17) A proposed alteration or rehabilitation, development or redevelopment of land or a structure provides for the implementation of sustainable growth principles and initiatives as approved by the commission.

(Code 1960, § 6-1307; Code 1989, § 163.031; Ord. No. 3376; Ord. No. 3948; Ord. No. 4017; Ord. No. 4318; Ord. No. 8256, § 1(163.031), 2-17-2009)

Sec. 123-109. - Public hearing.

- (a) An application for a variation shall be filed with the board of zoning appeals. The application shall be in the form and shall contain the information that the board shall from time to time prescribe by general rule. Upon receiving an application for a variation, the board shall, according to its rules of procedure, fix a reasonable time for a public hearing thereon and give public notice of the hearing.
- (b) An appeal may be taken to the board of zoning appeals by any person, firm, or corporation, or office, department, board, or bureau affected by a decision of the office of the director of the department of development and planning. The appeal shall specify the grounds thereof and shall be filed within the time and in the form as may be prescribed by the board by general rule. The director shall, upon request of the board of zoning appeals, transmit to it all documents, plans, and papers constituting the record of the action from which an appeal was taken.
- (c) The board shall fix a reasonable time for the hearing of an appeal. Public notice shall be given of the hearing and due notice shall be given additionally to the interested parties. The board may require the party taking the appeal to assume the cost of public notice and due notice to interested parties. At the hearing, any party may appear in person, by agent, or by attorney.
- (d) When an appeal from the decision of the director has been taken and filed with the board of zoning appeals, all proceedings and work on the premises concerning which the decision was made shall be stayed unless the director certifies to the board that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In that case, proceedings or work shall not be stayed except by a restraining order which may be granted by the board of zoning appeals or by a circuit or superior court of Lake County, on application of notice to the director and the owner of the premises affected and on due cause shown. After the owner or his agents or persons, or a corporation in charge of the work on the premises affected have received notice that an appeal has been filed with the board, the director shall have full power to order the work discontinued or stayed and to call upon the police power of the city or county to give full force and effect to the order.
- (e) In exercising its powers, the board may, upon the concurring vote of three members, reverse or affirm, partly or wholly, or may modify the order, requirement, decision, or determination appealed from as in its opinion ought to be done in the premises; and to that end it shall have all the powers of the director.

(Code 1960, §§ 6-1308, 6-1309; Code 1989, § 163.032; Ord. No. 3376; Ord. No. 8256, § 1(163.032), 2-17-2009)

Sec. 123-110. - Special exceptions.

- (a) The board of zoning appeals shall hear and decide on applications for special exceptions to the terms of this zoning code in the classes of cases set forth in this section. The board may authorize an exception if it has determined that the authorization is consistent with the spirit of this chapter and that the exception will not be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located. After a public hearing noticed and held in the manner prescribed in section 123-109 for variations and appeals, the board may allow as a special exception the following:
- (1) The same off-street parking facility to qualify as a shared parking facility for two or more uses, provided the substantial use of the facility by each user does not take place at approximately the same hours of the same days of the week.
 - (2) A nonconforming use or building to be continued beyond the period of time prescribed in section 123-88 for the termination thereof is permitted; provided the extension of time is granted within six months before the end of the original period and is no longer than the original termination period. The board may, after public hearing noticed and-held, renew any extension of time within six months before the end thereof but not longer than the original termination period, and in no case for longer than ten years.
 - (3) In a residentially zoned district on sites not less than ten acres in area, outdoor recreation uses, but not including the dispensing of food or beverages, or any merchandise or equipment not directly related to the recreational use, is permitted. In addition, the following requirements must be met.
 - a. Paved off-street parking is provided in an amount as determined by the board of zoning appeals.
 - b. Trash and litter control and waste collection areas are provided by the petitioner.
 - (4) In M2 and M3 districts, the treatment, storage and disposal of toxic waste or infectious materials, but only if the use has:
 - a. Been reviewed and a report issued by the city environmental affairs department, the city fire department and the city health and human services department. The review shall be conducted using any available information and shall include any applicable United States Environmental Protection Agency, the state department of environmental management or local, state or federal laws, regulations or standards;
 - b. The department's report, including a recommendation as to whether the health and safety standards have met, has been submitted to the zoning administrator, and
 - c. Met the health and safety standards set by the departments listed above.
 - (5) The petitioner documents and presents to the commission that proposed special exception provides for the implementation of sustainable growth principles and initiatives as approved by the commission.
- (b) The board of zoning appeals may impose those restrictions and conditions upon the premises benefited by an exception as may be necessary to prevent injurious effects therefrom upon other property in the neighborhood and better to carry out the general intent of this chapter.

(Code 1960, § 6-1310; Code 1989, § 163.033; Ord. No. 3376; Ord. No. 4144; Ord. No. 4515, 12-13-1970; Ord. No. 7394, § 2, 11-6-2002; Ord. No. 8256, § 1(163.033), 2-17-2009)

Secs. 123-111—123-133. - Reserved.

ARTICLE III. - ZONING DISTRICTS

DIVISION 1. - GENERALLY

Sec. 123-134. - Division of districts.

In order to carry out the purposes and provisions of this article, the city is divided into the following zoning districts:

(1) *Residence districts.*

a.	R1	One-family dwelling district.	Maximum floor area ratio of 0.5.
b.	R1A	One-family dwelling district.	Maximum floor area ratio of 0.5.
c.	R2	Single-family dwelling district.	Maximum floor area ratio of 0.5.
d.	R3	Single-family dwelling district.	Maximum floor area ratio of 0.5.
e.	R4	Two-family dwelling district.	Maximum floor area ratio of 0.75.
f.	R5	Multiple-family dwelling district.	Maximum floor area ratio of 1.0.
g.	R6	Multiple-family dwelling district.	Maximum floor area ratio of 2.0.
h.	R7	Multiple-family dwelling district.	Maximum floor area ratio of 3.0.

(2) *Business districts.*

a. B1 Limited retail districts.

1.	B1-1	Maximum floor area ratio of 1.5.
2.	B1-2	Maximum floor area ratio of 2.0.

b. B2 General retail districts.

1.	B2-1	Maximum floor area ratio of 1.5.
2.	B2-2	Maximum floor area ratio of 2.5.

3.	B2-3	Maximum floor area ratio of 3.5.
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c. B3 Limited service districts.

1.	B3-1	Maximum floor area ratio of 1.5.
2.	B3-2	Maximum floor area ratio of 2.5.

d. B4 General service districts.

1.	B4-1	Maximum floor area ratio of 2.0.
2.	B4-2	Maximum floor area ratio of 3.5.
3.	B4-3	Maximum floor area ratio of 4.0.

e. B5 Wholesale and motor vehicle districts.

	B5-1	Maximum floor area ratio of 2.5.
	B5-2	Maximum floor area ratio of 3.5.

(3) *Manufacturing districts.*

a. M1 Limited manufacturing districts.

1.	M1-1	Maximum floor area ratio of 1.0.
2.	M1-2	Maximum floor area ratio of 1.5.

b. M2 General manufacturing districts.

1.	M2-1.	Maximum floor area ratio of 1.5.
2.	M2-2.	Maximum floor area ratio of 2.0.

c. M3 Heavy industrial district. Maximum floor area ratio of 5.0.

(4) *Floodplain district*. F1 Floodplain district.

(Code 1960, § 6-301; Code 1989, § 163.013; Ord. No. 3376; Ord. No. 8256, § 1(163.013), 2-17-2009)

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Sec. 123-135. - Performance standards.

The performance standards for the M1 Manufacturing District, as set forth in section 123-217 regarding noise, odorous matter, vibration, toxic or noxious matter, glare or heat, and fire and explosive hazards, shall also apply to all residence or business districts.

(Code 1960, § 6-508; Code 1989, § 163.010; Ord. No. 3376; Ord. No. 8256, § 1(163.010), 2-17-2009)

Secs. 123-136—123-153. - Reserved.

DIVISION 2. - RESIDENCE DISTRICTS

Sec. 123-154. - Use and bulk regulations.

Use and bulk regulations applying specifically to residence districts are set forth in this division. Also applying to residence districts are additional regulations set forth as follows:

- (1) Article I of this chapter.
- (2) Article II of this chapter.
- (3) Article V of this chapter.
- (4) Chapter 117.

(Code 1960, § 6-601; Code 1989, § 163.050; Ord. No. 3376; Ord. No. 8256, § 1(163.050), 2-17-2009)

Sec. 123-155. - R1 and R1A One-Family Dwelling Districts.

(a) The following land uses are authorized as permitted uses:

- (1) Residential uses, as follows: single-family detached dwellings.
- (2) Community services uses, as follows: schools, elementary and high, non-boarding and including playgrounds and athletic fields auxiliary thereto.
- (3) Miscellaneous uses, as follows: agricultural uses, including nurseries and truck gardens but not including the raising of poultry or livestock, provided no offensive odor or dust is created and there is no sale of products not produced on the premises.
- (4) Uses incidental to principal permitted uses, as follows:
 - a. Accessory uses.

- b. Home occupations to permit by exception existing beauty shops and barbershops licensed by the state who does not involve employed persons and is distinct and separate from residential quarters, provided the owner location, and license number are registered within 30 days after the adoption of this amendment in the official commission and the use is not reinstituted if terminated or relinquished for any reason by the original registrant.
- c. Temporary buildings for construction purposes, for a period not to exceed the duration of the construction.

(b) The following land uses are authorized as transitional land uses section 123-59(a):

- (1) When bordering a residential or business district, a two-family detached dwellings and group living structures.
- (2) When tangential to a business district, principal offices of professional persons for the practice of medicine, dentistry, law, architecture, engineering and similar professions. Each office must be situated in the same dwelling unit as the home of the occupant, with not more than two persons other than members of the occupant's immediate family employed; and the residential character of the exterior of the dwelling shall be entirely maintained, except for the display of the accessory business signs permitted under the provisions of chapter 117.

(c) The following land uses may be allowed as special uses by approval of the board of zoning appeals of the city in accordance with this chapter:

- (1) Cemeteries, including crematories and mausoleums in conjunction therewith, if not located within 300 feet of any other property in a residence district.
- (2) Colleges or universities, but not business colleges or trade schools.
- (3) Convents and monasteries.
- (4) Hospitals, nursing home/convalescent center; assisted living center; intermediate care facility; independent living center; group home - community residence, state-licensed;
- (5) Golf courses, but not including commercially-operated driving ranges or miniature golf courses.
- (6) Institutions for children.
- (7) Open spaces, parks, playgrounds, and community centers, publicly and privately owned and operated.
- (8) Planned developments, residential.
- (9) Public utility and public service uses, including the following:
 - a. Bus turnarounds (off-street).
 - b. Fire stations.
 - c. Police stations.
 - d. Public art galleries and museums.
 - e. Telephone exchanges.
 - f. Railroad facilities.
 - g. Water filtration plants.
 - h. Water pumping stations.
 - i. Public libraries.
 - j. Water reservoirs.
 - k. Electric and gas public utilities.
- (10) Community and recreational buildings, privately owned and operated, not-for profit.

- (11) Nursery schools and day care.
 - (12) Type I manufactured homes.
 - (13) Accessory off-street motor vehicle parking lots for other than residential uses.
 - (14) Churches, temples, mosques, or other places of religious worship, including rectors and parish houses.
- (d) Every single-family detached dwelling hereafter erected and every two-family detached dwelling hereafter established as a transitional land use shall be on a zoning lot having a minimum area of 5,000 square feet and a minimum width of 59 feet at the building line. However, a lot of record on the effective date of the ordinance from which this chapter is derived which is less than 5,000 square feet in area or 40 feet in width may be improved with a single-family detached dwelling or a two-family detached dwelling as a transitional land use where authorized by the board of appeals in accordance with the provisions of this chapter.
- (e) Minimum lot sizes for special uses shall be prescribed by the common council with the advice of the plan commission at the time a special use permit is authorized, but in no case shall any lot size be less than 12,000 square feet in area nor less than 80 feet in width.
- (f) The floor area ratio of buildings and structures on a zoning lot shall not exceed 0.5.
- (g) The maximum building coverage on a zoning lot shall not exceed 40 percent.
- (h) On every zoning lot, a front yard shall be provided. In no case shall the front yard be less in depth than 25 feet or 20 percent of the lot depth, whichever is less. The minimum depth shall be extended to not more than 40 feet where lots comprising 40 percent of the frontage on the same street and within the same block are developed, with buildings having front yards with a variation of not more than ten feet in depth, the average of front yards to establish the minimum front yard depth for the entire frontage of the street within the same block.
- (1) For buildings exceeding 25 feet in height, the minimum front yard determined above shall be increased by one foot for each two feet or fraction thereof by which the building height exceeds 25 feet, but in no case shall a front yard of more than 40 feet be required.
 - (2) Required front yards shall be unobstructed from ground level to sky except as otherwise provided in section 123-333.
- (i) On every zoning lot, side yards shall be provided as follows:
- (1) On a lot improved with a single-family detached dwelling of one story in height, a side yard shall be provided along each side lot line. The combined widths of both side yards shall be at least 12 feet or 20 percent of the lot width, whichever is less, provided neither side yard is less than five feet in width.
 - (2) On a lot improved with a one-family detached dwelling of more than one story in height above grade, or with a two-family detached dwelling as a transitional land use, a side yard shall be provided along each side lot line. The combined widths of both side yards shall be at least 15 feet or 25 percent of the lot width, whichever is less, provided neither side yard is less than five feet in width.
 - (3) For all other buildings on a lot improved with a building other than a residential dwelling, a side yard shall be provided along each side lot line. Each side yard shall be not less in width than one-half of the building height as defined in this chapter, but in no case less than 15 feet; however, this paragraph shall not pertain to section 123-155(a).
 - (4) On a reversed corner lot, the side yard adjacent to the street shall not in any case be less than ten feet in width, except as provided in section 123-155(i)(5).
 - (5) If a lot of record on the effective date of the ordinance from which this chapter is derived which is 40 feet or

less in width is to be improved with a one-family detached dwelling, and if an adjacent lot is already improved with a principal building, the side yard contiguous to the adjacent improved lot may be reduced below five feet but not below three feet, provided there is a minimum distance of ten feet between buildings and provided the combined width of both side yards of the subject lot shall in no case be less than eight feet.

(6) Required side yards shall be unobstructed from ground level to sky except as otherwise provided in section 123-333.

- (j) On every zoning lot, a rear yard shall be provided. The rear yard shall be not less in depth than two-thirds of the building height, as defined in this chapter, but in no case less than 30 feet. Required rear yards shall be unobstructed from ground level to sky, except as otherwise provided in section 123-333.
- (k) A one-story residential dwelling hereafter erected shall not have a total ground floor area of less than 1,200 square feet, and a dwelling of more than one story shall not have a total floor area of less than 1,500 square feet. For the purposes of this determination, each floor shall be considered to be a continuous and unbroken surface extending to the exterior surfaces of exterior walls, but the following shall not be included in the measurement of floor area: basements or cellars if more than 25 percent of the story height is below finished grade; open porches; breezeways; accessory buildings, attached or detached; and other spaces not designed primarily for dwelling purposes.

(Code 1960, §§ 6-602—6-605, 6-607—6-610, 6-611—6-613; Code 1989, § 163.051; Ord. No. 3376; Ord. No. 3376; Ord. No. 3402; Ord. No. 3752; Ord. No. 3764; Ord. No. 3812; Ord. No. 3924; Ord. No. 3937; Ord. No. 4016; Ord. No. 4018; Ord. No. 4058; Ord. No. 4264; Ord. No. 4316; Ord. No. 4515, 12-13-1970; Ord. No. 5965, 2-7-1984; Ord. No. 6894, §§ 2—4, 5-20-1997; Ord. No. 8256, § 1(163.051), 2-17-2009)

Sec. 123-156. - R2 Single-Family Dwelling Districts.

- (a) The following land uses are authorized as permitted uses: any land use authorized as a permitted use in an R1 and R1A district as set forth in section 123-155(a).
- (b) If not authorized as a permitted use in an R1 and R1A district or herein, the following land uses are authorized as transitional uses: any land use authorized as a transitional use in an R1 and R1A district as set forth in section 123-155(b).
- (c) If not authorized as a permitted use or a transitional use in an R1 and R1A district or herein, the following land uses are authorized as special uses: any land use authorized as a special use in an R1 and R1A district as set forth in section 123-155(c).
- (d) Every single-family detached dwelling hereafter erected and every two-family detached dwelling hereafter established as a transitional use shall be on a zoning lot having a minimum area of 6,000 square feet and a minimum width of 50 feet at the building line. However, a lot of record on the effective date of the ordinance from which this chapter is derived which is less than 6,000 square feet in area or 50 feet in width may be improved with a single-family detached dwelling where authorized by the board of appeals in accordance with the provisions of this chapter.
- (e) The floor area ratio of buildings and structures on a zoning lot shall not exceed 0.5.
- (f) The maximum building coverage on a zoning lot shall not exceed 35 percent.
- (g) The regulations governing front yards in an R1 district, as set forth in section 123-155(h), shall apply.
- (h) The regulations governing side yards in an R1 district, as set forth in section 123-155(i) shall apply in an R2 district.

(i) The regulations governing rear yards in an R1 district as set forth in section 123-155(j) shall apply in an R2 district. (Code 1960, §§ 6-614—6-620; Code 1989, § 163.052; Ord. No. 3376; Ord. No. 3930; Ord. No. 4013; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.052), 2-17-2009)

Sec. 123-157. - R3 Single-Family Dwelling Districts.

- (a) The following land uses are authorized as permitted uses: any use permitted in an R2 district, as set forth in section 123-156(a).
- (b) If not authorized as a permitted use in an R2 district or herein, the following land uses are authorized as transitional uses: any land use authorized as a transitional use in an R2 district as set forth in section 123-156(b).
- (c) If not authorized as a permitted use or a transitional use in an R2 district or herein, any land use authorized as a special use in an R2 district as set forth in section 123-156(c).
- (d) Every single-family detached dwelling hereafter erected and every two-family detached dwelling hereafter established as a transitional use shall be on a zoning lot having a minimum area of 7,000 square feet and a minimum of 60 feet at the building line. However, a lot of record on the effective date of the ordinance from which this chapter is derived which is less than 7,000 square feet in area or 60 feet in width may be improved with a single-family detached dwelling where authorized by the board of zoning appeals in accordance with 53 163.020 through 163.043.
- (e) The floor area ratio of buildings and structures on a zoning lot shall not exceed 0.5.
- (f) The maximum building coverage of all principal buildings on a zoning lot shall not exceed 35 percent.
- (g) The regulations governing front yards in an R2 district, as set in section 123-156(g) shall apply.
- (h) The regulations governing side yards in an R2 district, as set forth in section 123-156(h) shall apply in an R3 district.
- (i) The regulations governing rear yards in an R2 district, as set forth in section 123-156(i) shall apply in an R3 district. (Code 1960, §§ 6-621—6-624—6-629; Code 1989, § 163.053; Ord. No. 3376; Ord. No. 3930; Ord. No. 4012; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.053), 2-17-2009)

Sec. 123-158. - R4 Two-Family Dwelling Districts.

- (a) The following land uses are authorized as permitted uses: any use permitted in an R3 district, as set forth in section 123-157(a); two-family detached dwellings and open spaces, parks, playgrounds, and community centers, publicly and privately owned and operated.
- (b) If not authorized as a permitted use in an R3 district or herein, the following land uses are authorized as transitional uses: any land use authorized as a transitional use in an R3 district as set forth in section 123-157(b); attached home (town home or row house) dwellings, party-wall type; and multiple-family detached dwellings.
- (c) If not authorized as a permitted use or a transitional use in an R3 district or herein, any land use authorized as a special use in an R3 district as set forth in section 123-157(c), including the following: grocery or convenience stores, less than 6,000 square feet and on corner lot and mobile home parks.
- (d) Further, the residential character of the exterior of the dwelling must be entirely maintained, except for the display of those accessory business signs that are permitted under the provisions of this chapter.
- (e) Any permitted use hereafter erected or established shall be on a zoning lot having a minimum area of 5,000 square feet and a minimum width of 40 feet at the building line, provided a lot of record on the effective date of

the ordinance from which this chapter is derived which is less than 5,000 square feet in area or 40 feet in width may only be improved with a single-family detached dwelling where authorized by the board of appeals in accordance with this chapter.

- (f) The floor area ratio of buildings and structures on a zoning lot shall not exceed 0.75.
- (g) The maximum building coverage on a zoning lot shall not exceed 40 percent.
- (h) The regulations governing front yards in an R3 district, as set forth in section 123-157 shall apply.
- (i) On every zoning lot, side yards shall be provided as follows:
 - (1) The regulations governing side yards for single-family detached dwelling shall be one story in height in a R1 and R1A district, as set forth in section 123-155(i)(1), shall apply in an R4 district.
 - (2) On a lot improved with a permitted use of more than one story in height a side yard shall be provided along each side lot line. The combined widths of both side yards shall be at least 15 feet or 25 percent of the lot width, whichever is less, provided neither side yard is less than five feet in width.
 - (3) On a lot improved with any non-residential building, a side yard shall be provided along each side of lot line. Each side yard shall be not less in width than one-third of the building height, but in no case less than 12 feet.
 - (4) On a lot to be improved with an authorized transitional use, a side yard shall be provided along each side lot line. The combined widths of both side yards shall not be less than 16 feet, or 20 percent of the lot width, whichever is less, provided neither side yard is less in width than one-fifth of the building height, but in no case less than five feet, unless:
 - a. On a lot to be improved with a residential building having a building width, as defined in section 123-134, in excess of 80 feet, a side yard shall be provided along each side lot line. Each side yard shall be not less in width than ten percent of the building width or 20 percent of the building height, whichever computed yard width is the greater.
 - b. On a lot improved with a nonresidential building, a side yard shall be provided along each side lot line. Each side yard shall be not less in width than one-third of the building height but in no case less than 12 feet.
 - (5) On a reversed corner lot, the side yard adjacent to the street shall not in any case be less than ten feet in width, except as provided in subsection (i)(4) of this section.
 - (6) If a lot of record on the effective date of the ordinance from which this chapter is derived is 40 feet or less in width and is to be improved with a single-family detached dwelling, and if an adjacent lot is already improved with a principal building, then the side yard contiguous to the adjacent improved lot may be reduced below five feet, but not below three feet, provided there is a minimum distance of ten feet between buildings and provided the combined width of both side yards shall in no case be less than eight feet.
 - (7) For all other building on a lot improved with a building other than a residential dwelling, a side yard shall be provided along each side lot line. Each side yard shall be not less in width than chapter, but in no case less than 15 feet. However, this subsection shall not pertain to section 123-155(a)(4).
 - (8) On a reversed corner, the side yard adjacent to the street shall not in any case be less than ten feet in width, except as provided in section 123-158(h).
 - (9) If a lot of record on the effective date of the ordinance from which this chapter is derived which is 40 feet or less in width is to be improved with a single-family detached dwelling, and if an adjacent lot is already improved with a principal building, the side yard contiguous to the adjacent improved lot may be reduced

below five feet but not below three feet, provided there is a minimum distance of ten feet between buildings, and provided the combined width of both side yards of the subject lot shall in no case be less than eight feet.

- (10) Required side yards shall be unobstructed from ground level to sky except as otherwise provided in section 123-333.

(j) The regulations governing rear yards in an R3 district, as set forth in section 123-157(i) shall apply in an R4 district. (Code 1960, §§ 6-630—6-637, 6-638; Code 1989, § 163.054; Ord. No. 3376; Ord. No. 3736; Ord. No. 3930; Ord. No. 4011; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.054), 2-17-2009)

Sec. 123-159. - R5 Multiple-Family Dwelling Districts.

- (a) The following land uses are authorized as permitted uses:

- (1) Any use permitted in an R4 district as set forth in section 123-158(a).
- (2) Additional residential uses, as follows:
 - a. Attached home (town home or row house) dwellings, party-wall type;
 - b. Multiple-family detached dwellings;
 - c. Multiple-family dwellings.
- (3) Additional nonresidential uses, as follows: Principal offices of professional persons for the practice of medicine, dentistry, law, architecture, engineering and similar professions, except for the display of the accessory business signs permitted under the provisions of chapter 117, all limited to the ground floor.

- (b) If not authorized as a permitted use in an R4 district or herein, the following land uses are authorized as transitional uses: any land use authorized as a transitional use in an R4 district as set forth in section 123-158(b), including:

- (1) Planned developments, residential.
- (2) Public utility and public service uses, including the following.
 - a. Bus turnarounds (off-street).
 - b. Fire stations.
 - c. Police stations.
 - d. Public art galleries and museums.
 - e. Telephone exchanges.
 - f. Railroad facilities.
 - g. Water filtration plants.
 - h. Water pumping stations.
 - i. Public libraries.
 - j. Water reservoirs.
 - k. Electric and gas public utilities.
- (3) Community and recreational buildings whether privately owned and operated or not-for-profit.
- (4) Nursery schools and day-care.
- (5) Type I manufactured homes.
- (6) Accessory off-street motor vehicle parking lots for other than residential uses.

(7) Churches, temples, mosques, rectors, parish houses.

- (c) If not authorized as a permitted use or a transitional use in an R4 district or herein, any land use authorized as a special use in an R4 district as set forth in section 123-158(c), including the following:
- (1) Nursing home/convalescent center;
 - (2) Assisted living center;
 - (3) Intermediate care facility;
 - (4) Independent living center;
 - (5) Group home - community residence, state-licensed;
- (d) For every residential dwelling unit established hereafter in R5 district, there shall be provided a minimum of 1,200 square feet of lot area. No existing land use shall be converted in such a way as to conflict with or further conflict with these requirements. No residential building shall be established hereafter on a lot which is less than 5,000 square feet in area and 40 feet in width at the building line, provided a lot of record on the effective date of the ordinance from which this chapter is derived which is less than 5,000 square feet in area or 40 feet in width may be improved with a single-family detached dwelling where authorized by the board of appeals in accordance with this chapter. No principal building other than a permitted residential building shall hereafter be established on a zoning lot having an area of less than 9,000 square feet and a width of less than 75 feet.
- (e) The floor area ratio of buildings and structures on a zoning lot shall not exceed 1.0.
- (f) The maximum building coverage on a zoning lot shall not exceed 40 percent.
- (g) The regulations governing front yards in an R4 district, as set forth in section 123-158(h) shall apply.
- (h) On every zoning lot, side yards shall be provided as follows:
- (1) On a lot to be improved with a residential building, a side yard shall be provided along each side lot line. The combined widths of both side yards shall not be less than 16 feet, or 20 percent of the lot width, whichever is less, provided neither side yard is less in width than one-fifth of the building height, but in no case less than five feet.
 - (2) On a lot to be improved with a residential building having a building width, as defined in section 123-134, in excess of 80 feet, a side yard shall be provided along each side lot line. Each side yard shall be not less in width than ten percent of the building width or 20 percent of the building height, whichever computed yard width is the greater.
 - (3) On a lot improved with a nonresidential building, a side yard shall be provided along each side lot line. Each side yard shall be not less in width than one-third of the building height but in no case less than 12 feet.
 - (4) On a reversed corner lot, the side yard adjacent to the street shall not in any case be less than ten feet in width.
 - (5) If a lot of record on the effective date of the ordinance from which this chapter is derived is 40 feet or less in width and is to be improved with a single-family detached dwelling, and if an adjacent lot is already improved with a principal building, then the side yard contiguous to the adjacent improved lot may be reduced below five feet, but not below three feet, provided there is a minimum distance of ten feet between buildings and provided the combined width of both side yards shall in no case be less than eight feet.
 - (6) Required side yards be unobstructed from ground level except as otherwise provided in section 123-333.
- (i) On every zoning lot, a rear yard of not less than 30 feet in depth shall be provided. Required rear yards shall be unobstructed from ground level to the sky, except as otherwise provided in section 123-333. Rear yard

requirements shall not apply to a through lot. However, on a through lot which measures at least 125 feet in depth, street to street, there shall be provided either of the following:

- (1) An unobstructed open strip located midway between the streets on which the lot fronts, and running across the full width of the lot, the strip to be at least ten feet in depth plus an additional two feet deep for every five feet or fraction thereof by which the lot depth exceeds 125 feet, to a total depth of 60 feet; or
- (2) An unobstructed open strip along all adjacent lot lines other than street lines, the strip to be at least five feet wide plus an additional one foot wide for every five feet or fraction thereof by which the lot depth exceeds 125 feet, to a total width of 30 feet.

(Code 1960, §§ 6-639—6-646; Code 1989, § 163.055; Ord. No. 3376; Ord. No. 3764; Ord. No. 3930; Ord. No. 4014; Ord. No. 4739, 12-19-1972; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.055), 2-17-2009)

Sec. 123-160. - R6 Multiple-Family Dwelling Districts.

- (a) The following land uses are authorized as permitted uses: any use permitted in an R5 district as set forth in section 123-159(a).
- (b) If not authorized as a permitted use in an R5 district or herein, the land uses authorized as transitional uses in an R5 district.
- (c) If not authorized as a permitted use or a transitional use in an R5 district or herein, any land use authorized as a special use in an R5 district as set forth in section 123-158(c).
- (d) For every dwelling unit established hereafter in an R6 district, there shall be provided a minimum of 1,250 square feet of lot area. No existing use shall be converted in such a way as to conflict with or further conflict with these requirements.
- (e) No residential building shall be established hereafter on a lot which is less than 7,500 square feet in area and 60 feet in width, provided a lot of record on the effective date of the ordinance from which this chapter is derived which is less than 7,500 square feet in area or 60 feet in width may be improved with a single-family detached dwelling where authorized by the board of appeals in accordance with this chapter.
- (f) The floor area ratio of buildings and structures on a zoning lot shall not exceed 2.0.
- (g) The maximum building coverage of all principal buildings on a zoning lot shall not exceed 40 percent.
- (h) The regulations governing front yards in an R5 district, as set forth in section 123-159(g) shall apply.
- (i) The regulations governing side yards in an R5 district, as set forth in section 123-159(h) shall apply.
- (j) The regulations governing rear yards in the R5 district, as set forth in section 123-159(j), shall apply. However, a rear yard in R6 may begin at a height of not more than six feet above curb level for the sole purpose of providing enclosed accessory off-street parking facilities beneath. However, when so elevated above normal grade level, there shall be no accessory buildings or other permanent structures erected on the yard and it shall be otherwise unobstructed from the lowest level to the sky, except as provided in section 123-333, when not in conflict with the foregoing requirement.

(Code 1960, §§ 6-647—6-539, 6-650—6-654; Code 1989, § 163.056; Ord. No. 3376; Ord. No. 4015; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.056), 2-17-2009)

Sec. 123-161. - R7 Multiple-Family Dwelling Districts.

- (a) The following land uses are authorized as permitted uses: any use permitted in an R6 district as set forth in

section 123-160(a).

- (b) If not authorized as a permitted use in an R6 district or herein, the land uses authorized as transitional uses in an R6 district.
- (c) If not authorized as a permitted use or a transitional use in an R6 district or herein, any land use authorized as a special use in an R6 district as set forth in section 123-158(c).
- (d) For every dwelling unit established hereafter in an R6 district, there shall be provided a minimum of 6,000 square feet of lot area. No existing use shall be converted in such a way as to conflict with or further conflict with these requirements.
- (e) No residential building shall be established hereafter on a lot which is less than 10,000 square feet in area and 80 feet in width, provided a lot of record on the effective date of the ordinance from which this chapter is derived which is less than 10,000 square feet in area or 80 feet in width may be improved with a single-family detached dwelling where authorized by the board of appeals in accordance with this chapter.
- (f) The floor area ratio of buildings and structures on a zoning lot shall not exceed 3.0.
- (g) The maximum building coverage of all principal buildings on a zoning lot shall not exceed 50 percent.
- (h) The regulations governing front yards in an R6 district, as set forth in section 123-160(g) shall apply.
- (i) The regulations governing side yards in an R6 district, as set forth in section 123-160(h) shall apply.
- (j) The regulations governing rear yards in the R6 district, as set forth in section 123-160(j), shall apply.
- (k) No amendment shall be passed to change the zoning district of any lot, lots, or parcels of land to the R7 district zoning classification unless the lot, lots, or parcels of land are either zoned to the R5 or R6 zoning classification, or are of a business zoning classification with a floor area ratio of at least 2.5.

(Code 1960, §§ 6-655—6-663; Code 1989, § 163.057; Ord. No. 3800; Ord. No. 3800; Ord. No. 3930; Ord. No. 4875, 4-9-1974; Ord. No. 5965, 2-7-1984; Ord. No. 6894, § 5, 5-20-1997; Ord. No. 8256, § 1(163.057), 2-17-2009)

Secs. 123-162—123-190. - Reserved.

DIVISION 3. - BUSINESS DISTRICTS

Sec. 123-191. - Applicable regulations.

Use and bulk regulations applying specifically to business districts are set forth in this division. Also applying to business districts are additional regulations set forth in other sections of this part as follows:

- (1) Article I of this chapter.
- (2) Article II of this chapter.
- (3) Article V of this chapter.
- (4) Chapter 117.

(Code 1960, § 6-701; Code 1989, § 163.065; Ord. No. 3376; Ord. No. 8256, § 1(163.065), 2-17-2009)

Sec. 123-192. - B1 Limited retail districts.

- (a) The following conditions shall be placed upon the land uses authorized as permitted or special use land uses in a

B1 Limited Retail District:

- (1) Residential dwelling units of any type are not permitted below the second floor.
 - (2) All business establishments shall be:
 - a. Retail or service establishment dealing directly with consumers.
 - b. All goods produced on the premises shall be sold at retail on the premises where produced, and not more than three person in addition to a single owner or manager shall be engaged at any one time in fabricating, repairing, cleaning, or processing of goods or products in any establishment.
 - c. Establishments shall be developed as pedestrian-orientated and shall include human scale design/development elements.
 - d. The following establishment elements shall be prohibited:
 1. A drive-through/drive-up facility offering goods or services directly to customers waiting in parked or standing motor vehicles; and
 2. Related to an automobile orientated development.
 - e. Establishments shall not be permitted which primarily sell alcohol under any ABL (an alcoholic beverage license as issued by the state alcohol and tobacco commission).
 - (3) Business establishments classified as retail and service hereafter and authorized as permitted land uses are restricted to a maximum gross floor area of 12,500 square feet each, exclusive of any floor area devoted to off-street parking, shared parking or loading facilities.
 - (4) All business, servicing, processing, or storage, except for off-street parking or loading, shall be conducted or located within completely enclosed buildings.
- (b) In the B1-1 and B1-2 districts the following land uses are authorized as permitted land uses, contingent upon the conditions under subsection (a) of this section:
- (1) Neighborhood related and pedestrian-orientated retail and services uses, as follows:
 - a. Book and stationery stores.
 - b. Custom dressmaking, tailor and millinery shops.
 - c. Drug and pharmaceutical stores.
 - d. Dry cleaning and laundry receiving stations, processing to be done elsewhere.
 - e. Florist shops.
 - f. Food stores, including grocery stores, meat markets, bakeries, candy and ice cream shops, delicatessens.
 - g. Hardware and home improvement store.
 - h. Personal service salons and shops: barber and beauty shops and nail salons.
 - i. Photography studio.
 - j. Restaurants, including cafes, coffee shops, tea houses, and internet/computer cafes.
 - (2) Offices: business and professional.
 - (3) Miscellaneous uses, as follows:
 - a. Open spaces, plazas and common greens.
 - b. Shared parking facilities.
 - c. Post offices.

- d. Electric and gas public utilities.
 - e. Public libraries.
 - f. Nursery schools and day care/child care facilities, licensed by the state.
- (4) Residential land uses, subject to subsection (a)(1) of this section.
- (5) Uses incidental to principal permitted uses, as follows:
- a. Accessory uses.
 - b. Home occupations.
 - c. Temporary buildings for construction purposes for a period not to exceed the duration of the construction.
- (c) In the B1-1 and B1-2 districts, the following land uses may be allowed as special uses by the board of zoning appeals in accordance with the provisions of this chapter:
- (1) Existing churches, temples or mosques or other religious houses of worship, provided their original design, purpose and use was for a house of worship and has at least 1,200 square feet of floor area and the required amount of off-street parking.
 - (2) Convents, monasteries, rectories, parish houses.
 - (3) Group living structures, institutions for the aged or for children.
 - (4) Marquees and canopies and sign attached thereto as regulated in section 117-5.
 - (5) Municipal or privately owned recreation buildings or community centers.
 - (6) Public utility and public uses, including the following:
 - a. Public bus transit station, bus terminal, bus turnaround (off-street).
 - b. Fire stations.
 - c. Police stations.
 - d. Railroad passenger stations.
 - e. Railroad rights-of-way.
 - f. Water pumping stations.
 - g. Other similar public service land uses.
 - (7) Radio, television or telecommunication towers.
 - (8) Funeral parlors and undertaking establishments, with required parking facilities.
- (d) The maximum floor area ratio of buildings and structures on a zoning lot shall be as follows:
- (1) In a B1-1 district, the floor area ratio shall not exceed 1.5.
 - (2) In a B1-2 district, the floor area ratio shall not exceed 2.40.
- (e) Where a B1-1 or B1-2 district adjoins a residence district, transitional yards shall be provided in accordance with the following regulations:
- (1) In a B1-1 or B1-2 district, where a side lot line coincides with a side or rear lot line of property in an adjacent residence district, a yard shall be provided along the side lot line. The yard shall be equal in dimension to the minimum side yard which would be required under this chapter for a residential use on the adjacent property in the appropriate residence district.
 - (2) In a B1-1 or B1-2 district, where a rear lot line coincides with a side lot line of property in an adjacent

residence district, a yard shall be provided along the rear lot line. The yard shall be equal in dimension to the minimum side yard which would be required under this chapter for a residential use on the adjacent property in the appropriate residence district. In addition, in a B1-1 or B1-2 district, where a rear lot line coincides with a rear lot line of property in an adjacent residence district, a yard shall be provided along the rear lot line. The yard shall be 20 feet in depth, but may begin at a height of 25 feet, or one story above grade, whichever is lower.

- (3) In a B1-1 or B1-2 district, where the extension of a front or side lot line coincides with the front lot line of an adjacent lot located in a residence district, a yard equal in depth to the minimum front yard required by this chapter on the adjacent lot in the residence district shall be provided along the front or side lot line for a distance of at least 25 feet, including the width of any intervening alley, from the lot in the residence district.
- (4) Transitional yards shall be unobstructed from the lowest level to the sky, except as allowed in section 123-333.
- (f) In the B1-1 or B1-2 districts, a side yard shall not be required, except for transitional yard requirements under subsection (e) of this section.
- (g) In the B1-1 or B1-2 districts, a front yard shall not be required, except for transitional yard requirements under subsection (e) of this section.
- (h) In the B1-1 or B1-2 districts, a rear yard shall be provided for residential uses located above the first floor, the yard to be not less than 30 feet in depth and to begin at a level no higher than that of the finished floor of the lowest residential unit. Required rear yards shall be unobstructed from the lowest level to the sky, except as allowed in section 123-333.
- (i) In a B1-1 district, for every dwelling unit established hereafter, there shall be provided a minimum of 1,200 square feet living area. However, for every efficiency dwelling unit there shall be provided not less than 800 square feet.
- (j) In a B1-2 district, for every dwelling unit established hereafter there shall be provided a minimum of 1,000 square feet. However, for every efficiency dwelling unit there shall be provided not less than 800 square feet.
- (k) No dwelling unit shall be established hereafter on a lot which is less than 5,000 square feet in area and 40 feet in width at the building line, provided a lot of record on the effective date of the ordinance from which this chapter is derived, which is less than 5,000 square feet in area or 40 feet in width may be improved with a building containing not more than two dwelling units. However, when the lot of record is less than 40 feet in width and is in the same ownership on or after the effective date of the ordinance from which this chapter is derived as an adjoining unimproved lot on the same street, it shall not be improved with a residential use unless both lots are combined as a single zoning lot for this purpose or unless further re-subdivision produces the requisite 40 feet minimum lot width.
- (l) No existing land use shall be converted, altered, rehabilitated or redeveloped in such a way as to conflict with or further conflict with the minimum lot size requirements for the zoning district in which they are located.

(Code 1960, §§ 6-702—6-708; Code 1989, § 163.066; Ord. No. 3376; Ord. No. 3531; Ord. No. 3937; Ord. No. 4152; Ord. No. 4595, 11-23-1971; Ord. No. 4669, 7-11-1972; Ord. No. 4739, 12-19-1972; Ord. No. 5891, 2-1-1983; Ord. No. 5965, 2-7-1984; Ord. No. 6246, 6-22-1988; Ord. No. 6628, §§ 1, 2, 9-10-1992; Ord. No. 6894, § 6, 5-20-1997; Ord. No. 7232, 5-15-2001; Ord. No. 8256, § 1(163.066), 2-17-2009)

Sec. 123-193. - B2 General retail districts.

- (a) In the B2-1 to B2-3 districts, inclusive, the conditions placed upon the land uses authorized as permitted or special use land uses in a B1 Limited Retail District shall apply unless superceded under subsections (b) and (c) of this

section.

(b) In the B2-1 to B2-3 districts, inclusive, the following land uses are authorized as permitted land uses:

(1) Any land use permitted in the B1 Limited Retail Districts, as set forth in section 123-192(b), unless otherwise set forth or superseded hereafter.

(2) Additional retail and service establishments, as follows:

- a. Bank machines and automated teller machines (ATMs).
- b. Camera and photographic supply stores.
- c. Card and gift shops.
- d. Clothes pressing establishments.
- e. Garden supply and seed stores.
- f. Gift shops.
- g. Hobby stores, including but not limited to the collection of coins, stamps, limited edition/production goods.
- h. Laundries and dry cleaners, automatic, self-service type or hand limited to a laundry operation of a retail nature where the work handled comes directly from the customer to the shop, and any noise, vibration, odor, or exhaust fumes shall not be transmitted beyond the zoning lot of the permitted use.
- i. Locksmith shops.
- j. Massage therapy salons.
- k. Musical instrument stores, including minor repairs.
- l. Office supply stores.
- m. Picture framing establishments, when conducted for retail trade on the premises only.
- n. Pet shops, sale of domestic animals and aquarium fish.
- o. Schools, including music, dance, or business.
- p. Shoe and hat repair stores.
- q. Tailor shops.
- r. Machinery sales rooms, with no repair or servicing, provided storage and display of machinery, except of household appliances and office machines such as typewriters, are restricted to new floor samples.
- s. Schools, including music, dance, business or trade.
- t. Ticket agencies, recreational and amusement.
- u. Travel bureaus and transportation ticket offices.
- v. Video and audio sales and rental establishments.
- w. Video arcade or video game establishments.

(c) In the B2-1 to B2-3 districts, inclusive, the following land uses are authorized and may be allowed as special uses by the board of zoning appeals in accordance with this chapter:

(1) Any land use authorized as a special land use in a B1 district as set forth in section 123-192(c) that is not listed as a permitted land use under subsection (b) of this section.

(2) Apartment buildings.

(3) Restaurants, including live entertainment and appropriate ABL (alcoholic beverage license) issued by the state

alcohol and tobacco commission.

(4) Automotive dependant and related retail and service establishments, subject to the following:

- a. An automobile service station shall not hereafter be erected except on a lot on the corner of an intersection of two streets or a lot situated on the corner where one street runs into another; the lot on which any automobile service station shall be hereafter erected shall have not less than 75 feet frontage on one street and not less than 100 feet frontage on the other street.
- b. No portion of any building shall be less than 30 feet from any front property line or less than ten feet from any side or rear property line, nor shall any portion of any building be within 100 feet of a residential building.
- c. No gasoline pumps less than 20 feet from any front line.
- d. Any portion of a lot used for any automobile service station shall not be less than 200 feet away from any public, parochial, or other school, playground, hospital, church, or public library.
- e. There shall not be more than one access way to any one public street unless the dimensions of the lot on the street exceeds 100 feet; then two access ways may be permitted on the street.
- f. Along any street line on which the property abuts, a protective curb which meets city specifications shall be erected, and the curb shall be continuous except for the permitted 30-foot openings for accessways.
- g. Whenever considered necessary for the protection of adjoining properties, either to reduce disturbance from noise or to form a harmonious and aesthetic transition from other commercial uses or from adjoining residential uses, the plan commission may require the erection of a fence or wall of whatever height they deem necessary, along the rear and side property lines, and that the fence or wall be supplemented with suitable planting of grass, trees, or shrubbery.
- h. Automobile service stations erected in shopping centers will not be required to follow the regulation of being placed at an intersection as so stated herein, but these stations must comply with all other subdivisions herein.
- i. An application for a special use permit may not be made for an automobile service station if the station will be utilized for the sale principally of the products of a particular oil company, if at the time of the application the oil company has any interest, whether by lease, deed, or contract, in any vacant or non-operating auto service station or stations, unless and until the land the vacated or non-operating station is environmentally mitigated.
- j. For the purpose of enforcing these provisions, the city plan commission shall have the right to call for and review any presently existing or proposed documents concerning any auto service station special use permit location, presently existing or proposed, including but not limited to deeds, options, leases, assignments, and contracts.

(d) The maximum floor area ratio of buildings and structures on a zoning lot shall be as follows:

- (1) In a B2-1 district the floor area ratio shall not exceed 1.5.
- (2) In a B2-2 district the floor area ratio shall not exceed 2.5.
- (3) In a B2-3 district the floor area ratio shall not exceed 3.5.

(e) In the B2-1 to B2-3 districts, inclusive, the regulations governing transitional yards in the B1 districts, as set forth in section 123-192(e) shall apply.

(f) In the B2-1 to B2-3 districts, inclusive, regulations governing side yards in the B1 districts, as set forth in section

123-192(f) shall apply.

- (g) In the B2-1 to B2-3 districts, inclusive, regulations governing front yards in the B1 districts, as set forth in section 123-192(g) shall apply.
- (h) In the B2-1 to B2-3 districts, inclusive, regulations governing rear yards in the B1 districts, as set forth in section 123-192(h) shall apply.
- (i) In the B2-1 to B2-3 districts, inclusive, regulations governing the minimum living areas in a B1-2 district, as set forth in section 123-192(i) shall apply.
- (j) An apartment building or similar multi-family dwelling unit shall not be established hereafter on a lot which is less than 7,500 square feet in area and 60 feet in width at the building line, provided a lot of record on the effective date of the ordinance from which this chapter is derived, which is less than 7,500 square feet in area or 60 feet in width may be improved with a building containing not more than two dwelling units. However, when the lot of record is less than 60 feet in width and is in the same ownership on or after the effective date of the ordinance from which this chapter is derived as an adjoining unimproved lot on the same street, it shall not be improved with a residential use unless both lots are combined as a single zoning lot for this purpose or unless further re-subdivision produces the requisite 60 feet minimum lot width.
- (k) No existing land use shall be converted, altered, rehabilitated or redeveloped in such a way as to conflict with or further conflict with the minimum lot size requirements for the zoning district in which they are located.

(Code 1960, §§ 6-709—6-715; Code 1989, § 163.067; Ord. No. 3376; Ord. No. 4284; Ord. No. 4285; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.067), 2-17-2009)

Sec. 123-194. - B3 Limited Service Districts.

- (a) In the B3-1 and B3-2 districts, inclusive, the conditions placed upon the land uses authorized as permitted or special use land uses in a B2 Limited Retail District shall apply unless superceded under subsections (b) and (c) of this section or as follows:
 - (1) All goods produced on the premises shall be sold at retail on the premises where produced.
 - (2) Business and wholesale establishments classified as retail and service hereafter are restricted to a maximum gross floor area of 15,000 square feet each exclusive of any floor area devoted to off-street parking or loading facilities, except for any development established as a business mixed use development or lifestyle center development (see subsection (a)(3) of this section).
 - (3) A business mixed use development or lifestyle center development on a site in excess of 75,000 square feet shall be developed within sustainable growth and/or sensible development principles and initiatives as approved by the commission.
 - (4) Business and wholesale establishments classified as retail and service hereafter may include drive-through/drive-up facilities.
 - (5) All business, servicing, processing, or storage, except for off-street parking or loading, shall be conducted or located within completely enclosed buildings unless otherwise indicated hereafter and except when establishment's of the through/drive-up facility offer goods and service directly to customers waiting in parked motor vehicles.
- (b) In the B3-1 and B3-2 districts, inclusive, the following land uses are authorized as permitted land uses:
 - (1) Any land use permitted in the B2 General Retail Districts, as set forth in section 123-193(b), unless otherwise

set forth or superseded hereafter.

(2) Additional retail and service establishments, as follows:

- a. Antique shops, resale store, consignment store, excluding thrift shops.
- b. Art and school supply stores.
- c. Art galleries.
- d. Banquet halls;
- e. Banks and financial institutions, including currency exchanges.
- f. Carpet, rug, and linoleum stores.
- g. China and glassware stores.
- h. Employment agencies.
- i. Furniture stores, including upholstering when conducted as part of the retail operations and secondary to the principal use.
- j. Furrier shops, including the incidental storage and conditioning of furs.
- k. Health/fitness center, privately owned.
- l. Hotel and motel.
- m. Clothing stores.
- n. Interior decorating shops, including upholstering and making of draperies, slip covers, and other similar articles, when conducted as part of the retail operations and secondary to the principal use.
- o. Jewelry stores, including watch repair.
- p. Leather goods and luggage stores.
- q. Medical and dental offices and clinics.
- r. Movie theater, indoor.
- s. Museum/cultural facility.
- t. Optician shops.
- u. Pawnshop.
- v. Photograph developing and processing shops.
- w. Physical culture and health services, including gymnasiums, swimming pools, reducing salons, state licensed message therapy salons.
- x. Radio/television station;
- y. Restaurants, including live entertainment and dancing and appropriate ABL (alcoholic beverage license) issued by the state alcohol and tobacco commission.
- z. Sewing machine stores, household machines only.
- aa. Sporting goods stores.
- bb. Theater (dramatic, operatic, musical, or other live theatrical performance).
- cc. Tobacco shops.
- dd. Toy shops.
- ee. Trade/business/vocational educational facility or college/university.

- ff. Transit station or terminal.
 - gg. Variety stores.
 - hh. Wineries, brew pubs, taverns, bars or night club with appropriate ABL (alcoholic beverage license) issued by the state alcohol and tobacco commission.
- (c) In the B3-1 and B3-2 districts, inclusive, the following land uses are authorized and may be allowed as special uses by the board of zoning appeals in accordance with this chapter:
- (1) Any land use authorized as a special land use in a B2 district as set forth in section 123-193(c) that is not listed as a permitted land use under subsection (b) of this section.
 - (2) Ambulance service.
 - (3) Amusement, athletic and entertainment establishments including bowling alleys, pool halls, dance halls, skating rinks, and other similar places of recreation and other amusement centers, including places of assembly devoted thereto, such as stadiums and arenas.
 - (4) Blueprinting and photostatting establishments.
 - (5) Caskets and casket supplies.
 - (6) Catering establishments.
 - (7) Controlled substance abuse center, subject to the following:
 - a. The proposed controlled substance abuse center shall be sited on an arterial street.
 - b. The proposed location and utilization of the controlled substance abuse center may not have a detrimental effect on the privacy, quiet, and light of the surrounding or adjacent structures.
 - c. Off-street parking must be provided for. Insofar as possible off-street parking facilities shall be grouped in bays, either adjacent to the street or in the interior of blocks. No off-street parking shall be more than 100 feet by the most direct pedestrian route from the door of the controlled substance abuse center. Common parking facilities for three or more automobiles shall provide space outside the public right-of-way for maneuvering incidental to parking.
 - d. There shall be provided a minimum of one parking space per staff person in the center.
 - e. There shall be provided a minimum of five parking spaces per individual practitioner in the center.
 - f. Off-street parking and loading areas and the entrance and exits of these areas will be adequate in terms of location, design, and construction to serve the use of a controlled substance abuse center.
 - g. In the event the structure or premises occupied by a controlled substance abuse center becomes and remains vacant for a continuous period of six months or more, the use of the same shall thereafter conform to the use regulations of the adjacent zoning in which the structure or premises is located.
 - h. No controlled substance abuse center shall be enlarged, extended, reconstructed, or structurally altered, unless such use is changed to a use which conforms to the use regulation of the adjacent zoning; provided, however, that a structure or premises may be physically enlarged, extended, reconstructed, or structurally altered to the extent necessary for compliance with any existing and applicable law or ordinance specifying minimum standards of health or safety.
 - i. The vehicular traffic may neither hinder the general traffic flow nor endanger pedestrian traffic.
 - j. Any used or emptied container or vial that has previously contained or encapsulated a controlled substance is to be retrieved and crushed. The crushed matter is then to be properly disposed of in accordance with state laws and environmentally acceptable procedures.

- k. All exterior garbage containers, trash bin area, or other outside storage areas shall be screened by an opaque enclosure of not less than five feet in height.
- l. In approving a special use permit for the operation of a controller substance abuse center, the plan commission may impose such reasonable restrictions and conditions as in its opinion will accomplish the intent of this Code.

(8) Exterminating shops.

(9) Greenhouses (retail only).

(10) Laboratories, medical, dental, research, and testing.

(11) Microbrewery.

(12) Orthopedic, medical, and surgical appliance stores, not including the assembly or manufacture of these article.

(13) Plumbing showrooms, retail and wholesale establishments.

(14) Blueprinting and photostating establishments, including printing establishments for letter press, business cards, mimeographing, and other similar custom printing services.

(d) Definitions. For the purpose of this chapter, the following definitions shall apply:

Controlled substance means any and all substances listed, and amended to include, in the Indiana Uniform controlled Substance Act Schedules I through V, to include, while not being limited to:

- (1) Each of the opiates, opium derivatives, or hallucinogenic substances, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation;
- (2) Substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or a combination of extraction and chemical synthesis; and
- (3) Opium, including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium, deodorized opium, and tincture of opium.

Controlled substance abuse center means a center which is operated by either an individual practitioner, institutional practitioner, or person (other than an individual) where the primary function of the center is to provide, through the dispensing of detoxification substances, for the detoxifying of individuals who are abusers of controlled substances.

Dispensing means the issuance of one or more doses of a drug or substance.

Individual practitioner means a physician or other individual licensed, registered, or otherwise permitted by the state or the United States, to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner.

Institutional practitioner means a hospital or other person (other than an individual) licensed, registered, or otherwise permitted by the state or the United States, to dispense a controlled substance in the course of practice, but does not include a pharmacy.

Person means any individual, corporation, government, or governmental subdivision or agency, business, trust, partnership, association, or other legal entity.

Substance means any chemical compound recognized in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of those drugs intended for use in the treatment of people.

Substance abuse means psychological or physical dependence on the effects of drugs or substances or such abuse of the use of drug or substances as is harmful to the individual or society.

Substance abuser means any person who has developed a psychological or physical dependence on the effects of drugs or substances, or any person's usage of drugs or substances so that the person or society is harmed.

- (e) The maximum floor area ratio of buildings and structures on a zoning lot shall be as follows:
 - (1) In a B3-1 district, the floor area ratio shall not exceed 1.5.
 - (2) In a B3-2 district, the floor area ratio shall not exceed 2.5.
- (f) In the B3-1 to B3-2 districts, inclusive, the regulations governing transitional yards in the B2 districts, as set forth in section 123-193(e) shall apply.
- (g) In the B3-1 to B3-2 districts, inclusive, regulations governing side yards in the B2 districts, as set forth in section 123-193(f) shall apply.
- (h) In the B3-1 to B3-2 districts, inclusive, regulations governing front yards in the B2 districts, as set forth in section 123-193(g) shall apply.
- (i) In the B3-1 to B3-2 districts, inclusive, regulations governing rear yards in the B2 districts, as set forth in section 123-193(h) shall apply.
- (j) In the B2-1 to B2-3 districts, inclusive, regulations governing the minimum living areas in a B2-3 district, as set forth in section 123-193(i) shall apply.
- (k) An apartment building or multifamily dwelling unit shall not be established hereafter on a lot which is less than 10,000 square feet in area and 75 feet in width at the building line, provided a lot of record on the effective date of the ordinance from which this chapter is derived, which is less than 10,000 square feet in area or 75 feet in width may be improved with a building containing not more than two dwelling units. However, when the lot of record is less than 60 feet in width and is in the same ownership on or after the effective date of the ordinance from which this chapter is derived as an adjoining unimproved lot on the same street, it shall not be improved with a residential use unless both lots are combined as a single zoning lot for this purpose or unless further re-subdivision produces the requisite 75 feet minimum lot width.
- (l) No existing land use shall be converted, altered, rehabilitated or redeveloped in such a way as to conflict with or further conflict with the minimum lot size requirements for the zoning district in which they are located.

(Code 1960, §§ 6-716—6-722; Code 1989, § 163.068; Ord. No. 3376; Ord. No. 4102; Ord. No. 4368; Ord. No. 4387; Ord. No. 4744, 1-9-1973; Ord. No. 5534, 6-19-1979; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.068), 2-17-2009)

Sec. 123-195. - B4 General Service Districts.

- (a) In the B4-1 to B4-3 districts, inclusive, the conditions placed upon the land uses authorized as permitted or special use land uses in a B3 Limited Service District shall apply unless superseded under subsections (b) and (c) of this section as follows:
 - (1) Dwelling units that are part of or located in a hotel or motel development are permitted below the second floor.

- (2) All business, servicing, processing, or storage shall be conducted or located within completely enclosed buildings otherwise indicated hereafter, and except when establishments of the drive through/drive-up facility offer goods services directly to customers waiting in parked or standing motor vehicles. However, off-street loading facilities street parking of motor vehicles under a 3.25-ton curb weight, but not for sale or display purposes, may be unen except for the screening of off- street parking and loading facilities as may be required under the provisions of tl
- (b) In the B4-1 to B4-3 districts, inclusive, the following land uses are authorized as permitted land uses:
- (1) Any land use permitted in the B3 Limited Service District, as set forth in section 123-194(b), unless otherwise set forth or superseded hereafter.
- (2) Additional retail and service establishments, as follows:
- a. Ambulance service.
 - b. Amusement, athletic and entertainment establishments including bowling alleys, pool halls, dancehalls, skating rinks, and other similar places of recreation and other amusement centers, including places of assembly devoted thereto, such as stadiums and arenas.
 - c. Animal grooming service.
 - d. Animal clinic, veterinary clinic, not including animal kennel or boarding other than for pre- and post-clinical procedures or care.
 - e. Blueprinting and photostatting establishments, including printing establishments for letter press, business cards, mimeographing, and other similar custom printing services.
 - f. Catering establishments.
 - g. Data processing facility, less than 10,000 square feet and not be located on the ground floor within 50 feet of any street.
 - h. Greenhouses.
 - i. Laboratories, including medical, dental, research, and testing not be located on the ground floor within 50 feet of any street.
 - j. Newspaper printing and publishing.
 - k. Orthopedic, medical, and surgical appliance stores, not including the assembly or manufacture of these article.
 - l. Plumbing showrooms, retail and wholesale establishments.
 - m. Restricted production and repair, limited to art needlework and hand weaving, clothing, custom manufacturing and alterations, for retail only; jewelry from precious metal; watches; dentures; and optical lenses.
 - n. Wholesale establishments, provided that storage is limited to samples only, not be located on the ground floor within 50 feet of any street.
 - o. Vehicle emission testing facility.
- (c) In the B4-1 to B4-3 districts, inclusive, the following land uses are authorized and may be allowed as special uses by the board of zoning appeals in accordance with the provisions of this chapter:
- (1) Any land use authorized as a special land use in a B3 Limited Business District, as set forth in section 123-194(c) that is not listed as a permitted land use under subsection (b) of this section, except for controlled substance abuse centers.

(2) Advertising signs (billboards).

(3) Planned development, business.

(d) The maximum floor area ratio of buildings and structures on a zoning lot shall as follows:

(1) In a B4-1 district, the floor area ratio shall not exceed 2.0.

(2) In a B4-2 district, the floor area ratio shall not exceed 3.5.

(3) In a B4-3 district, the floor area ratio shall not exceed 4.0.

(e) In the B4-1 to B4-3 districts, inclusive, the regulations governing transitional yards in the B3 districts, as set forth in section 123-194(f) shall apply.

(f) In the B4-1 to B4-3 districts, inclusive, regulations governing side yards in the B3 districts, as set forth in section 123-194(g) shall apply.

(g) In the B4-1 to B4-3 districts, inclusive, regulations governing front yards in the B3 districts, as set forth in section 123-194(h) shall apply

(h) In the B4-1 to B4-3 districts, inclusive, regulations governing rear yards in the B3 districts, as set forth in section 123-194(i) shall apply.

(i) No existing land use shall be converted, altered, rehabilitated or redeveloped in such a way as to conflict with or further conflict with the minimum lot size requirements for the zoning district in which they are located.

(Code 1960, §§ 6-723—6-729; Code 1989, § 163.069; Ord. No. 3376; Ord. No. 4448; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.069), 2-17-2009)

Sec. 123-196. - B5 Wholesale and Motor Vehicle Districts.

(a) In the B5-1 and B5-2 districts, inclusive, the conditions placed upon the land uses authorized as permitted or special use land uses in a B4 General Service District shall apply unless superseded under subsections (b) and (c) of this section as follows:

(1) Not more than 6,250 square feet in the aggregate of gross floor area per establishment, shall be devoted to the production or processing of goods or products.

(2) Wholesale offices and storerooms, with storage limited to the following:

a. In a B5-1 district, 6,250 square feet of floor area per business establishment.

b. In a B5-2 district, 9,375 square feet of floor area per business establishment.

(3) All activities involving the production, processing, cleaning, servicing, testing, or repair of material, goods, or products shall conform with the performance standards established for the M1 Manufacturing District in section 123-217.

(4) All production, processing, cleaning, servicing, testing, or repair of materials, goods, or products shall take place within completely enclosed buildings unless otherwise indicated hereafter. Storage of fuel, ice, building materials, and all other storage, except of merchandise on display for sale to the general public and except for parked motor vehicles, shall take place within completely enclosed buildings.

(b) In the B5-1 and B5-2 districts, the following land uses are authorized as permitted land uses:

(1) Any use permitted in the B4 districts, as set forth in section 123-195(b)(2), unless otherwise set forth or superseded hereinafter.

(2) Additional retail, service and wholesale land-uses, as follows:

- a. Animal hospitals and kennels, provided all facilities for the care and boarding of animals within completely enclosed buildings.
 - b. Automotive dependant and related retail and service establishments, subject to the conditions under section 123-193(c)(4).
 - c. Bakeries, wholesale.
 - d. Beverages, nonalcoholic, bottling, and distributing.
 - e. Building materials, sales.
 - f. Contractor or construction shops and offices, such as building electrical; roofing; refrigeration; heating, cooling and ventilating; masonry, painting, and plumbing.
 - g. Dry-cleaning and laundry facilities establishments, with processing within the building limited to 6,250 square feet of gross floor area.
 - h. Linen, towel, diaper, and other similar supply services.
 - i. Machinery sales.
 - j. Monument (cemetery) sales.
 - k. Motorcycle sales, including servicing and repair.
 - l. Repair of household or office machinery or equipment.
 - m. Trailers for motor vehicles, sales and rentals, not including house trailer or mobile homes.
 - n. Garages, model display and sales.
- (3) Additional production and processing, limited to the following land uses:
- a. Advertising displays.
 - b. Art needlework and hand weaving.
 - c. Awnings, venetian blinds, window shades.
 - d. Books, hand binding and tooling.
 - e. Carpenter shops for custom woodworking and custom furniture making.
 - f. Clothing, custom manufacturing and alterations, for retail only.
 - g. Cosmetics, drugs, and perfumes.
 - h. Dentures.
 - i. Food processing, packaging, and distributing, except meat and fish.
 - j. Glass cutting and glazing.
 - k. Jewelry from precious metals and including watches.
 - l. Optical lenses.
 - m. Printing, commercial, including engraving and photo-engraving, limited to 6,250 square feet of floor area per establishment for production purposes.
 - n. Products from the following finished materials: plastic, bone, cork, felt, feathers, fibre, fur, glass, hair, horn, leather, paper, precious and semi-precious stones, rubber, shell, or yarn.
 - o. Soldering and welding.
 - p. Tool, die, and pattern-making, limited to 6,250 square feet of floor area per establishment.
- (4) Miscellaneous land uses as follows:

- a. Shared parking facilities, off-street parking lots and parking garage facilities, other than accessory, for the storage of passenger motor vehicles less than 3.5 tons in curb weight but not truck trailers, and subject to the provisions of this chapter.
- b. Packing and crating.
- (c) In the B5-1 and B5-2 districts, inclusive, the following land uses are authorized and may be allowed as special uses by the board of zoning appeals in accordance with the provisions of this chapter. Any land use authorized as a special land use in a B4 General Service District, as set forth in section 123-195(c) that is not listed as a permitted land use under subsection (b) of this section, except for controlled substance abuse centers:
 - (1) House trailer sales.
 - (2) Motor vehicles sales, including servicing and minor repairs for vehicles under 1½ ton capacity, but not major repairs.
- (d) The maximum floor area ratio of buildings and structures of a zoning lot shall be as follows:
 - (1) In a B5-1 district, the floor area ratio shall not exceed 2.5.
 - (2) In a B5-2 district, the floor area ratio shall not exceed 3.5.
 - (3) In the B5-1 and B5-2 districts, inclusive, the regulations governing transitional yards in the B4 districts, as set forth in section 123-195(e) shall apply.
 - (4) In the B5-1 and B5-2 districts, inclusive, regulations governing side yards in the B4 districts, as set forth in section 123-195(f) shall apply.
 - (5) In the B5-1 and B5-2 districts, inclusive, regulations governing front yards in the B4 districts, as set forth in section 123-195(g) shall apply.
 - (6) In the B5-1 and B5-2 districts, inclusive, regulations governing rear yards in the B4 districts, as set forth in section 123-195(h) shall apply.
 - (7) No existing land use shall be converted, altered, rehabilitated or redeveloped in such a way as to conflict with or further conflict with the minimum lot size requirements for the zoning district in which they are located.

(Code 1960, §§ 6-730—6-735; Code 1989, § 163.070; Ord. No. 3376; Ord. No. 4027; Ord. No. 4033; Ord. No. 4448; Ord. No. 5222, 11-23-1976; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.070), 2-17-2009)

Secs. 123-197—123-215. - Reserved.

DIVISION 4. - MANUFACTURING DISTRICTS

Sec. 123-216. - Applicable regulations.

Use and bulk regulations applying specifically to manufacturing zoning districts are set forth in this division. Also applying to manufacturing districts are additional regulations set forth in other articles of this chapter, as follows:

- (1) Article I of this chapter.
- (2) Article II of this chapter.
- (3) Article V of this chapter.
- (4) Chapter 117.

Sec. 123-217. - M1 Limited Manufacturing Districts.

- (a) The following conditions shall be placed upon the land uses authorized as permitted or special use land uses in the M1 Limited Manufacturing District:
 - (1) Any production, processing, cleaning, servicing, testing, repair, or storage of goods, materials, or products shall conform with the performance standards set forth in subsections (d) through (k) of this section.
 - (2) All business, production, servicing, and processing shall take place within completely enclosed buildings unless otherwise specified. Within 150 feet of a residence district, all storage shall be in completely enclosed buildings or structures, and storage located elsewhere in this district may be open to the sky but shall be enclosed by solid walls or fences, including solid doors or gates thereto, at least eight feet high, but in no case lower in height than the enclosed storage, and suitably landscaped. However, open off-street loading facilities and open off-street parking of motor vehicles under a 3.5-ton capacity may be unenclosed throughout the district, except for screening of parking and loading facilities that may be required under the provisions of this chapter.
- (b) The following land uses are authorized as permitted uses:
 - (1) Retail and service uses, as follows:
 - a. Any use permitted in a business district, excluding all residential dwelling units (including hotels and motels), churches; schools; public auditoriums; open air assembly units; amusement places of any kind.
 - b. Automotive dependant and related retail and service establishments, subject to the conditions under section 123-193(c)(4), including fuel sales, with storage of fuel oils, gasoline, and other flammable products limited to 120,000 gallons per tank, with total storage on one zoning lot not to exceed 500,000 gallons.
 - c. Business incubator facility.
 - d. Engineering professional office and service establishments.
 - e. Ice sales, linen, towel, diaper, and other similar supply services.
 - f. Self-storage facilities.
 - g. Tattoo and body piercing establishments, licensed by the state.
 - h. Trade schools and colleges.
 - (2) Production, processing, cleaning, testing, or repair, limited to the following land uses and products:
 - a. Advertising displays.
 - b. Art needlework and hand weaving.
 - c. Awnings, venetian blinds.
 - d. Bakeries.
 - e. Beverages, nonalcoholic.
 - f. Boat-building and repair of pleasure craft and other small craft, but not including shipbuilding or ship repair.
 - g. Books, hand binding, and tooling.
 - h. Bottling works, beverage.
 - i. Brushes and brooms.

- j. Cameras and other photographic equipment and supplies.
- k. Canvas and canvas products.
- l. Ceramic products such as pottery and small glazed tile.
- m. Clothing.
- n. Cosmetics and toiletries.
- o. Dentures.
- p. Drugs.
- q. Dry-cleaning establishments.
- r. Electric appliances.
- s. Electrical equipment assembly such as home radio and television receivers and home movie equipment, but not including electrical machinery.
- t. Manufacturing and assembly of electrical supplies, such as wire and cable assembly, switches, lamps, insulation, and dry cell batteries.
- u. Processing and combining of food products except meat and fish, baking, boiling, canning, cooking, dehydrating, freezing, frying, grinding, mixing, and pressings.
- v. Fur goods, not including tanning or dyeing.
- w. Glass products from previously manufactured glass.
- x. Hair, felt, and feather products, except washing, curling, and dyeing.
- y. Hat bodies of fur and wool felt.
- z. Hosiery.
- aa. House trailers.
- bb. Ice, dry and natural.
- cc. Industrial incubator facility.
- dd. Industrial research facility.
- ee. Ink mixing and packaging, and inked ribbons.
- ff. Jewelry.
- gg. Laboratories, medical, dental, research, experimental, and testing, provided there is no danger from fire or explosion nor of offensive noise, vibration, smoke, dust, odors, heat, glare, or other objectionable influences.
- hh. Laundries, dry-cleaning facility.
 - ii. Leather products, including shoes and machine belting.
- jj. Luggage.
- kk. Machine shops for tool, die, and pattern making.
- ll. Meat products.
- mm. Metal finishing, plating, grinding, sharpening, polishing, cleaning, rustproofing, and heat treatment.
- nn. Metal stamping and extrusion of small products such as costume jewelry, pins and needles, razor blades, bottle caps, buttons, and kitchen utensils.
- oo. Microbrewery.

- pp. Musical instruments.
 - qq. Orthopedic and medical appliances such as artificial limbs, braces, supports, and stretchers.
 - rr. Small paper products, such as envelopes and stationery, bags, boxes, tubes, and wallpaper printing.
 - ss. Perfumes and perfumed soaps, compounding only.
 - tt. Pharmaceutical products, compounding only.
 - uu. Precision instruments such as optical, medical, and drafting.
 - vv. Products from finished materials, including plastic, bone, cork, feathers, felt, fibre, paper, fur, glass, hair, horn, leather, precious and semi-precious stones, rubber, shell, or yarn.
 - ww. Printing and newspaper publishing, including engraving and photo-engraving.
 - xx. Small rubber products, and synthetic treated fabrics, excluding all rubber and synthetic processing, such as washers, gloves, footwear, bathing caps, and atomizers.
 - yy. Repair of household or office equipment.
 - zz. Silverware, plate and sterling.
 - aaa. Soap and detergents, packaging only.
 - bbb. Soldering and welding.
 - ccc. Sporting and athletic equipment such as balls, baskets, cues, gloves, bats, racquets, and rods.
 - ddd. Statuary, mannequins, figurines, and religious and church art goods, excluding foundry operations.
 - eee. Textiles, including spinning, weaving, manufacturing, dyeing, printing, knit goods, yarn, thread and cordage, but not including textile bleaching.
 - fff. Tools and hardware such as bolts, nuts and screws, doorknobs, drills, hand tools and cutlery, hinges, house hardware, locks, nonferrous metal castings, and plumbing appliances.
 - ggg. Toys.
 - hhh. Umbrellas.
 - iii. Bulk upholstering, including mattress manufacturing, rebuilding, and renovating.
 - jjj. Vehicles - children's, such as: bicycles, scooters, wagons, and baby carriages.
 - kkk. Wood products, such as furniture, boxes, crates, baskets, pencils, and cooperage works.
- (3) Wholesale and warehousing, as follows:
- a. Local and regional distribution and logistics facilities, including express facilities, but not including motor freight terminals.
 - b. Electronic data storage facilities.
- (4) Public and community service land uses, as follows:
- a. Bus garages, bus lots, street railway terminals, or transportation orientated maintenance facilities.
 - b. Electric and gas public utilities.
 - c. Fire stations.
 - d. Water filtration plants.
 - e. Water pumping stations.
 - f. Bus and railroad passenger stations or terminals.
 - g. Railroad rights-of-way.

- h. Post office transfer facilities, including other similar package transfer facilities.
 - i. Vehicle emission testing facilities for passenger vehicles.
- (5) Miscellaneous land uses ancillary but acceptable within the M1 district, as follows:
- a. Cellular, radio, television, satellite or cable transmission/reception towers.
 - b. Above ground water storage tank.
 - c. Signs, as regulated by chapter 117.
- (6) Uses incidental to principal permitted land uses, as follows:
- a. Accessory uses.
 - b. Temporary buildings for construction purposes, for a period not to exceed the duration of the construction.
- (7) In the B1-1 and B1-2 districts, the following land uses may be allowed as special uses by the board of zoning appeals in accordance with the provisions of this chapter:
- a. Establishments engaged in production, processing, cleaning, testing, or repair other than those listed as permitted in the M1 districts, including the following:
 - 1. Insecticides.
 - 2. Food processing/canning/preparation.
 - 3. Welding shop.
 - b. Adult sexually orientated businesses.
 - c. Railroad switching and classification yards, repair shops and roundhouses.
 - d. Truck sales and service facilities, including fueling facilities, provided the following requirements are met:
 - 1. No motor freight facility shall be erected except on a lot with more than a 200-foot frontage.
 - 2. The minimum area for such facilities shall be 40,000 square feet.
 - 3. There shall be separate ingress and egress to the property with minimum distance between the two of 100 feet with adequate traffic control in conformance with all local and state agency requirements.
 - 4. All curb cuts shall be at least 40 feet in width and with protective curbs, and landscaping shall be erected along any street line. The curb shall be contiguous except for the permitted opening.
 - 5. There shall be minimum 15-foot vegetative buffer zone along all sides of the property other than the frontage.
 - 6. A performance bond shall be provided equal in dollar amount to the overall square footage of the proposed parcel to ensure compliance with the requirements set forth herein.
- (c) Sound levels shall be measured with a sound level meter and associated octave band filter manufactured according to standards prescribed by the American Standards Association. Measurements shall be made using the flat network of the sound level meter.
- (1) Impulsive type noises shall be subject to the performance standards hereafter prescribed, provided the noises are capable of being accurately measured with that equipment. Noises capable of being so measured, for the purpose of this section, shall be those noises which cause rapid fluctuations of the needle of the sound level meter with a variation of no more than plus or minus two decibels. Noises incapable of being so measured, such as those of an irregular and intermittent nature, shall be controlled so as not to become a nuisance to adjacent uses.

- (2) At no point either on the boundary of a residence district or a B1, B2, B3, or B4 district, or at 125 feet from the nearest property line of a plant or operation, whichever distance is greater, shall the sound pressure level of an individual or plant, other than the operation of motor vehicles and other transportation facilities, exceed the decibel levels designated octave bands shown hereafter for the districts indicated. Maximum permitted sound level in decibels at district boundaries or 125 feet from plant or operation property line are as follows:

Octave Band Cycles Per Second	Residence District (in decibels)	Business District (in decibels)
0—75	67	73
75—150	62	68
150—300	58	64
300—600	54	60
600—1,200	49	55
1,200—2,400	45	51
2,400—4,800	41	47
Above 4,800	<u>37</u>	<u>43</u>

- (d) In the M1-1 and M1-2 districts, the emission of noxious odorous matter in such quantities as to produce a public nuisance beyond the property boundaries is prohibited.
- (e) In the M1-1 and M1-2 districts, any process or equipment which produces intense earth-shaking vibrations, such as are created by heavy drop forges or heavy hydraulic surges, shall be set back at least 500 feet from the property boundaries on all sides, except for a property line adjoining an M2 or M3 district where this setback shall not be mandatory. However, in no case shall vibrations be allowed to create a public nuisance or hazard beyond the property boundaries.
- (f) In the M1-1 and M1-2 districts, a land use on any property shall not discharge across the boundaries of the property toxic or noxious matter in such concentrations as to be detrimental to or endanger the public health, safety, comfort, or welfare or cause injury or damage to other property or business.
- (g) In the M1-1 and M1-2 districts:
- (1) Any operation producing intense glare or heat shall be performed within a completely enclosed building and effectively screened in such a manner as not to create a public nuisance or hazard along property boundaries.
 - (2) In the M1 district, no use is permitted which violates any local, state or federal pollution control law or regulation.
 - (3) In the M1 district, no use is permitted in the treatment, storage and disposal of toxic or infectious materials.
- (h) In the M1-1 and M1-2 districts, fire and explosive hazards shall be controlled as follows:
- (1) Activities involving the storage or manufacture of materials or products which decompose by detonation are not permitted in the M1 districts. A list of such explosives is contained in section 123-334.
 - (2) The storage, utilization, or manufacture of materials ranging from incombustible to moderate burning, as determined by the director of the department of development and planning, is permitted.
 - (3) The storage, utilization, or manufacture of materials or products ranging from free or active burning to intense burning, as determined by the director, is permitted under the following conditions:
 - a. All storage, utilization, or manufacture of such materials or products shall be within completely enclosed

buildings or structures having incombustible exterior walls.

- b. All buildings or structures shall be set back at least 50 feet from property boundaries or, in lieu thereof, shall be protected throughout by an automatic sprinkler system complying with standards for installation prescribed by the National Fire Protection Association.
- (4) Materials or products which produce flammable or explosive vapors or gases under ordinary weather temperatures shall not be permitted in this district, with the exception of the following, which are permitted:
- a. Materials required for emergency or standby equipment.
 - b. Materials used in secondary processes which are auxiliary to a principal operation, such as paint-spraying of finished products.
 - c. Flammable liquids and oils stored, sold, and used in conjunction with the operation of an automobile service station and customarily required or used in that operation.
- (i) The maximum floor area ratio of buildings and structures on a zoning lot shall be as follows:
- (1) In an M1-1 district, the floor area ratio shall not exceed 1.0.
 - (2) In an M1-2 district, the floor area ratio shall not exceed 1.5.
- (j) In the M1-1 and M1-2 districts, on every zoning lot a front yard of not less than 25 feet in depth shall be provided.
- (k) In the M1-1 and M1-2 districts, on every zoning lot a side yard shall be provided along each side lot line. Each side yard shall be not less in width than ten percent of the lot width but need not exceed 20 feet in width, except as may be required for setbacks along residence district boundaries under the terms of this section.
- (l) A planned industrial park is an industrial subdivision developed according to a comprehensive plan to provide serviced sites for manufacturing plants, distribution warehouses, and similar uses. The district must provide for adequate control of the tract and buildings, through restrictive covenants or adequate zoning, with a view to maintaining aesthetic values and protecting the investments of both developers of the district and the industries occupying the improved sites.
- (1) This district is intended to be used as a buffer for light and heavy industrial areas between residential and commercial areas, or in locations which are served by major thoroughfares, but are not feasible for light and heavy industrial developments because of the proximity to residential and other uses, which require a controlled type of industrial use. For this reason, development is limited to a low concentration of land use, and permitted uses are confined to those administrative, wholesaling, and manufacturing activities that can be carried on in an unobtrusive manner and to certain facilities that are necessary to serve employees of the district.
- (2) Any land use permitted in this division is permitted in this district.
- (3) The minimum area for a planned industrial park shall not be less than 25 acres. No lot shall have an area of less than one acre or 43,560 square feet, nor a width of less than 140 feet. Lots may be re-subdivided only with the approval of the city plan commission.
- a. The floor area ratio shall be determined by the district in which the park is located.
 - b. All buildings, including accessory building and outdoor storage facilities, shall not occupy more than 40 percent of the lot.
 - c. There shall be a front yard provided on each lot. The depth of the front yard shall be determined by the city plan commission. No parking or paving except for access roads and walks, shall be permitted within any portion of the minimum required front yard.

- d. There shall be two side yards on each lot, neither of which shall be less than 25 feet in width, nor shall any side yard abutting upon a street be less than the required front yard as determined by the plan commission. No parking except for access roads and walks, shall be permitted within any portion of the minimum side yards abutting a street; however, parking shall be permitted within side yards not abutting a street.
- e. Requirements governing rear yards shall be determined by uses and plans.
- f. Outside storage shall be permitted only in rear yards when accessory to a permitted land use and appropriately screened. All areas used for storage shall be enclosed on all sides by a masonry wall or solid fence not less than six feet in height. No materials or products shall be stacked or stored to exceed the height of the wall.
- g. All open portions of any lot shall be suitably paved and maintained in a dust-free condition. All other open areas shall, as a minimum, be seeded and maintained in grass and preferably be further landscaped with trees, shrubs, ground cover, and the like so as to provide a parklike setting for the buildings and to screen parking and loading areas.
- h. All lighting used to illuminate entrances, exits, service roads, parking aisles, parking areas, or buildings must be so arranged or shielded as to avoid glare or reflection into any portion of an adjacent street, into the path of oncoming vehicles, or onto any abutting property.
- i. One off-street parking or shared parking facility spaces shall be provided for each two employees on a major shift, plus one parking space for each sales person permanently employed. A required off-street parking space shall be at least 10 feet in width and at least 20 feet in length. All open off-street parking areas shall be improved with an all-weather, dust-less, paved asphalt or concrete pervious surface. No portion of a paved area for that purpose shall project into any minimum required front yard or into any portion of a side or rear yard in which paving is prohibited.
- j. All required loading berths shall be located on the same zoning lot as the use served. Each required loading berth shall be at least ten feet in width and at least 25 feet in length, and shall have a vertical clearance of at least 14 feet. The number of required loading berths will be determined by proposed use and this determination will be made by the city plan commission.
- k. One freestanding identification sign, identifying the name of the industrial park and the business within the park is permitted. The area of the sign shall not exceed 80 square feet nor shall the sign be more than 25 feet in height. The sign may be a wall sign or freestanding. No sign shall be located nearer than 25 feet from the front property line. Each industry or business within the industrial park is permitted one wall sign; this sign shall not project more than 18 inches from the face of the building or wall to which it is attached. In lieu of a wall sign, one freestanding sign not more than 40 square feet nor more than 15 feet in height may be erected on each business site.
- l. In an industrial park, performance standards shall conform to those performance standards set forth in this section.
- m. A site plan showing location of buildings, streets, utilities, building lines, suitable arrangements of off-street or shared facility parking, loading spaces, sufficient space for maneuvering, and adequate access to land from the public right-of-way, shall be submitted to the plan commission for final approval. Also, a site plan shall be provided for each lot within the park and any changes in the original plan must also be reviewed and approved by the plan commission.

(Code 1960, §§ 6-802—6-814; Code 1989, § 163.081; Ord. No. 3376; Ord. No. 3984; Ord. No. 3992; Ord. No. 4055; Ord. No. 4386; Ord. No. 4377; Ord. No. 5222, 11-23-1976; Ord. No. 5965, 2-7-1984; Ord. No. 6221, 12-22-1987; Ord. No. 6236, 4-5-1988; Ord. No. 7394, § 3a, 11-6-2002; Ord. No. 8256, § 1(163.081), 2-17-2009)

Sec. 123-218. - M2 General Manufacturing Districts.

- (a) The following conditions shall be placed upon the land uses authorized as permitted or special use land uses in the M2 General Manufacturing District:
 - (1) All production, processing, cleaning, servicing, testing, repair, or storage of goods, materials, or products shall conform with the performance standards set forth in this section.
 - (2) Within 150 feet of a residence district, all business, production, servicing, processing, and storage shall take place or be within completely enclosed buildings unless otherwise specified. However, within 150 feet of a residence district, off-street loading facilities and off-street or shared parking of motor vehicles under 3.5 ton capacity may be unenclosed, except for the screening of parking and loading facilities that may be required under the provisions of this chapter.
- (b) The following uses are permitted:
 - (1) Any land use permitted in the M1 district, except those retail and service land uses specifically enumerated under section 123-217(b)(1)(a), unless otherwise set forth or superseded hereafter.
 - (2) Automotive dependant and related retail and service establishments, subject to the conditions under section 123-193(c)(4), including fuel sales, with storage of fuel oils, gasoline, and other flammable products limited to 120,000 gallons per tank, with total storage on one zoning lot not to exceed 500,000 gallons, provided that within 150 feet of a residence district, lubrication and washing facilities, including auto laundries, shall be in a completely enclosed building. The retail sale of gasoline and motor oil, including minor services customarily incidental hereto, may be conducted out-of-doors.
 - (3) Truck sales and service facilities, including fueling facilities, provided the following requirements are met:
 - a. No motor freight facility shall be erected except on a lot with more than a 200-foot frontage.
 - b. The minimum area for such facilities shall be 40,000 square feet.
 - c. There shall be separate ingress and egress to the property with minimum distance between the two of 100 feet with adequate traffic control in conformance with all local and state agency requirements.
 - d. All curb cuts shall be at least 40 feet in width and with protective curbs, and landscaping shall be erected along any street line. The curb shall be contiguous except for the permitted opening.
 - e. There shall be minimum 15-foot vegetative buffer zone along all sides of the property other than the frontage.

A performance bond shall be provided equal in dollar amount to the overall square footage of the proposed parcel to insure compliance with the requirements set forth herein. Any production, processing, cleaning, servicing, testing, repair, or storage of materials, goods, or products which conforms to the performance standards for this district set forth in this section (refer to the city's environmental ordinances, Ordinance Nos. 7394 and 7641, which restrict toxic substances and potential polluting substances).

- (c) In the M2-1 and M2-2 districts, the following land uses may be allowed as special uses by the board of zoning appeals in accordance with the provisions of this chapter:
 - (1) Any use which may be allowed as a special uses in the M1 districts, unless already permitted as a land use

under this section.

- (2) Junkyards or salvage yards.
 - (3) Sewage disposal plants, including primary and/or secondary sewage treatment facilities and advanced sewage treatment facilities.
 - (4) Water treatment/purification facilities.
 - (5) Storage of flammable liquids.
- (d) In the M2-1 and M2-1 districts, the emission of noise from any individual operation or plant, other than the operation of motor vehicles and other transportation facilities, so as to create a public nuisance beyond property boundaries is prohibited.
- (e) In the M2-1 and M2-2 districts, the performance standards governing odorous matter in the M1 districts shall apply.
- (f) In the M2-1 and M2-2 districts, any process or equipment which produces intense earth-shaking vibrations, such as are created by heavy drop forges or heavy hydraulic surges, shall be set back at least 300 feet from the boundary of a residence or business district and at least 150 feet from the boundary of an M1 district, unless the operation is controlled in such a manner as to prevent transmission beyond property boundaries of earth-shaking vibrations perceptible without the aid of instruments.
- (g) In the M2-1 and M2-2 districts:
- (1) A land use on any property shall not discharge across the boundaries of that property toxic or noxious matter in such concentrations as to be detrimental to or endanger the public health, safety, comfort, or welfare, or cause injury or damage to other property or business.
 - (2) In the M2 district, no use is permitted in the treatment, storage and disposal of toxic or infectious materials.
 - (3) In the M2 district, no use is permitted in the treatment, storage and disposal of toxic or infectious material without obtaining a special exception under section 123-110.
- (h) In the M2-1 and M2-2 districts, any operation producing intense glare or heat shall be performed within an enclosure and effectively screened in such a manner as not to create a public nuisance or hazard along property boundaries.
- (i) In the M2-1 and M2-2 districts, land uses and manufacturing processes with inherent fire and explosive hazards shall be controlled as follows:
- (1) Activities involving the storage or manufacture of materials or products which decompose by detonation are not permitted in the M2 districts unless licensed by the city controller with the approval of the fire prevention bureau. A list of such materials is contained in S 163.012. However, in no case shall such materials or products be stored or manufactured within 300 feet of the boundary of any other zoning district, except M3 district, unless otherwise authorized by the fire prevention bureau.
 - (2) The storage, utilization or manufacture of materials or products ranging from incombustible to moderate burning, as determined by the director of the department of development and planning, is permitted.
 - (3) The storage, utilization, or manufacture of materials or products ranging from free or active burning to intense burning, as determined by the director, is permitted, provided that within 50 feet of the boundary of a residence or business district, the following restrictions shall apply:
 - a. All storage, utilization or manufacture of these materials or products shall be within completely enclosed buildings having incombustible exterior walls.

- b. All such buildings or structures shall be protected throughout by an automatic sprinkler system complying with installation prescribed by the National Fire Protection Association.
- (4) Materials or products which produce flammable or explosive vapors or gases under ordinary weather temperatures shall not be permitted in this district, with the exception of the following which are permitted.
 - a. Materials required for emergency or standby equipment.
 - b. Materials used in secondary processes which are auxiliary to a principal operation, such as paint-spraying of finished products.
 - c. Flammable liquids and oils, stored, sold, and used in conjunction with the operation of an automobile service station and customarily required or used in that operation.
- (j) The maximum floor area ratio of buildings or structures on a zoning lot shall be as follows:
 - (1) In an M2-1 district, the floor area ratio shall not exceed 1.5.
 - (2) In an M2-2 district, the floor area ratio shall not exceed 2.0.
- (k) In the M2-1 and M2-2 districts, the regulations governing minimum front yards for the M1 districts shall apply.
- (l) In the M2-1 and M2-2 districts, the regulations along residence district boundaries for the M1 districts shall apply. In addition, along any side lot line directly across the street from a residence district, a side yard shall be provided on each zoning lot. Each side yard shall be equal in width to ten percent of the width of the zoning lot, but need not exceed 50 feet in width.

(Code 1960, §§ 6-815—6-826; Code 1989, § 163.082; Ord. No. 3376; Ord. No. 3991; Ord. No. 5965, 2-7-1984; Ord. No. 5965, 2-7-1984; Ord. No. 6221, 12-22-1987; Ord. No. 6236, 4-5-1988; Ord. No. 7394, § 3b—3d, 11-6-2002; Ord. No. 8256, § 1(163.082), 2-17-2009)

Sec. 123-219. - M3 Heavy Industrial Districts.

- (a) The following conditions shall be placed upon the land uses authorized as permitted or special use land uses in the M3 Heavy Industrial District:
 - (1) All production, processing, cleaning, servicing, testing, repair, or storage of goods, materials, or products shall conform to the performance standards set forth in this section (refer to city toxics ordinance for further restrictions).
 - (2) Within 150 feet of a residence district, all business, production, servicing, processing, and storage shall take place or be within completely enclosed buildings or structures unless otherwise specified. However, within 150 feet of a residence district, off-street loading facilities and off-street or shared parking of motor vehicles under 3.5-ton capacity may be unenclosed except for the screening or parking and loading facilities that may be required under the provisions of this chapter.
- (b) In the M3 district, the following land uses are permitted:
 - (1) Any land use permitted in the M2 districts, but subject to the performance standards for this M3 district.
 - (2) Production, processing, cleaning, servicing, testing, and repair, including the following uses and manufacturing of the following products:
 - a. Automobile wrecking.
 - b. Asphalt and asphalt products.
 - c. Charcoal, lampblack, and fuel briquettes.

- d. Chemicals, including acetylene, aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black, cleaning and polishing preparations, creosote, exterminating agents, hydrogen and oxygen, industrial nitrating of cotton or other materials, nitrates, manufactured and natural, of an explosive nature, potash, plastic and synthetic resins, pyroxylin, rayon, hydrochloric, picric and sulphuric acids and derivatives.
- e. Coal, coke, and tar products, including gas manufacturing.
- f. Electric central station power, steam-generating plants or cogeneration facilities.
- g. Explosives, when not prohibited by other city laws.
- h. Fertilizers.
- i. Film, photographic.
- j. Flour, feed, grain, and processing.
- k. Gelatin, glue and size, animal.
- l. Linoleum and oil.
- m. Magnesium foundries.
- n. Matches.
- o. Metal and metal ores, and rare metals, reduction, refining, smelting, and alloying.
- p. Paint, lacquer, shellac, varnishes, linseed oil, and turpentine.
- q. Petroleum and petroleum products, subject to the provisions of subsection (h) of this section.
- r. Rubber, natural or synthetic.
- s. Soaps, including fat and oil rendering.
- t. Starch.
- u. Manufacturing of steel and metal alloy products.
- v. Wood, coal, and bone distillation.
- w. Any other production, processing, cleaning, servicing, testing and repair which conforms with the performance standards established hereinafter for the M3 district.

(3) Storage, including the following uses and materials or products:

- a. Goods used in or produced by manufacturing activities permitted in this district.
- b. Outdoor storage of solid or processed byproducts materials.
- c. Explosives, subject to the provisions of subsection (h) of this section.
- d. Grain.
- e. Manure, peat, and top-soil.
- f. Flammable liquids and oils stored, sold, and used in conjunction with the operation of an automobile service station and customarily required or used in that operation.

(4) Miscellaneous land uses, as follows:

- a. Railroad, water freight and port terminals, motor freight terminals, railroad switching and classification yards, repair shops, and roundhouses.
- b. Intermodal transportation facilities.

(c) In an M3 district, the following land uses may be allowed as special uses by the board of zoning appeals in accordance with the provisions of this chapter:

- (1) Any land use which may be allowed as a special use in the M2 districts, as set forth in section 123-218(c) unless a permitted under this section.
- (2) Recycling facilities.
- (3) Medical waste facilities.
- (d) In the M3 district, the performance standards governing noise in the M2 districts shall apply.
- (e) In the M3 district, the performance standards governing odorous matter in the M2 district shall apply.
- (f) In the M3 district, the performance standards governing vibration in the M2 districts shall apply.
- (g) In the M3 district:
 - (1) A land use on any property shall not discharge across the boundaries of that property toxic or noxious matter in such concentrations as to be detrimental to or endanger the public health, safety, comfort, or welfare, or cause injury or damage to other property or business.
 - (2) In the M2 district, no use is permitted in the treatment, storage and disposal of toxic or infectious materials.
 - (3) In the M2 district, no use is permitted in the treatment, storage and disposal of toxic or infectious material without obtaining a special exception under section 123-110.
- (h) In the M3 district, fire and explosive hazards shall be controlled as follows:
 - (1) Activities involving the storage or manufacture of materials or products which decompose by detonation are not permitted in the M3 district unless licensed by the city controller with the approval of the fire prevention bureau. A list of such materials is set out in section 123-334. However, in no case shall these materials or products be stored or manufactured within 300 feet of the boundary of any other district unless otherwise authorized by the fire prevention bureau.
 - (2) The storage, utilization, or manufacture of materials or products ranging from incombustible to fast burning, as determined by the director of the department of development and planning, or which produce flammable or explosive vapors or gases under ordinary weather temperature is permitted. However, within 600 feet of the boundary of any other zoning district, the storage, utilization, or manufacture of materials or products which produce flammable or explosive vapors or gases under ordinary weather temperature is not permitted, with the exception of the following, which are permitted within 600 feet.
 - a. Materials required for emergency or standby equipment.
 - b. Materials used in secondary processes which are auxiliary to a principal operation, such as paint-spraying of finished products.
 - c. Flammable liquids and oils stored, sold, and used in conjunction with the operation of a motor vehicle service station and customarily required or used in that operation.
- (i) The floor area ratio of buildings and structures on a zoning lot shall not exceed 2.5.
- (j) In an M3 district, the regulations governing minimum front yards for the M2 district shall apply.
- (k) In an M3 district, no building, structure, or other obstruction or portion thereof, except as allowed in section 123-333, shall be located within 300 feet of the boundary of residence or business district unless the building, structure, or other obstruction or portion thereof within 150 feet of the boundary of the residence district complies with the regulations along residence district boundaries for the M2 districts, as set forth in section 123-217, and unless the use thereof complies with the performance standards for the M2 district.

Secs. 123-220—123-246. - Reserved.

DIVISION 5. - FLOODPLAIN DISTRICT

Subdivision I. - In General

Sec. 123-247. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building. See *Structure*.

Development means any manmade change to improved or unimproved real estate including, but not limited to:

- (1) Construction, reconstruction, or placement of a building or any addition to a building valued at more than \$1,000.00;
- (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, dams, 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.

The term "development" does not include activities such as the maintenance of existing buildings 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.

Existing manufactured home park or subdivision means 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 ordinance from which this division is derived.

Expansion to an existing manufactured home park or subdivision means 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).

FBFM means the Flood Boundary and Floodway Map.

FEMA means the Federal Emergency Management Agency.

FHBM means the Flood Hazard Boundary Map.

FIRM means the flood insurance rate map.

Flood means 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 protection grade or *FPG* means the elevation of the regulatory flood plus two feet at any given location in the SFHA.

Floodplain means 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 floodway fringe districts.

Floodway fringe means those portions of the floodplain lying outside the floodway.

Letter of map amendment (LOMA) means an amendment to the current FEMA map that establishes that a property is not located in a special flood hazard area (SFHA). A LOMA is only issued by FEMA.

Letter of map revision (LOMR) means an official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

Lowest floor means the lowest of the following:

- (1) The top of the basement floor;
- (2) The top of the garage floor, if the garage is the lowest level of the building;
- (3) The top of the first floor or of buildings elevated on pilings or constructed on a crawl space with permanent openings; or
- (4) The top of the floor level or any enclosed below an elevated building where the walls of the enclosure provide any resistance to the flow of flood waters unless:
 - a. The walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters, by providing a minimum of two openings (in addition to doorways and windows) having a total area of one square foot for every two square feet of enclosed area subject to flooding. The bottom of all such openings shall be no higher than one foot above grade.
 - b. Such enclosed space shall be usable for the parking of vehicles and building access.

Manufactured home means a structure, transportable in one 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.

New manufactured home park or subdivision means 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 ordinance from which this division is derived.

Recreational vehicle means 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 means the flood having a one percent probability of being equaled or exceeded in any given year, as calculated by a method and procedure which is acceptable to and approved by the state natural resources commission and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in section 123-252. The regulatory flood is also known by the term "base flood."

Special flood hazard area (SFHA) means those lands within the jurisdiction of the city that are subject to inundation by the regulatory flood. The SFHAs of the city generally identified as such on the flood insurance rate map of the city prepared by the Federal Emergency Management Agency and dated March 16, 1981. The SFHAs of those parts of unincorporated Lake 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 flood insurance rate map prepared for Lake County by the Federal Emergency Management Agency and dated September 2, 1981.

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.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred 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 a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

(Code 1989, § 163.086; Ord. No. 6705, § 3, 3-16-1994; Ord. No. 7092, § 1, 7-4-1999; Ord. No. 8256, § 1(163.086), 2-17-2009)

Sec. 123-248. - Violations.

Failure to obtain an improvement location permit in the SFHA or failure to comply with the requirements of a permit or conditions of a variance shall be deemed to be a violation of this division. All violations shall be considered a common nuisance and be treated as such in accordance with this part. All violations shall be punishable by a fine not exceeding \$2,500.00.

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The city plan commission 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.

(Code 1989, § 163.095; Ord. No. 6705, § 12, 3-16-1994; Ord. No. 8256, § 1(163.095), 2-17-2009)

Sec. 123-249. - Purpose.

The purpose of this division is to guide development in the flood hazard areas in order to reduce the potential for loss of life and property, reduce the potential for health and safety hazards, and to reduce the potential for extraordinary public expenditures for flood protection and relief. Under the authority granted to local units of government to control land use within their jurisdiction, which includes taking into account the effects of flooding, the common council hereby adopts the following floodplain management regulations in order to accomplish the following:

- (1) To prevent unwise developments from increasing flood or drainage hazards to others;
- (2) To protect new buildings and major improvements to buildings from flood damage;
- (3) To protect human life and health from the hazards of flooding;
- (4) To lessen the burden on the taxpayer for flood control projects, repairs to flood-damaged public facilities and utilities, and flood rescue and relief operations;
- (5) To maintain property values and a stable tax base by minimizing the potential for creating flood blighted areas; and
- (6) To make federally subsidized flood insurance available for structures and their contents in the city by fulfilling the requirements of the National Flood Insurance Program.

(Code 1989, § 163.085; Ord. No. 6705, §§ 1, 2, 3-16-1994; Ord. No. 8256, § 1(163.085), 2-17-2009)

Sec. 123-250. - Disclaimer of liability.

The degree of flood protection required by this division 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 division does not create any liability on the part of the community, natural resources, or the state, for any flood damage that results from reliance on this chapter or any administrative decision made lawfully thereunder.

(Code 1989, § 163.094; Ord. No. 6705, § 11, 3-16-1994; Ord. No. 8256, § 1(163.094), 2-17-2009)

Sec. 123-251. - Abrogation and greater restrictions.

This division repeals and replaces other ordinances adopted by the common council to fulfill the requirements of the National Flood Insurance Program, including section 123-304. However, this division does not repeal the original resolution or ordinance adopted to achieve eligibility in the program. Nor does this division repeal, abrogate, or impair any existing easements, covenants, deed restrictions. Where this division and other ordinance easements, covenants, or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall take precedence. In addition, the common council shall assure that all National Flood Insurance Program regulations and laws (310 IAC 6-1-1, IC 13-2-22 and IC 13-2-22.5) are met.

(Code 1989, § 163.096; Ord. No. 6705, § 13, 3-16-1994; Ord. No. 8256, § 1(163.096), 2-17-2009)

Sec. 123-252. - Regulatory flood elevation.

This division's protection standard is the regulatory flood. The best available regulatory flood data is listed below. Whenever a party disagrees with the best available data, the party submitting the detailed engineering study needs to replace existing data with better data and submit it to the department of natural resources for review and approval.

- (1) The regulatory flood elevation and floodway limits for the SFHAs of the Little Calumet River, Grand Calumet River and Southern Shore of Lake Michigan shall be as delineated on the 100-year flood profiles in the Flood Insurance Study of the city dated September 16, 1980, and the corresponding (FBFM/FIRM) dated March 16, 1981, prepared by the Federal Emergency Management Agency.
- (2) The regulatory flood elevation for each SFHA delineated as an AH Zone or AO Zone shall be that elevation (or depth) delineated on the flood insurance rate map of the city.
- (3) The regulatory flood elevation for each of the remaining SFHAs delineated as an A Zone on the flood

insurance rate map of the city shall be according to the best data available as provided by the department of natural resources.

- (4) The regulatory flood elevation and floodway limits for the SFHAs of those parts of unincorporated Lake County that are within the extraterritorial jurisdiction of the city that may be annexed into the city shall be as delineated on the 100-year flood profiles in the Flood Insurance Study of Lake County dated March 2, 1981, and the corresponding (FBFM/FIRM) dated September 2, 1981, prepared by the Federal Emergency Management Agency.
- (5) If the SFHA is delineated as AH Zone or AO Zone, the elevation (or depth) will be delineated on the county flood insurance rate map, the regulatory flood elevation shall be according to the best data available as provided by the department of natural resources.

(Code 1989, § 163.088; Ord. No. 6705, § 5, 3-16-1994; Ord. No. 8256, § 1(163.088), 2-17-2009)

Secs. 123-253—123-282. - Reserved.

Subdivision II. - Administration and Enforcement

Sec. 123-283. - Duties of the administrator.

The zoning administrator (i.e., plan commission director, building inspector, clerk, treasurer, etc.) shall implement this division and hereafter be referred to as the zoning administrator. The zoning administrator for the city is appointed to review all development and subdivision proposals to ensure compliance with this division, including, but not limited, to the following duties:

- (1) Ensure that all development activities within the SFHAs of the jurisdiction of the city meet the requirements of this division;
- (2) Provide information and assistance to citizens upon request about permit procedures and flood plain construction techniques;
- (3) Ensure that construction authorization has been granted by the state natural resources commission for all development projects subject to section 123-304, and maintain a record of such authorization (either copy of actual permit or letter of recommendation);
- (4) Maintain a record of the "as-built" elevation of the top of the lowest floor (including basement) of all new and/or substantially improved buildings constructed in the SFHA. Inspect before, during and after construction;
- (5) Maintain a record of the engineer's certificate and the "as-built" flood-proofed elevation of all buildings subject to section 123-305;
- (6) Cooperate with state and federal floodplain management agencies to improve base flood and floodway data and to improve the administration of this division. Submit reports as required for the National Flood Insurance Program;
- (7) Maintain for public inspection and furnish upon request regulatory flood data, SFHA maps, letters of map amendment (LOMA), letters of map revision (LOMR), copies of DNR permits and letters of recommendation, federal permit documents, and "as-built" elevation and floodproofing data for all building construction subject

to this division.

(Code 1989, § 163.087; Ord. No. 6705, § 4, 3-16-1994; Ord. No. 7092, § 2, 7-4-1999; Ord. No. 8256, § 1(163.087), 2-17-2009)

Sec. 123-284. - Variances.

- (a) The board of zoning appeals may consider issuing a variance to the terms and provisions of this division provided the applicant demonstrates that:
 - (1) There exists a good and sufficient cause for the requested variance;
 - (2) The strict application of the terms of this division will constitute an exceptional hardship to the applicant; and
 - (3) The granting of the requested variance will not increase flood heights, create additional threats to public safety, cause additional public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- (b) The board of zoning appeals may issue a variance to the terms and provisions of this division subject to the following standards and conditions:
 - (1) No variance or exception for a residential use within a floodway subject to section 123-304(1) or (2) may be granted;
 - (2) Any variance or exception granted in a floodway subject to section 123-304(1) or (2) will require a permit from the department of natural resources;
 - (3) Variances or exceptions to the building protection standards of section 123-305 may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade;
 - (4) Variances or exceptions may be granted for the reconstruction or restoration of any structure individually listed on the Register of Historic Places or the Indiana State Survey of Historic Architectural, Archaeological and Cultural Sites, Structures, Districts, and Objects;
 - (5) All variances shall give the minimum relief necessary and be such that the maximum practical flood protection will be given to the proposed construction; and
 - (6) The board of zoning appeals shall issue a written notice to the recipient of a variance or exception that the proposed construction will be subject to increased risks to life and property and could require payment of increased flood insurance premiums.

(Code 1989, § 163.093; Ord. No. 6705, § 10, 3-16-1994; Ord. No. 8256, § 1(163.093), 2-17-2009)

Sec. 123-285. - Improvement location permit.

No person, firm, corporation, or governmental body not exempted by state law shall commence any development in the SFHA without first obtaining an improvement location permit from the zoning administrator. The zoning administrator shall not issue an improvement location permit if the proposed development does not meet the requirements of this division.

- (1) The application for an improvement location permit shall be accompanied by the following:
 - a. A description of the proposed development;
 - b. Location of the proposed development sufficient to accurately locate property and structure in relation to existing roads and streams;
 - c. A legal description of the property site;

- d. A site development plan showing existing and proposed development locations and existing and proposed lot lines.
 - e. Elevation of the top of the lowest floor (including basement) of all proposed development. Elevation should be in National Geodetic Vertical Datum of 1929 (NGVD) or North American Vertical Datum (NAVD). In either case the conversion formula should be included.
- (2) Upon receipt of an application for an improvement location permit, the zoning administrator shall determine if the site is located within an identified floodway, floodway fringe or within the floodplain where the limits of the floodway have not yet been determined.
- a. If the site is in an identified floodway the zoning administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the department of natural resources and apply for a permit for construction in a floodway. Under the provisions of IC 13-2-22, a permit from the natural resources commission 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, etc., undertaken before the actual start of construction of the building. No action shall be taken by the zoning administrator until a permit has been issued by the natural resources commission granting approval for construction in the floodway. Once a permit has been issued by the natural resources commission, the building official may issue the local improvement location permit, provided the provisions contained in sections 123-304 and 123-305 have been met. The improvement location permit cannot be less restrictive than the permit issued by the natural resources commission.
 - b. If the site is located in an identified floodway fringe, then the zoning administrator may issue the local improvement location permit provided the provisions contained in sections 123-304 and 123-305 have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the flood protection grade (FPG).
 - c. If the site is in an identified floodplain where the limits of the floodway and floodway fringe have not yet been determined (shown as Zone A on the flood insurance rate map), and the drainage area upstream of the site is greater than one square mile, the zoning administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the department of natural resources for review and comment. No action shall be taken by the zoning administrator until either a permit for construction in the floodway or a letter of recommendation citing the 100-year flood elevation and the recommended flood protection grade has been received from the department of natural resources. Once the zoning administrator has received the proper permit or letter of recommendation approving the proposed development, an improvement location permit may be issued provided the conditions of the improvement location permit are not less restrictive than the conditions received from the department of natural resources and the provisions contained in sections 123-304 and 123-305 have been met.

(Code 1989, § 163.089; Ord. No. 6705, § 6, 3-16-1994; Ord. No. 7092, §§ 3—5, 7-4-1999; Ord. No. 8256, § 1(163.089), 2-17-2009)

Secs. 123-286—123-303. - Reserved.

Subdivision III. - Flood Hazard Reduction

Sec. 123-304. - Preventing increased damages.

No development in the SFHA shall create a damaging or potentially damaging increase in flood heights or velocity or threat to public health and safety.

- (1) Within the floodway identified on the flood boundary and floodway map or the flood insurance rate map, the following standards shall apply:
 - a. No development shall be allowed which acting along or in combination with existing or future development, will cause any increase in the elevation of the regulatory flood; and
 - b. 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.
- (2) Within all SFHAs identified as A Zones (no 100-year flood elevation and/or floodway/floodway fringe delineation has been provided), the following standard shall apply: The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the regulatory flood elevation more than one-tenth of one foot and will not increase flood damages or potential flood damages.
- (3) Public health standards in all SFHAs.
 - a. No development in the SFHA shall include locating or storing chemicals, explosives, buoyant materials, flammable liquids, pollutants, or other hazardous or toxic materials below the flood protection grade, unless such materials are stored in a floodproofed storage tank or building constructed according to the requirements of section 123-305.
 - b. New and replacement sanitary sewer lines and onsite waste disposal systems may be permitted providing all man-holes or other aboveground openings are located above the FPG, or those which are located below the FPG are watertight.

(Code 1989, § 163.090; Ord. No. 6705, § 7, 3-16-1994; Ord. No. 8256, § 1(163.090), 2-17-2009)

Sec. 123-305. - Protecting buildings.

In addition to the damage prevention requirements of section 123-304, all buildings to be located in the SFHA shall be protected from flood damage below the FPG.

- (1) This building protection requirement applies to the following situations:
 - a. Construction or placement of any new building valued at more than \$1,000.00;
 - b. Structural alterations made to an existing building that increase the market value of the building by more than 50 percent (excluding the value of the land);
 - c. Any subsequent alterations;
 - d. Reconstruction or repairs made to a damaged building that are valued at or more than 50 percent the market value of the building (excluding the value of the land) before damage occurred;
 - e. Installing a manufactured home on a new site or a new manufactured home on an existing site. This division does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage; and
 - f. Installing a travel trailer or recreational vehicle on a site for more than 180 days.
- (2) This building protection requirement may be met by one of the following methods. The zoning administrator

shall maintain a record of compliance with these building protection standards as required in section 123-283.

- a. A residential or nonresidential building may be constructed on a permanent landfill in accordance with the following:
 1. The fill shall be placed in layers no greater than one foot deep before compacting to 95 percent of the maximum density obtainable with the Standard Proctor Test method.
 2. The fill should extend at least ten feet beyond the foundation of the building before sloping below the FPG.
 3. The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than three horizontal to one vertical (3:1).
 4. The fill shall not adversely affect the flow of surface drain age from or onto neighboring properties.
 5. The top of the lowest floor including basements (see definition of lowest floor in section 123-247), shall be at or above the FPG.
- b. A residential or nonresidential building may be elevated in accordance with the following:
 1. The building or improvements shall be elevated on posts, piers, columns, extended walls, or other types of similar foundation provided:
 - (i) Walls of any enclosure below the elevated floor shall be designed to automatically equalize hydrostatic flood forces on the walls by allowing for the entry and exit of floodwaters, through providing a minimum of two openings (in addition to doorways and windows) having a total area of one square foot for every two square feet of enclosed area subject to flooding. The bottom of all such opening shall be no higher than one foot above grade.
 - (ii) Any enclosure below the elevated floor is used for storage of vehicles and building access.
 2. The foundation and supporting members shall be anchored and aligned in relation to flood flows and adjoining structures so as to minimize exposure to known hydrodynamic forces such as buoyancy, current, waves, ice, and floating debris.
 3. All areas below the FPG shall be constructed of materials resistant to flood damage. The top of the lowest floor (including basement) and all electrical, heating, ventilating, plumbing, and air conditioning equipment and utility meters shall be located at or above the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.
- c. Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following anchoring requirements:
 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. This requirement applies to all manufactured homes to be placed on a site:
 - (i) Outside a manufactured home park or subdivision;
 - (ii) In a new manufactured home park or subdivision;
 - (iii) In an expansion to an existing manufactured home park or subdivision; or
 - (iv) In an existing manufactured home park or subdivision on which a manufactured home has

incurred substantial damage as a result of a flood.

2. This requirement applies to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood.
 3. The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by rein-forced piers or other foundation elements that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- d. Recreational vehicles placed on a site shall either:
1. Be on the site for less than 180 consecutive days;
 2. Be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
 3. Meet the requirements for manufactured homes in this subsection.
- e. A nonresidential building may be floodproofed to the FPG (in lieu of elevating) if done in accordance with the following:
1. A registered professional engineer shall certify that the building 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 building design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice.
 2. Floodproofing measures shall be operable without human intervention and without an outside source of electricity.

(Code 1989, § 163.091; Ord. No. 6705, § 8, 3-16-1994; Ord. No. 7092, §§ 6—9, 7-4-1999; Ord. No. 8256, § 1(163.091), 2-17-2009)

Sec. 123-306. - Other development requirements.

- (a) The zoning administrator shall review all proposed subdivisions to determine whether the subdivision lies in a flood hazard area as defined elsewhere by ordinance. If the zoning administrator finds the subdivision to be so located, the zoning administrator shall forward plans and materials to the state department of natural resources for review and comment. The zoning administrator shall require appropriate changes and modifications in order to assure that:
- (1) It is consistent with the need to minimize flood damages;
 - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems, are located and constructed to minimize or eliminate flood damage;
 - (3) Adequate drainage is provided so as to reduce exposure to flood hazards;
 - (4) On-site waste disposal systems, if provided, will be so located and designed to avoid impairment of them or contamination from them during the occurrence of the regulatory flood.
- (b) Developers shall record the 100-year flood elevation on all subdivision plats containing lands (identified elsewhere by this division) within a flood hazard area prior to submitting the plats for approval by the plan commission.
- (c) All owners of manufactured home parks or subdivisions located within the SFHA identified as Zone A on the

community's FHBM or FIRM shall develop an evacuation plan for those lots located in the SFHA and file it with the local plan commission add have it filed with and approved by the appropriate community emergency management authorities.

(Code 1989, § 163.092; Ord. No. 6705, § 9, 3-16-1994; Ord. No. 8256, § 1(163.092), 2-17-2009)

Secs. 123-307—123-330. - Reserved.

ARTICLE IV. - SUPPLEMENTAL REGULATIONS

Sec. 123-331. - Access to public streets.

Every principal building erected shall be on a zoning lot or parcel of land which adjoins a public street or a permanent easement of access to a public street, the easement to be at least 20 feet wide unless a lesser width was duly established and recorded prior to the effective date of the ordinance from which this chapter is derived.

(Code 1960, § 6-504; Code 1989, § 163.007; Ord. No. 3376; Ord. No. 8256, § 1(163.007), 2-17-2009)

Sec. 123-332. - Principal and accessory buildings.

- (a) Except in the case of planned developments, not more than one principal detached residential building shall be located on a zoning lot, nor shall a principal detached residential building be located on the same zoning lot with any other principal building.
- (b) No accessory building or structure shall be constructed on any lot prior to the time of construction of the principal building to which it is accessory. No accessory building or buildings shall occupy more than 40 percent of the area of a required rear yard. No accessory building or portion thereof located in a required rear yard shall exceed 15 feet in height. On a reversed corner lot in a residence district and within 15 feet of any adjacent property to the rear in a residence district, no accessory building or portion thereof located in a required rear yard shall be closer to the side lot line abutting the street than a distance equal to 60 percent of the least depth which would be required under this chapter for the front yard on the adjacent property to the rear. Further, in the above instance, no accessory building shall be located within five feet of any part of a rear lot line which coincides with a side lot line or portion thereof of property in an R1, R1A, R2, R3, or R4 district.

(Code 1960, §§ 6-505, 6-506; Code 1989, § 163.008; Ord. No. 3376; Ord. No. 8256, § 1(163.008), 2-17-2009)

Sec. 123-333. - Bulk regulations.

- (a) The maintenance of yards, courts, plazas, common greens and other open spaces and minimum lot area legally required for a building shall be a continuing obligation of the owner of the building or of the property on which it is located as long as the building is in existence. Furthermore, no legally required yards, courts, plazas, common greens, other open space, or minimum lot area allocated to any building, by virtue of change of ownership or for any other reason, shall be used to satisfy yard, court, plaza, common green other open space, or minimum lot area requirements for any other building.
- (b) No zoning lot improved with a building or buildings shall be divided into two or more zoning lots; and no portion of any zoning lot which is improved with a building or buildings shall be sold, unless all zoning lots resulting from

each division or sale and improved with a building or buildings shall conform with all the bulk regulations of the zoning district in which the property is located. However, with respect to the re-subdivision of improved zoning lots in R5 and R6 districts or improved transitional zoning lots in an R4 district, side yard requirements shall not apply between attached buildings.

- (c) All yards, courts, plazas, common greens, and other open spaces allocated to a building or dwelling group shall be located on the same zoning lot as the building or dwelling group. Front yards shall not be paved except under the following conditions:
 - (1) Residential districts. Driveways of not more than 25 feet in width, perpendicular to the front property line, are permitted.
 - (2) Business districts. Driveways of not more than 35 feet in width, perpendicular to the front property line, are permitted.
 - (3) Manufacturing districts. Driveways of not more than 35 feet, perpendicular to the front property line, are permitted.
- (d) No yards now or hereafter provided for a building existing on the effective date of the ordinance from which this chapter is derived shall subsequently be reduced below, or further reduced below if already less, than the minimum yard requirements of this chapter for equivalent new construction.
- (e) Permitted obstructions in required yards.
 - (1) In all yards. Open terraces not over four feet above the average level of the adjoining ground but not including a permanent roofed-over terrace or porch; awnings and canopies; steps four feet or less above grade, which are necessary for access to a permitted building or for access to a zoning lot from a streets or alley; chimneys projecting 18 inches or less into the yard; recreational and laundry-drawing equipment; arbors, trellises, and flag poles are permitted.
 - a. Open mesh fences having a height of six feet or less may be used to locate property lines within the required side or rear yards in the R districts. Open mesh-type fences having a height of four feet or less may be used to locate property lines within required front yards in the R districts where authorized by the board of appeals in accordance with the provisions of this chapter.
 - b. Fences, walls, or lattice-work screens which form outside living rooms or provide necessary privacy for swimming pools or other activities and are actual projections from the bearing walls of existing dwellings may be extended into either the side or the rear yard, but not both yards, where the fence, wall, or screen has not less than 50 percent of the surface open, or is a vertical type of louvered fence which can prevent free movement of air from one or more directions and yet have more than 50 percent of its surface open when viewed on an angle from two directions. However, the projection shall not prohibit the erection of an open mesh-type fence over six feet in height enclosing an elementary or high school site, and this projection shall not limit the height, type, or location of a fence, wall, or other structure which is located within the buildable area exclusive of the side or rear yards of the property.
 - c. In all business districts, fences and walls located in the front yard shall not exceed 42 inches in height above the finished ground level. Fences having a height of more than 42 inches may be used in business districts where authorized by the board of zoning appeals in accordance with the provisions of this chapter.
 - d. In all business districts, no fence or wall, any part of which is barbed wire, may be erected on the front yard or area adjoining and adjacent to any street or highway. Barbed wire may be used on fences or walls

provided said wire is more than six feet above ground.

- e. All front yard fences or walls shall be erected at least ten feet from the property line. The setback area shall be appropriately screened and landscaped. Landscaping shall be installed in such a manner as to promote compatibility with the commercial uses in the surrounding areas, and to negate adverse visual effects of the fence or wall.
 - f. The location of a fence on the side yard of a corner lot shall be five feet from the property line. Further, all fences higher than 42 inches shall be reviewed and approved for vehicular and/or pedestrian safety by the traffic engineer.
- (2) In front yards. One-story bay windows projecting three feet or less into the yard, and overhanging eaves and gutters projecting three feet or less into the yard are permitted.
 - (3) In rear yards. Enclosed, attached, or detached off-street parking spaces; open off-street parking spaces; accessory sheds, tool rooms, and similar accessory buildings or structures for domestic and agricultural storage; balconies; breezeways and open porches; one-story bay windows projecting three feet or less into the yard; overhanging eaves and gutters projecting three feet or less into the yard are permitted. No accessory building shall be nearer than three feet to the side lot line. No accessory building or use shall be nearer than three feet to the rear lot line.
 - (4) In side yards. Overhanging eaves and gutters projecting into the yard for a distance not exceeding 40 percent of the required yard width, but in no case exceeding 30 inches are permitted.

(Code 1960, § 6-507; Code 1989, § 163.009; Ord. No. 3376; Ord. No. 3515; Ord. No. 3721; Ord. No. 4544, 6-1-1971; Ord. No. 6247B, 6-22-1988; Ord. No. 8256, § 1(163.009), 2-17-2009)

Sec. 123-334. - Explosives.

For the purpose of this chapter, the list of materials or products which decompose by detonation when in sufficient concentrations includes, but is not limited to, the following:

- (1) Acetylides.
- (2) Azides.
- (3) Chlorates.
- (4) Dynamite.
- (5) Blasting gelatin.
- (6) Fulminates.
- (7) Anhydrous hydrazine.
- (8) Ammonium nitrates.
- (9) Dinitroresorcinol.
- (10) Dinitrotoluene.
- (11) Guanidine nitrate.
- (12) Guncotton (cellulose nitrate with nitrogen content in excess of 12.2 percent, or pyroxylin).
- (13) Hexamine.
- (14) Nitroglycerin.
- (15) Petn (pentaerythritoltetranitrate).

- (16) Picric acid.
- (17) Tetryl (trinitrophenylmethyltramine)
- (18) Cylonite or hexogen (trimethylene, trinitramine).
- (19) Dinol.
- (20) Petryl.
- (21) TNT (trinitrotoluene).
- (22) Perchlorates (when mixed with carbonaceous materials).
- (23) Black powder.
- (24) Fireworks.
- (25) Greek fire.
- (26) Permanganates.
- (27) Peroxides (except hydrogen peroxide in concentrations of 35 percent or less in aqueous solution).

(Code 1960, § 6-1401; Code 1989, § 163.012; Ord. No. 3376; Ord. No. 8256, § 1(163.012), 2-17-2009)

Sec. 123-335. - Solid waste or hazardous substance disposal sites or landfills.

Solid waste disposal sites, hazardous waste sites, manufacturing sites containing toxic substances and potentially polluting substances (reference city environmental ordinances, Ord. Nos. 7394 and 7641) and/or landfills shall be special uses prohibited from locating within one mile of each other and from locating within one mile of residentially zoned district.

(Code 1989, § 163.015; Ord. No. 6245, 6-7-1988; Ord. No. 8256, § 1(163.0152), 2-17-2009)

Secs. 123-336—123-358. - Reserved.

ARTICLE V. - OFF-STREET PARKING AND LOADING

Sec. 123-359. - Scope of regulations.

- (a) It is the purpose of these regulations to provide adequate on-site parking for developments, minimize any detrimental effects of on-site parking areas on adjacent properties, and ensure the proper and uniform development of parking areas throughout the city. On-site parking and loading spaces for every use shall be provided in accordance with the standards established herein. Furthermore, parking areas shall be designed to:
 - (1) Minimize dangerous traffic movements;
 - (2) Achieve efficient traffic flow in accordance with standards in the Institute of Traffic Engineers (ITE) Transportation and Traffic Engineering Handbook; and
 - (3) Conform to the applicable parking requirements and provide for the optimum number of parking spaces, while maintaining design standards and preserving green space.
- (b) The off-street parking and loading provisions of this chapter shall apply as follows:
 - (1) For all buildings and structures erected and all uses of land established after the effective date of the ordinance from which this chapter is derived, accessory parking and loading facilities shall be provided as required by the regulations of the districts in which such buildings or uses are located. However, where a

building permit has been issued prior to the effective date of the ordinance from which this chapter is derived, and provided that construction is begun within one year of such effective date and diligently prosecuted to completion, parking and loading facilities as required hereinafter need not be provided.

- (2) When the intensity of use of any building, structure or premises shall be increased through addition of dwelling units, gross floor area, seating capacity or other units of measurement specified herein for required parking or loading facilities, parking and loading facilities as required herein shall be provided for such increase in intensity of the land use. However, no building or structure lawfully erected or use lawfully established prior to the effective date of the ordinance from which this chapter is derived shall be required to provide such additional parking or loading facilities unless and until the aggregate increase in units of measurement shall equal not less than 15 percent of the units of measurements existing upon the effective date of the ordinance from which this chapter is derived, in which event parking or loading facilities as required herein shall be provided for the total increase.
- (3) Whenever the existing use of a building or structure shall hereafter be changed to a new use, parking or loading facilities shall be provided as required for such new use. However, if the building or structure was erected prior to the effective date of the ordinance from which this chapter is derived, additional parking or loading facilities are mandatory only in the amount by which the requirements for the new use would exceed those for the existing use if the latter were subject to the parking and loading provisions of this chapter.

(Code 1960, § 6-1001; Code 1989, § 163.100; Ord. No. 3376; Ord. No. 8256, § 1(163.100), 2-17-2009)

Sec. 123-360. - Existing facilities.

Accessory off-street parking or loading facilities which are located on the same lot as the building or land use served and which were in existence on the effective date of the ordinance from which this chapter is derived or were provided voluntarily after such effective date shall not hereafter be reduced below, or if already less, shall not further be reduced below the requirements of this chapter for a similar new building or use.

(Code 1960, § 6-1002; Code 1989, § 163.101; Ord. No. 3376; Ord. No. 8256, § 1(163.101), 2-17-2009)

Sec. 123-361. - Voluntary establishment of facilities.

Nothing in this chapter shall be deemed to prevent the voluntary establishment of off-street parking or loading facilities to serve any existing land use or buildings, provided that all regulations herein governing the location, design, improvement and operation of such facilities are adhered to.

(Code 1960, § 6-1003; Code 1989, § 163.102; Ord. No. 3376; Ord. No. 8256, § 1(163.102), 2-17-2009)

Sec. 123-362. - Destruction of existing facilities.

For any conforming or legally nonconforming building or land use which is in existence on the effective date of the ordinance from which this chapter is derived, which subsequently thereto is damaged or destroyed by fire, collapse, explosion, or other cause and which is reconstructed, reestablished, or repaired, off-street parking or loading facilities need not be provided, except that parking or loading facilities equivalent to any maintained at the time of such damage or destruction shall be restored or continued in operation. However, in no case shall it be necessary to restore or maintain parking or loading facilities in excess of those required by this chapter for equivalent new uses or construction.

Sec. 123-363. - Control of parking facilities.

- (a) Where required parking facilities are provided on land other than the zoning lot on which the building or land use served by the facilities is located, they shall be and remain in the same possession or ownership as the zoning lot occupied by the building or use to which the parking facilities are accessory.
- (b) An off-site parking facilities shall not be authorized and a zoning certificate shall not be issued where the plans call for parking facilities other than on the same zoning lot until and unless the board of zoning appeals has reviewed the plans and heard the applicant and made findings that the common ownership or possession of the zoning lot and the site of the parking facilities are reasonably certain to continue, and that the off-site parking facilities will be maintained at all times during the life of the proposed use or building.
- (c) Upon the approval of the board of zoning appeals, a parking lot may be built with fewer spaces than the required minimum spaces herein if the following standards are met:
 - (1) Land bank area. Adequate space shall be land banked such that the full number of parking spaces required in can be built on-site at a later date, should the need arise;
 - (2) Shared parking facility. Adequate spaces to meet the minimum number of parking spaces required herein are available at a shared parking facility site.
 - (3) Mixed development land uses. Where a development contains multiple land uses with different peak travel generation, the total required parking spaces may be reduced by the board of zoning appeals upon recommendation of the plan commission and petition by an applicant. In such instances, parking space reductions shall be determined by utilizing the ITE: Trip Generation standards or similar professional parking or travel demand standards.
 - (4) Multi-modal proximity. Where a development is located within one-tenth of a mile of a public transit stop or a multi-use trail facility, the minimum parking requirement may be reduced by up to a maximum of 15 percent upon a commission finding of fact to such qualification.
 - (5) Maximum reduction. Under no circumstances shall a reduction be less than 50 percent of the spaces required to be installed.
- (d) Parking for the disabled. Refer to section 123-372 for further requirements and standards.

(Code 1960, § 6-1005; Code 1989, § 163.104; Ord. No. 3376; Ord. No. 8256, § 1(163.104), 2-17-2009)

Sec. 123-364. - Submission of parking design plan.

- (a) Parking design required. A design shall be presented showing how the full number of parking spaces required both on-site and off-site shall be installed, the type of parking area surface, how drainage would be handled and landscaping installed. This design shall be reviewed by the planning staff for compliance with this chapter.
- (b) Any application for a building permit or for a certificate of occupancy where no building permit is required shall include therewith a parking design plan, drawn to scale and fully dimensioned, showing any parking or loading facilities to be provided in compliance with this chapter.

(Code 1960, § 6-1006; Code 1989, § 163.105; Ord. No. 3376; Ord. No. 8256, § 1(163.105), 2-17-2009)

Sec. 123-365. - Parking space regulations.

(a) Use of parking spaces.

- (1) Exclusive use. Unless a shared parking agreement has been established in accordance with this chapter, on-site parking spaces shall be designed, maintained and used exclusively for the tenants, occupants and customers of the buildings or land uses on the site.
- (2) Storage of vehicles or equipment. Parking lots and spaces, including both required and excess parking spaces, shall not be used for storing vehicles that are not used in conjunction with the primary use of the lot.

(b) Except as otherwise indicated, required accessory off-street parking facilities provided for land uses listed hereinafter shall be solely for the parking of passenger vehicle of patrons, occupants (or their guests) or employees of such land uses.

(c) On lots of record as of the date of the adoption of this chapter, which are 40 feet or less in width, which are to be improved with a single-family dwelling or a two-family dwelling for which an alley has not been dedicated to the rear, accessory off-street parking facilities shall not be required.

(d) When determination of the number of off-street parking spaces required by this chapter results in a requirement of a fractional space, any fraction of one half or less may be disregarded while a fraction in excess of one half shall be counted as one parking space.

(e) Stacked parking spaces shall not be used to fulfill minimum parking space requirements. Single-family residences are exempt from this provision.

(f) Off-street parking facilities for separate land uses may be provided collectively under the following circumstances:

- (1) The total number of spaces so provided collectively is not less than the sum of the separate requirements for each such use, and provided that all regulations governing, location of accessory parking spaces in relation to the use served are adhered to unless provided as a shared parking facility. Furthermore, no parking space or portion thereof shall serve as a required space for more than one use unless otherwise authorized by the board of appeals in accordance with section 123-110.
- (2) Shared parking facilities. The owners of two or more properties may join together to provide the required parking spaces for their respective land uses. Upon request by the owners and after review of the BZA, the BZA may authorize the use of a shared parking facility under the following conditions:
 - a. Minimum. In a shared parking arrangement, each property shall provide a minimum of 60 percent of the individual parking requirements. In no case shall the total combined parking spaces be less than 120 percent of the greater individual parking requirement.
 - b. Proximity. Any property utilizing shared parking facilities shall be located within 300 feet of such parking facility, using established sidewalks and crosswalks where available.
 - c. Shared parking agreement. The property owner seeking leased spaces shall provide a recordable zoning commitment to the planning department stating that in the case where leased spaces are no longer available, that an adequate parking alternative will be provided whether in perpetuity or limited in time or period.

(g) Parking of nuisance vehicles.

- (1) Vehicles and trailers. The parking of any vehicle or trailer of any type without current license plates or in an inoperable condition shall be prohibited unless completely enclosed within a building or within an approved salvage/scrap yard.
- (2) Storage, occupancy, or similar uses. Vehicles, campers or tractor/trailers of any type shall not be used for the

purpose of storage, occupancy, or similar use.

- (h) A required off-street parking space shall be at least nine feet in width and at least 20 feet in length, exclusive of access drives or aisles, ramps, columns or office or work areas. Such space shall have a vertical clearance of at least seven feet.
- (i) Each required off-street parking space shall open directly upon an aisle or driveway of such width and design as to provide safe and efficient means of vehicular access to such parking space. All open off-street parking facilities shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movements. No driveway across public property nor curb cut shall exceed a width of 25 feet.
- (j) Off-street parking spaces may be located in any yards except required front yards.
- (k) Design and maintenance.
 - (1) Accessory parking spaces located on the same lot as occupied by the land use served may be open to the sky or enclosed in a building. Accessory parking spaces located in a residence district elsewhere than on the same lot occupied by the use served shall be open to the sky.
 - (2) All open off-street parking areas, except a parking spaces in a residentially zoned traditional neighborhood district shall be improved with an all-weather, dustless, paved pervious or pervious concrete surface.
 - (3) All open automobile parking areas containing more than four parking spaces shall be effectively screened on each side adjoining or fronting on any property situated in a residentially zoned district or any institutional premises by a fence, or densely planted compact hedge not less than five feet or more than seven feet in height. Such required screening shall conform to the front and side yard setback requirements of the district in which the parking is located.
 - (4) Accessory signs are permitted on parking areas in accordance with the provisions of section 117-1.
 - (5) Motor vehicle repair work of any kind shall not be permitted in conjunction with accessory off-street parking facilities provided in the residence, B1, B2, B3 or B4 districts. The sale of gasoline and motor oil in conjunction with accessory off-street parking facilities is not permitted in any residence district except an R6 district and is permitted there only where taking place within a building enclosing parking facilities, provided that no sign advertising such sale is visible from outside and that all gasoline and oil dispensing equipment is effectively screened from view from the public way. The sale of gasoline and motor oil in conjunction with accessory off-street parking facilities provided in a B1, B2, B3 or B4 district is permitted only under the conditions prescribed above for such sale in an R6 district.
- (l) On-street parking exemption. The BZA may approve the utilization of on-street parking spaces to count toward the provision of the minimum number of spaces required for a development. Such on-street spaces shall be located along the property frontage on the same side of the street as the development requesting their land use. In cases where new on-street spaces are being created as a component of the development, the design of such spaces shall meet the standards of the city engineering department and shall be available to the general public.
- (m) The total number of accessory parking spaces provided for a single-family, two-family, or multiple-family dwelling or hotel shall not exceed that required by this chapter for such use or for an equivalent new use by more than 50 percent or four spaces, whichever number is greater.
- (n) When two or more uses are located on the same zoning lot, only one exemption in terms of floor area, as set forth in the schedule of parking requirements in section 123-367, shall be taken.
- (o) Stormwater drainage.

- (1) Parking areas shall be constructed such that all surface water is directed into a stormwater drainage system.
- (2) Water draining from a parking lot shall not flow across a sidewalk, walking or biking trail.
- (3) Stormwater drainage plans for off-street parking areas shall be reviewed and approved by the city engineering department with a recommendation to the plan commission for stormwater drainage compliance.

(p) Surface material.

- (1) Unless specifically stated otherwise in this chapter, all off-street areas used for parking shall be asphalt, concrete, pavers, or other approved material.
- (2) The BZA, upon recommendation by the planning department staff, may require and approve other structurally engineered, permeable parking pavers for hard surface parking surfaces provided the parking area is intended for low intensity or intermittent parking uses and parking pavers are designed and used to mitigate the negative environmental impacts of impervious surfaces.
- (3) Areas utilizing permeable parking pavers shall not count towards impervious surface calculations.

(Code 1960, § 6-1008; Code 1989, § 163.106; Ord. No. 3376; Ord. No. 3975; Ord. No. 8256, § 1(163.106), 2-17-2009)

Sec. 123-366. - Location of off-street parking facilities in residential districts.

- (a) The location of off-street parking spaces in relation to the land use served in residential districts shall be as prescribed hereinafter. All distances specified shall be walking distances between such parking spaces and a main entrance to the land use served.
- (b) Location.
 - (1) The parking spaces required for residential land uses shall be located on the same lot as the dwelling unit.
 - (2) Parking for residential uses shall be prohibited within the setback between the street and the building.
 - (3) In cases where an existing neighborhood has consistent curb cuts and driveways as a prevailing design criteria or if the area is a new subdivision, then these elements (driveways and curb cuts) are allowed after review and sign-off by the department of planning and division of zoning, engineering, and traffic. If an existing neighborhood does not possess these elements as a prevailing feature, then requests for such elements must be presented to the board of zoning appeals as a variance request.
 - (4) Parking spaces for multifamily dwelling units may be exempt from subsection (b)(1) of this section if:
 - a. Off-street parking is provided on a lot within 100 feet of the perimeter of the lot improved with the dwelling unit;
 - b. The owner of the multifamily dwelling unit shows proof of ownership in the lot for which the alternative parking area is requested; and
 - c. Upon review and recommendation by the planning department and approval by the plan commission after a formal petition by the owner of the properties.
- (c) Surface.
 - (1) Parking spaces shall utilize a dustless, hard surface of concrete or asphalt. Crushed stone, or comparable material may be approved by the BZA if extraordinary conditions exist upon petition by the property owner. If approved, crushed stone parking surfaces shall be contained within a raised, permanent border.
 - (2) Under no circumstances shall stone, rock, dirt, sand or grass be permitted as parking areas.

- (3) All new driveway aprons onto a street shall be surfaced with concrete. Enlargement or modification of an existing driveway shall require driveway apron to be surfaced with asphalt or concrete.

(Code 1960, § 6-1009; Code 1989, § 163.107; Ord. No. 3376; Ord. No. 8256, § 1(163.107), 2-17-2009)

Sec. 123-367. - Number of parking spaces required.

For the following uses, accessory off-street parking spaces shall be provided as required hereinafter. Parking spaces required on an employee basis shall be based on the maximum number of employees on duty or residing, or both, on the premises at any one time.

(1) *Residential uses.*

- a. *One-family dwellings and two-family dwellings.* One parking space shall be provided for each dwelling unit.
- b. *Multiple-family dwellings (including apartment hotels).* One parking space shall be provided for each dwelling unit, except that in an R6 or R7 district parking spaces equal in number to 75 percent of the number of dwelling units (exclusive of efficiency units) and 50 percent of the number of efficiency units shall be provided. For lodging rooms located in an apartment hotel, one parking space shall be provided for each three lodging rooms.
- c. *Tourist courts, tourist homes and motels.* One parking space shall be provided for each dwelling unit or lodging room.
- d. *Hotels, transient.* One parking space for each dwelling unit and one parking space for each three lodging rooms shall be provided.
- e. *Lodginghouses.* One parking space shall be provided for each three lodging rooms, plus one space for the owner or manager.
- f. *Private clubs and lodges (with sleeping facilities for guests).* One parking space shall be provided for each three lodging rooms plus parking spaces equal in number to ten percent of the capacity in persons (exclusive of lodging room capacity) of such club or lodge.

(2) *Retail and service uses.*

- a. *Retail stores and banks.* One parking space shall be provided for each 300 square feet of floor area in excess of 2,000 square feet, except that in a B5-2 district, one parking space shall be provided for each 300 square feet of floor area in excess of 5,000 square feet.
- b. *Automobile service stations.* One parking space shall be provided for each three employees.
- c. *Bowling alleys.* Three parking spaces shall be provided for each alley, plus such additional spaces as may be required herein for affiliated uses, bars, restaurants and the like.
- d. *Establishments dispensing food or beverages for consumption on the premises.* One parking space shall be provided for each 400 square feet of floor area in excess of 4,000 square feet, except that in a B5-2 district, one parking space shall be provided for each 400 square feet of floor area in excess of 7,500 square feet.
- e. *Furniture and appliance stores, household equipment or furniture repair shops.* One parking space shall be provided for each 600 square feet of floor area in excess of 4,000 square feet, except that in a B5-2 district, one parking space shall be provided for each 600 square feet of floor area in excess of 7,500 square feet.
- f. *Motor vehicle sales and machinery sales.* One parking space shall be provided for each 600 square feet of

floor area in excess of 4,000 square feet, except that in a B5-2 district, one parking space shall be provided for each 600 square feet of floor area in excess of 7,500 square feet.

- g. *Theaters (indoor)*. One parking space shall be provided for each ten seats up to 500 seats, plus one parking space for each five seats above 500.
 - h. *Undertaking establishments, funeral parlors*. Five parking spaces shall be provided for each chapel or parlor, plus one parking space for each funeral vehicle kept on the premises.
- (3) *Offices, business, professional and governmental*. One parking space shall be provided for each 500 square feet for floor area in excess of 4,000 square feet, except that in a B5-2 district, one parking space shall be provided for each 500 square feet of floor area in excess of 7,500 square feet.
- (4) *Wholesale establishments (but not including warehouses and storage buildings other than accessory)*. One parking space shall be provided for each 600 square feet of floor area in excess of 4,000 square feet, except that in a B5-2 district, one parking space shall be provided for each 600 square feet of floor area in excess of 7,500 square feet.
- (5) *Establishments engaged in production, processing, cleaning, servicing, testing or repair of materials, goods or products*. One parking space shall be provided for each three employees, plus one space for each vehicle used in the conduct of the enterprise.
- (6) *Warehouses and storage buildings*. One parking space shall be provided for each three employees, plus one space for each vehicle used in the conduct of the enterprise.
- (7) *Community service uses*.
- a. *Church or other religious auditoriums*. One parking space shall be provided for each four seats.
 - b. *School, college, and other institutional auditoriums*. One parking space shall be provided for each 12 seats.
 - c. *Colleges, universities, and business, professional, and trade schools*. One parking space shall be provided for each three employees, and one parking space shall be provided for each six students based on the maximum number of students attending classes on the premises at any one time during any 24-hour period.
 - d. *Health centers, government operated*. Three parking spaces shall be provided for each staff and visiting doctor.
 - e. *Hospitals*. One parking space shall be provided for each three hospital beds, plus one parking space for each three employees (other than staff doctors), plus one parking space for each doctor assigned to the staff.
 - f. *Libraries, art galleries, and museums, public*. One parking space shall be provided for each 1,000 square feet of gross floor area.
 - g. *City-owned or privately owned recreation buildings or community centers*. One parking space shall be provided for each three employees, plus spaces adequate in number, as determined by the BZA, to serve the visiting public.
 - h. *Public utility and public service uses*. One parking space shall be provided for each three employees, plus spaces adequate in number, as determined by the BZA, to serve the public.
 - i. *Schools, nursery, elementary, and high*. One parking space shall be provided for each three employees.
- (8) *Place of assembly*. Stadiums, arenas, auditoriums (other than church, college or institutional school),

convention halls, dancehalls, exhibition halls, skating rinks and other similar places of assembly. Parking spaces equal in number to ten percent of the capacity in persons shall be provided.

(9) *Miscellaneous uses.*

- a. *Fraternities or sororities housing and dormitories.* One parking space shall be provided for each five active members, plus one parking space for the manager thereof.
- b. *Institutions for the care of mental illness.* One parking space shall be provided for each staff doctor, plus spaces adequate in number, as determined by the BZA, to serve the visiting public.
- c. *Private clubs and lodges (without sleeping facilities for guests).* Parking spaces equal in number to ten percent of the capacity in persons shall be provided.
- d. *Rest homes or nursing homes, sanitariums, convalescent homes, or institutions for the aged or for children.* One parking space shall be provided for each six beds, plus one parking space for each three employees (other than staff doctors), plus one parking space for each doctor assigned to the staff.
- e. *Theaters, automobile drive-in.* Reservoir parking space equal to ten percent of the vehicle capacity of such theaters shall be provided.
- f. *Persons employed or residing on the premises, visiting.* For the following uses, off-street parking spaces shall be provided in adequate number, as determined by the BZA, to serve persons employed or residing on the premises as well as the visiting public.
 1. Airports or aircraft landing fields; heliports.
 2. Convents and monasteries.
 3. Fraternal or religious institutions.
 4. Outdoor amusement establishments, fair grounds, kiddie parks and other similar amusement centers.
 5. Rectories and parish houses.
 6. Swimming pools.

(10) *Mixed uses.* When two or more uses are located on the same zoning lot or within the same building, parking spaces equal in number to the sum of the separate requirements for each such use shall be provided. A parking space or portion thereof shall not serve as a required space for more than one use unless otherwise authorized by the board of appeals in accordance with section 123-108.

(11) *Other uses.* For uses not listed heretofore in this schedule of parking requirements, parking space shall be provided on the same basis as required for the most similar listed use, as determined by the BZA.

(Code 1960, § 6-1010; Code 1989, § 163.108; Ord. No. 3376; Ord. No. 3802; Ord. No. 8256, § 1(163.108), 2-17-2009)

Sec. 123-368. - Off-street loading berths.

(a) Requirements for off-street loading berths are as follows:

- (1) All required loading berths shall be located on the same zoning lot as the land use served. A loading berth for vehicles over two ton capacity shall not be closer than 50 feet to any property in a residence district unless completely enclosed by building walls, a uniformly painted solid fence or wall or any combination thereof, not less than six feet in height. A permitted or required loading berth shall not be located within 25 feet of the nearest point of intersection of any two streets. A loading berth shall not be located in required side yard, and any loading berth located in a required rear yard shall be open to the sky.

- (2) Unless otherwise specified, a required loading berth shall be at least ten feet in width by at least 25 feet in length of aisle and maneuvering space, and shall have a vertical clearance of at least 14 feet.
- (3) Each required off-street loading berth shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movements, subject to approval by the traffic engineer.
- (4) All open off-street loading berths shall be improved with a compacted base not less than seven inches thick, surfaced with not less than two inches of asphaltic concrete or some comparable all-weather dustless material.
- (5) No motor vehicle repair work or service of any kind shall be permitted in conjunction with loading facilities provided in any residence or business districts.
- (6) Space allocated to any off-street loading berth shall not, while so allocated, be used to satisfy the space requirements for any off-street parking facilities or portions thereof.
- (7) For special uses other than prescribed for hereinafter, loading berths adequate in number and size to serve such use, as determined by the BZA, shall be provided.
- (8) Uses for which off-street loading facilities are required herein but which are located in buildings of less floor area than the minimum prescribed for such required facilities shall be provided with adequate receiving facilities off any adjacent alley, service drive or open space on the same lot which is accessible by motor vehicle.

(b) For the uses listed in the following table, off-street loading berths shall be provided on the basis of gross floor area of building or portions thereof devoted to such uses in the amounts shown herein.

Use	Gross Floor Area (in square feet)	Required Number and Minimum Horizontal Dimensions of Berths
Multiple-family dwellings	10,000 to 200,000	1 (10 ft. × 25 ft.)
Fraternity and sorority houses		
Hospitals, sanitariums, and other institutional uses	For each additional 200,000 or fraction thereof	1 additional (10 ft. × 25 ft.)
Hotels, clubs, and lodges, except as set forth below		
Hotels, clubs, and lodges, when containing any of the following: retail shops, convention halls, auditoriums, exhibition halls, or business or professional offices (other than accessory)	10,000 to 20,000	1 (10 ft. × 25 ft.)
	20,000 to 150,000	1 (10 ft. × 50 ft.)
	For each additional 150,000 or fraction thereof	1 additional (10 ft. × 50 ft.)
Retail stores	5,000 to 10,000	1 (10 ft. × 25 ft.)
Establishments dispensing food or beverages for consumption on the premises	10,000 to 25,000	2 (10 ft. × 25 ft. each)
	25,000 to 40,000	2 (10 ft. × 50 ft. each)
	40,000 to 100,000	3 (10 ft. × 50 ft. each)
Motor vehicle and machinery sales	For each additional 200,000 or fraction thereof	1 additional (10 ft. × 50 ft.)
Wholesale establishments, but not including warehouse and storage		

buildings other than accessory		
Auditoriums, convention halls, exhibition halls, sports arenas, stadiums	10,000 to 20,000	1 (10 ft. × 25 ft.)
	20,000 to 100,000	1 (10 ft. × 50 ft.)
	For each additional 100,000 or fraction thereof	1 additional (10 ft. × 50 ft.)
Bowling alleys	10,000 to 100,000	1 (10 ft. × 25 ft.)
Banks and offices, business, professional, and governmental	For each additional 100,000 or fraction thereof to 500,000	1 additional (10 ft. × 25 ft.)
	For each additional or fraction thereof	1 additional (10 ft. × 25 ft.)
Establishments engaged in production, processing, cleaning, servicing, testing or repair of materials, goods, or products	5,000 to 10,000	1 (10 ft. × 25 ft.)
	10,000 to 40,000	1 (10 ft. × 50 ft.)
	40,000 to 100,000	2 (10 ft. × 50 ft. each)
	For each additional 100,000 or fraction thereof	1 additional (10 ft. × 50 ft.)
Warehouses and storage buildings		
Theaters	8,000 to 25,000	1 (10 ft. × 25 ft.)
	For each additional 50,000 or fraction thereof	1 additional (10 ft. × 25 ft.)
Undertaking establishments and funeral parlors	8,000 to 100,000	1 (10 ft. × 25 ft.)
	For each additional 100,000 or fraction thereof	1 additional (10 ft. × 25 ft.)

(Code 1960, §§ 6-1011, 6-1012; Ord. No. 3376; Code 1989, § 163.109; Ord. No. 8256, § 1(163.109), 2-17-2009)

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Sec. 123-369. - Parking certain vehicles in residential districts.

It shall hereafter be unlawful for any person, owner, or driver to park or cause to be parked except for expediting pickup or delivery, any bus, truck, truck tractor, semi-trailer, or trailer that exceeds three-fourths ton of capacity of standard design upon any property in an area zoned for residential use, provided that this section shall not apply to vehicles governed by chapter 115.

(Code 1960, § 6-1001; Code 1989, § 163.110; Ord. No. 4092; Ord. No. 8256, § 1(163.110), 2-17-2009)

Sec. 123-370. - Parking lot facilities.

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Motor vehicles means any automobile, truck, motor scooter, or other self-propelled vehicle.

Parking facilities means any outdoor or indoor space, plot, place, lot, parcel, yard or enclosure, or any portion thereof, where more than five motor vehicles may be parked, stored, housed or kept, for which any charge is made.

(b) The establishment or creation of a parking facility in the city is declared to be a special use and shall be governed by the provisions of section 123-59.

(c) Off-street parking facilities may be located in residential zoned districts for other than residential uses. Parking lots must conform to the following requirements and any other which may be placed on the special use at the time of consideration by the BZA:

- (1) Entrances shall not be located on the front street thereby reducing the nonresidential traffic on the street.
- (2) Entrances shall be from the rear alley. Other entrances will be determined according to each specific request.
- (3) No parking will be permitted in front or side yards. These yards will conform to the requirements of the district they are located in. These yards will be planted with lawns and/or shrubbery.
- (4) Site plans will be submitted to the BZA at the time of the request.
- (5) Such parking lot shall be used solely for the parking of passenger vehicles.
- (6) The parking lot shall be closed between 11:00 p.m. and 6:00 a.m.
- (7) The parking lot shall conform to the provisions of section 123-371 with respect to design and maintenance.

(Code 1960, § 6-1013; Code 1989, § 163.111; Ord. No. 3713; Ord. No. 4515, 12-13-1970; Ord. No. 8256, § 1(163.111), 2-17-2009)

Sec. 123-371. - Requirements applicable to certain districts.

In order to prevent undue traffic congestion in areas of intensive business concentration and so promote an orderly and efficient circulation of pedestrians and vehicles, it is necessary and reasonable that off-street parking facilities should be provided in such areas only in conformity with an overall, coordinated parking plan. To secure these objectives, the following regulations shall be in effect in the B2-2, B2-3, B4-2 and B4-3 districts:

- (1) No accessory off-street parking facilities shall be required for any use in these districts under the terms of this article.
- (2) No off-street parking facilities shall be permitted for any use in these districts unless the plan commission shall certify that the provision of such facilities is consistent with the overall parking plan for the area and that the location and design of such facilities will not tend to create additional traffic congestion to an appreciable extent in the neighboring streets.

(Code 1960, § 6-1007; Code 1989, § 163.112; Ord. No. 3376)

Sec. 123-372. - Space reservation requirements for handicapped persons.

- (a) Any parking facility under the jurisdiction or control of any public agency, which is available to private persons who desire to conduct business with the public agency, shall have a space reserved for the use of physically handicapped persons.
- (b) At least two parking spaces shall be reserved if the facility contains 25 or fewer parking spaces. At least four parking spaces shall be reserved if the facility contains more than 26 spaces while no more than 50 spaces. At least six parking spaces shall be reserved if the facility contains more than 51 spaces.
- (c) The reserved spaces shall be reserved by posting immediately adjacent to and visible from the spaces a sign bearing the official international wheelchair symbol stating the amount of the penalty for violation of this section. A reasonable facsimile of the symbol shall be displayed on the handicapped person's motor vehicle registration plate.
- (d) If a public agency has no parking facility under its jurisdiction or control available to private persons who desire to

conduct business with the public agency, the public agency shall request the portion of the street which is adjacent to the facilities of the public agency for the reservation of parking spaces for the use of physically handicapped persons.

- (e) Parking spaces required under this section must conform in size and location to the specifications established by the American National Standards Institute as these specifications existed on September 1, 1979. Access facilities between the parking facility and offices of the public agency must also conform to the specifications established by the American National Standards Institute.

(Ord. No. 6110, 3-18-1986; Ord. No. 8256, § 1(163.113), 2-17-2009)

Appendix A - UNSAFE BUILDING LAW

Footnotes:

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Editor's note— Printed in this appendix is IC 36-7-9, as amended through 2007. Obvious misspellings have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same schedule of expression of numbers in text as appears in the Code of Ordinances has been used. A consistent scheme of capitalization has also been used. Additions for clarity are indicated by brackets.

Sec. 36-7-9-1. - Application of chapter.

Sec. 1. This chapter applies to each consolidated city and its county. This chapter also applies to any other municipality or county that adopts an ordinance under section 3 [36-7-9-3] of this chapter.

Sec. 36-7-9-2. - Definitions.

Sec. 2. As used in this chapter.

Community organization means a citizen's group, neighborhood association, neighborhood development corporation, or similar organization that:

- (1) Has specific geographic boundaries defined in its bylaws or articles of incorporation and contains at least 40 households within those boundaries;
- (2) Is a nonprofit corporation that is representative of at least 25 households or 20 of the households in the community, whichever is less;
- (3) Is operated primarily for the promotion of social welfare and general neighborhood improvement and enhancement;
- (4) Has been incorporated for at least two years; and
- (5) Is exempt from taxation under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

Department refers to the executive department authorized by ordinance to administer this chapter. In a consolidated city, this department is the department of metropolitan development, subject to IC 36-3-4-23.

Enforcement authority refers to the chief administrative officer of the department, except in a consolidated city. In a consolidated city, the division of development services is the enforcement authority, subject to IC 36-3-4-23.

Hearing authority refers to a person or persons designated as such by the executive of a city or county, or by the legislative body of a town. However, in a consolidated city, the director of the department or a person designated by the director is the hearing authority. An employee of the enforcement authority may not be designated as the hearing authority.

Known or recorded fee interest, life estate interest, or equitable interest of a contract purchaser means any fee interest, life estate interest, or equitable interest of a contract purchaser held by a person whose identity and address may be determined from:

- (1) An instrument recorded in the recorder's office of the county where the unsafe premises is located;
- (2) Written information or actual knowledge received by the department (or, in the case of a consolidated city, the enforcement authority); or
- (3) A review of department (or, in the case of a consolidated city, the enforcement authority) records that is sufficient to identify information that is reasonably ascertainable.

Known or recorded substantial property interest means any right in real property, including a fee interest, a life estate interest, a future interest, a mortgage interest, or an equitable interest of a contract purchaser, that:

- (1) May be affected in a substantial way by actions authorized by this chapter; and
- (2) Is held by a person whose identity and address may be determined from:
 - (A) An instrument recorded in the recorder's office of the county where the unsafe premises is located;
 - (B) Written information or actual knowledge received by the department (or, in the case of a consolidated city, the enforcement authority); or
 - (C) A review of department (or, in the case of a consolidated city, the enforcement authority) records that is sufficient to identify information that is reasonably ascertainable.

Substantial property interest means any right in real property that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate interest, a future interest, a mortgage interest, or an equitable interest of a contract purchaser.

Sec. 36-7-9-3. - Ordinances adopting this chapter.

Sec. 3. The legislative body of a municipality or county may adopt this chapter by ordinance. The ordinance must specify the executive department of the unit responsible for the administration of this chapter or establish such a department. However, in a municipality in which a commissioner of buildings was appointed to administer IC 18-5-5 (before its repeal on September 1, 1981), the commissioner of buildings is responsible for the administration of this chapter. The ordinance must also incorporate by reference the definition of "substantial property interest" in this chapter.

Sec. 36-7-9-4. - Unsafe buildings and unsafe premises described.

Sec. 4. For purposes of this chapter, a building or structure, or any part of a building or structure, that is:

- (a)
 - (1) In an impaired structural condition that makes it unsafe to a person or property;
 - (2) A fire hazard;
 - (3) A hazard to the public health;
 - (4) A public nuisance;
 - (5) Dangerous to a person or property because of a violation of a statute or ordinance concerning building

condition or maintenance; or

- (6) Vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance;

is considered an unsafe building.

(b) For purposes of this chapter:

- (1) An unsafe building; and
- (2) The tract of real property on which the unsafe building is located;

are considered unsafe premises.

(c) For purposes of this chapter, a tract of real property that does not contain a building or structure, not including land used for production agriculture, is considered an unsafe premises if the tract of real property is:

- (1) A fire hazard;
- (2) A hazard to public health;
- (3) A public nuisance; or
- (4) Dangerous to a person or property because of a violation of a statute or an ordinance.

Sec. 36-7-9-4.5. - Legislative findings; vacant or deteriorated structures.

Sec. 4.5. (a) In Indiana, especially in urban areas, there exist a large number of unoccupied structures that are not maintained and that constitute a hazard to public health, safety, and welfare.

- (b) Vacant structures often become dilapidated because the structures are not maintained and repaired by the owners or persons in control of the structures.
- (c) Vacant structures attract children, become harborage for vermin, serve as temporary abodes for vagrants and criminals, and are likely to be damaged by vandals or set ablaze by arsonists.
- (d) Unkempt grounds surrounding vacant structures invite dumping of garbage, trash, and other debris.
- (e) Many vacant structures are situated on narrow city lots and in close proximity to neighboring structures, thereby increasing the risk of conflagration and spread of insect and rodent infestation.
- (f) Vacant, deteriorated structures contribute to blight, cause a decrease in property values, and discourage neighbors from making improvements to properties.
- (g) Structures that remain boarded up for an extended period of time also exert a blighting influence and contribute to the decline of the neighborhood by decreasing property values, discouraging persons from moving into the neighborhood, and encouraging persons to move out of the neighborhood.
- (h) Vacant structures often continue to deteriorate to the point that demolition of the structure is required, thereby decreasing available housing in a community and further contributing to the decline of the neighborhood.
- (i) The blighting influence of vacant, deteriorated structures adversely affects the tax revenues of local government.
- (j) The general assembly finds that vacant, deteriorated structures create a serious and substantial problem in urban areas and are public nuisances.
- (k) In recognition of the problems created in a community by vacant structures, the general assembly finds that

vigorous and disciplined action should be taken to ensure the proper maintenance and repair of vacant structures and encourages local governmental bodies to adopt maintenance and repair standards appropriate for the community in accordance with this chapter and other statutes.

Sec. 36-7-9-5. - Orders; contents; notice; expiration.

Sec. 5 The enforcement authority may issue an order requiring action relative to any unsafe premises, including:

- (a).
 - (1) Vacating of an unsafe building;
 - (2) Sealing an unsafe building against intrusion by unauthorized persons, in accordance with a uniform standard established by ordinance;
 - (3) Extermination of vermin in and about the unsafe premises;
 - (4) Removal of trash, debris, fire hazardous material, or a public health hazard in and about the unsafe premises;
 - (5) Repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy, or use by a statute, a rule adopted under IC 4-22-2, or an ordinance;
 - (6) Removal of part of an unsafe building;
 - (7) Removal of an unsafe building; and
 - (8) Requiring, for an unsafe building that will be sealed for a period of more than 90 days:
 - (A) Sealing against intrusion by unauthorized persons and the effects of weather;
 - (B) Exterior improvements to make the building compatible in appearance with other buildings in the area; and
 - (C) Continuing maintenance and upkeep of the building and premises; in accordance with standards established by ordinance.

Notice of the order must be given under section 25 of this chapter. The ordered action must be reasonably related to the condition of the unsafe premises and the nature and use of nearby properties. The order supersedes any permit relating to building or land use, whether that permit is obtained before or after the order is issued.

- (b) The order must contain:
 - (1) The name of the person to whom the order is issued;
 - (2) The legal description or address of the unsafe premises that are the subject of the order;
 - (3) The action that the order requires;
 - (4) The period of time in which the action is required to be accomplished, measured from the time when the notice of the order is given;
 - (5) If a hearing is required, a statement indicating the exact time and place of the hearing, and stating that person to whom the order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses, and present arguments;
 - (6) If a hearing is not required, a statement that an order under subsection (a)(2), (a)(3), (a)(4), or (a)(5) becomes final ten days after notice is given, unless a hearing is requested in writing by a person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises, and the request is delivered to the enforcement authority before the end of the ten-day period;

- (7) A statement briefly indicating what action can be taken by the enforcement authority if the order is not complied with;
 - (8) A statement indicating the obligation created by section 27 of this chapter relating to notification of subsequent interest holders and the enforcement authority; and
 - (9) The name, address, and telephone number of the enforcement authority.
- (c) The order must allow a sufficient time, of at least ten days, but not more than 60 days, from the time when notice of the order is given, to accomplish the required action. If the order allows more than 30 days to accomplish the action, the order may require that a substantial beginning be made in accomplishing the action within 30 days.
- (d) The order expires two years from the day the notice of the order is given, unless one or more of the following events occurs within that two-year period:
- (1) A complaint requesting judicial review is filed under section 9 of this chapter.
 - (2) A contract for action required by the order is let at public bid under section 11 of this chapter.
 - (3) A civil action is filed under section 17 of this chapter.

Sec. 36-7-9-6. - Modification or rescission of orders.

Sec. 6. The enforcement authority may issue an order that modifies the order previously issued.

- (a) (b) The enforcement authority may rescind an order previously issued, even if the order has been affirmed by the hearing authority.

Sec. 36-7-9-7. - Hearing; extension of time limits; performance bonds; record of findings and action; penalties.

Sec. 7. A hearing must be held relative to each order of the enforcement authority, except for an order issued under

- (a) section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter. An order issued under section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter becomes final ten days after notice is given, unless a hearing is requested before the ten day period ends by a person holding a fee interest, life estate interest, mortgage interest, or equitable interest of a contract purchaser in the unsafe premises. The hearing shall be conducted by the hearing authority.
- (b) The hearing shall be held on a business day no earlier than ten days after notice of the order is given. The hearing authority may, however, take action at the hearing, or before the hearing if a written request is received by the enforcement authority not later than five days after notice is given, to continue the hearing to a business day not later than 14 days after the hearing date shown on the order. Unless the hearing authority takes action to have the continued hearing held on a definite, specified date, notice of the continued hearing must be given to the person to whom the order was issued at least five days before the continued hearing date, in the manner prescribed by section 25 of this chapter. If the order being considered at the continued hearing was served by publication, it is sufficient to give notice of the continued hearing by publication unless the enforcement authority has received information in writing that enables it to make service under section 25 of this chapter by a method other than publication.
- (c) The person to whom the order was issued, any person having a substantial property interest in the unsafe premises that are the subject of the order, or any other person with an interest in the proceedings may appear in person or by counsel at the hearing. Each person appearing at the hearing is entitled to present evidence, cross-examine opposing witnesses, and present arguments.
- (d) At the conclusion of any hearing at which a continuance is not granted, the hearing authority may make findings and take action to:
 - (1) Affirm the order;

- (2) Rescind the order; or
 - (3) Modify the order, but unless the person to whom the order was issued, or counsel for that person, is present at the hearing, the hearing authority may modify the order in only a manner that makes its terms less stringent.
- (e) In addition to affirming the order, in those cases in which the hearing authority finds that there has been a willful failure to comply with the order, the hearing authority may impose a civil penalty in an amount not to exceed \$5,000.00. The effective date of the civil penalty may be postponed for a reasonable period, after which the hearing authority may order the civil penalty reduced or stricken if the hearing authority is satisfied that all work necessary to fully comply with the order has been done. For purposes of an appeal under section 8 of this chapter or enforcement of an order under section 17 of this chapter, action of the hearing authority is considered final upon the affirmation of the order, even though the hearing authority may retain jurisdiction for the ultimate determination related to the civil penalty. In the hearing authority's exercise of continuing jurisdiction, the hearing authority may, in addition to reducing or striking the civil penalty, impose one or more additional civil penalties in an amount not to exceed \$5,000.00 per civil penalty. An additional civil penalty may be imposed if the hearing authority finds that:
- (1) Significant work on the premises to comply with the affirmed order has not been accomplished; and
 - (2) The premises have a negative effect on property values or the quality of life of the surrounding area or the premises require the provision of services by local government in excess of the services required by ordinary properties.
- (f) If, at a hearing, a person to whom an order has been issued requests an additional period to accomplish action required by the order, and shows good cause for this request to be granted, the hearing authority may grant the request. However, as a condition for allowing the additional period, the hearing authority may require that the person post a performance bond to be forfeited if the action required by the order is not completed within the additional period.
- (g) The board or commission having control over the department shall, at a public hearing, after having given notice of the time and place of the hearing by publication in accordance with IC 5-3-1, adopt a schedule setting forth the maximum amount of performance bonds applicable to various types of ordered action. The hearing authority shall use this schedule to fix the amount of the performance bond required under subsection (f).
- (h) The record of the findings made and action taken by the hearing authority at the hearing shall be available to the public upon request. However, neither the enforcement authority nor the hearing authority is required to give any person notice of the findings and action.
- (i) If a civil penalty under subsection (e) is unpaid for more than 15 days after payment of the civil penalty is due, the civil penalty may be collected from any person against whom the hearing officer assessed the civil penalty or fine. A civil penalty or fine may be collected under this subsection in the same manner as costs under section 13 or 13.5 of this chapter. The amount of the civil penalty or fine that is collected shall be deposited in the unsafe building fund.

Sec. 36-7-9-8. - Appeals.

Sec. 8. An action taken under section 7(d) or 7(e) of this chapter is subject to review by the circuit or superior court of the

- (a) county in which the unsafe premises are located, on request of:

- (1) Any person who has a substantial property interest in the unsafe premises; or

(2) Any person to whom that order was issued.

- (b) A person requesting judicial review under this section must file a verified complaint including the findings of fact and the action taken by the hearing authority. The complaint must be filed within ten days after the date when the action was taken.
- (c) An appeal under this section is an action de novo. The court may affirm, modify, or reverse the action taken by the hearing authority.

Sec. 36-7-9-9. - Emergency action; recovery of costs; challenge of determination of emergency.

Sec. 9. If the enforcement authority finds it necessary to take emergency action concerning an unsafe premises in order

- (a) to protect life, safety, or property, it may take that action without issuing an order or giving notice. However, this emergency action must be limited to removing any immediate danger.
- (b) The department, acting through the enforcement authority, may recover the costs incurred by the enforcement authority in taking emergency action, by filing a civil action in the circuit court or superior court of the county against the persons who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises at the time the enforcement authority found it necessary to take emergency action. The department is not liable for the costs of this civil action.
- (c) If an unsafe premises poses an immediate danger to the life or safety of persons occupying or using nearby property, the enforcement authority may, without following this chapter's requirements for issuing an order and giving notice, take emergency action to require persons to vacate and not use the nearby property until the danger has passed. However, any person required to vacate an unsafe premises under this subsection may challenge in an emergency court proceeding the enforcement authority's determination that the premises poses an immediate danger to the life or safety of any person. In an emergency court proceeding, the enforcement authority has the burden of proving that emergency action is necessary to protect from immediate danger the life or safety of persons occupying or using nearby property.

Sec. 36-7-9-10. - Action to enforce orders.

Sec. 10. The enforcement authority may cause the action required by an order issued under section 5(a)(2), 5(a)(3), 5(a)(4),

- (a) or 5(a)(5) of this chapter to be performed by a contractor if:
 - (1) The order has been served, in the manner prescribed by section 25 of this chapter, on each person having a known or recorded fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises that are the subject of the order;
 - (2) The order has not been complied with;
 - (3) A hearing was not requested under section 5(b)(6) of this chapter, or, if a hearing was requested, the order was affirmed at the hearing; and
 - (4) The order is not being reviewed under section 8 of this chapter.
- (b) The enforcement authority may cause the action required by an order, other than an order under section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter, to be performed if:
 - (1) Service of an order under section 5(a)(1) of this chapter, in the manner prescribed by section 25 of this chapter, has been made on each person having a known or recorded substantial property interest or present possessory interest in the unsafe premises that are the subject of the order;
 - (2) Service of an order under section 5(a)(6), 5(a)(7), or 5(a)(8) of this chapter, in the manner prescribed by section

25 of this chapter, has been made on each person having a known or recorded substantial property interest in the unsafe premises that are the subject of the order;

- (3) The order has been affirmed or modified at the hearing in such a manner that all persons having a known or recorded substantial property interest, and persons holding a present possessory interest, as required, in the unsafe premises that are the subject of the order are currently subject to an order requiring the accomplishment of substantially identical action;
 - (4) The order, as affirmed or modified at the hearing, has not been complied with; and
 - (5) The order is not being reviewed under section 8 of this chapter.
- (c) If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement by publication and indicate that the enforcement authority intends to perform the work, unless the authority has received information in writing that enables it to make service under section 25 of this chapter by a method other than publication.

Sec. 36-7-9-11. - Liability for costs for performance of work required by orders.

Sec. 11. The work required by an order of the enforcement authority may be performed in the following manner:

- (a)
 - (1) If the work is being performed under an order other than an order under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter, and if the cost of this work is estimated to be less than \$10,000.00, the department, acting through the unit's enforcement authority or other agent, may perform the work by means of the unit's own workers and equipment owned or leased by the unit. Notice that this work is to be performed must be given to all persons with a known or recorded substantial property interest, in the manner prescribed in subsection (c), at least ten days before the date of performance of the work by the enforcement authority. This notice must include a statement that an amount representing a reasonable estimate of the cost incurred by the enforcement authority in processing the matter and performing the work may, if not paid, be recorded after a hearing as a lien against all persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.
 - (2) If the work is being performed under an order other than an order under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter, and if the estimated cost of this work is \$10,000.00 or more, this work must be let at public bid to a contractor licensed and qualified under law. The obligation to pay costs imposed by section 12 of this chapter is based on the condition of the unsafe premises at the time the public bid was accepted. Changes occurring in the condition of the unsafe premises after the public bid was accepted do not eliminate or diminish this obligation.
 - (3) If the work is being performed under an order issued under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter, the work may be performed by a contractor who has been awarded a base bid contract to perform the work for the enforcement authority, or by the department, acting through the unit's enforcement authority or other governmental agency and using the unit's own workers and equipment owned or leased by the unit. Work performed under an order issued under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter may be performed without further notice to the persons holding a fee interest, life estate interest, or equitable interest of a contract purchaser, and these persons are liable for the costs incurred by the enforcement authority in processing the matter and performing the work, as provided by section 12 of this chapter.
- (b) Bids may be solicited and accepted for work on more than one property if the bid reflects an allocation of the bid

amount among the various unsafe premises in proportion to the work to be accomplished. The part of the bid amount attributable to each of the unsafe premises constitutes the basis for calculating the part of the costs described by section 12(a)(1) of this chapter.

- (c) All persons who have a known or recorded substantial property interest in the unsafe premises and are subject to an order other than an order under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter must be notified about the public bid in the manner prescribed by section 25 of this chapter, by means of a written statement including:
 - (1) The name of the person to whom the order was issued;
 - (2) A legal description or address of the unsafe premises that are the subject of the order;
 - (3) A statement that a contract is to be let at public bid to a licensed contractor to accomplish work to comply with the order;
 - (4) A description of work to be accomplished;
 - (5) A statement that both the bid price of the licensed contractor who accomplishes the work and an amount representing a reasonable estimate of the cost incurred by the enforcement authority in processing the matter of the unsafe premises may, if not paid, be recorded after a hearing as a lien against all persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises;
 - (6) The time of the bid opening;
 - (7) The place of the bid opening; and
 - (8) The name, address, and telephone number of the enforcement authority.
- (d) If the notice of the statement that public bids are to be let is served by publication, the publication must include the information required by subsection (c), except that it need only include a general description of the work to be accomplished. The publication must also state that a copy of the statement of public bid may be obtained from the enforcement authority.
- (e) Notice of the statement that public bids are to be let must be given, at least ten days before the date of the public bid, to all persons who have a known or recorded substantial property interest in the property and are subject to an order other than an order under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter.
- (f) If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement that public bids are to be let by publication, unless the enforcement authority has received information in writing that enables the unit to make service under section 25 of this chapter by a method other than publication.

Sec. 36-7-9-12. - Liability for costs for performance of work required by orders.

Sec. 12. When action required by an order is performed by the enforcement authority or by a contractor acting under

- (a) section 11 of this chapter, each person who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises from the time when the order requiring the work performed was recorded to the time that the work was completed is jointly and severally responsible for the following costs:
 - (1) The actual cost of the work performed by the enforcement authority or the bid price of work accomplished by the contractor under section 11 of this chapter.
 - (2) An amount that represents a reasonable forecast of the average processing expense that will be incurred by the enforcement authority in taking the technical, administrative, and legal actions concerning typical unsafe premises that are necessary under this chapter so that the action required by an order may be performed by

a contractor under section 11 of this chapter. In calculating the amount of the average processing expense, the following costs may be considered:

- (A) The cost of obtaining reliable information about the identity and location of persons who own a substantial property interest in the unsafe premises.
 - (B) The cost of notice of orders, notice of statements of rescission, notice of continued hearing, notice of statements that public bids are to be let or that the enforcement authority intends to accomplish the work, and notice that a hearing may be held on the amounts indicated in the record, in accordance with section 25 [36-7-9-25] of this chapter.
 - (C) Salaries for employees.
 - (D) The cost of supplies, equipment, and office space.
- (b) The board or commission having control over the department shall determine the amount of the average processing expense at the public hearing, after notice has been given in the same manner as is required for other official action of the board or commission. In determining the average processing expense, the board or commission may fix the amount at a full dollar amount that is an even multiple of ten.

Sec. 36-7-9-13. - Notice of unpaid costs; filing with clerk of court; hearing; judgment lien.

Sec. 13. If all or any part of the costs listed in section 12 [36-7-9-12] of this chapter remain unpaid for any unsafe premises

- (a) (other than unsafe premises owned by a governmental entity) for more than 15 days after the completion of the work, the enforcement authority does not act under section 13.5 of this chapter, and the enforcement authority determines that there is a reasonable probability of obtaining recovery, the enforcement authority shall prepare a record stating:
- (1) The name and last known address of each person who held a known or recorded fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises from the time the order requiring the work to be performed was recorded to the time that the work was completed;
 - (2) The legal description or address of the unsafe premises that were the subject of work;
 - (3) The nature of the work that was accomplished;
 - (4) The amount of the unpaid bid price of the work that was accomplished; and
 - (5) The amount of the unpaid average processing expense.

The record must be in a form approved by the state board of accounts.

- (b) The enforcement authority, or its head, shall swear to the accuracy of the record before the clerk of the circuit court and deposit the record in the clerk's office. Notice that the record has been filed and that a hearing on the amounts indicated in the record may be held must be sent in the manner prescribed by section 25 of this chapter to all of the following:
- (1) The persons named in the record.
 - (2) Any mortgagee that has a known or recorded substantial property interest.
- (c) If, within 30 days after the notice required by subsection (b), a person named in the record or a mortgagee files with the clerk of the circuit court a written petition objecting to the claim for payment and requesting a hearing, the clerk shall enter the cause on the docket of the circuit or superior court as a civil action, and a hearing shall be held on the question in the manner prescribed by IC 4-21.5. However, issues that could have been determined

under section 8 of this chapter may not be entertained at the hearing. At the conclusion of the hearing, the court shall either sustain the petition or enter a judgment against the persons named in the record for the amounts recorded or for modified amounts.

- (d) If no petition is filed under subsection (c), the clerk of the circuit court shall enter the cause on the docket of the court and the court shall enter a judgment for the amounts stated in the record.
- (e) A judgment under subsection (c) or (d), to the extent that it is not satisfied under IC 27-2-15, is a debt and a lien on all the real and personal property of the person named, or a joint and several debt and lien on the real and personal property of the persons named in the record prepared under subsection (a). The lien on real property is perfected against all creditors and purchasers when the judgment is entered on the judgment docket of the court. The lien on personal property is perfected by filing a lis pendens notice in the appropriate filing office, as prescribed by the Indiana Rules of Trial Procedure.
- (f) Judgments rendered under this section may be enforced in the same manner as all other judgments are enforced.

Sec. 36-7-9-13.5. - Unpaid costs for unsafe premises repairs; notice; certification as special assessment; collection as delinquent taxes; disposition of collections.

Sec. This section does not apply to the collection of an amount if a court determines under section 13 of this chapter

13.5. (a) that the enforcement authority is not entitled to the amount.

- (b) If all or any part of the costs listed in section 12 of this chapter remain unpaid for any unsafe premises (other than unsafe premises owned by a governmental entity) for more than 15 days after completion of the work, the enforcement authority may send notice under section 25 of this chapter to each person who held a known or recorded fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises. If the notice is sent, the enforcement authority shall also send notice to any mortgagee with a known or recorded substantial property interest. The notice must require full payment of the amount owed within 30 days.
- (c) If full payment of the amount owed is not made less than 30 days after the notice is delivered, the enforcement officer may certify the following information to the county auditor:
 - (1) The name of each person who held a known or recorded fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.
 - (2) The description of the unsafe premises, as shown by the records of the county auditor.
 - (3) The amount of the delinquent payment, including all costs described in section 12 of this chapter.
- (d) The county auditor shall place the total amount certified under subsection (c) on the tax duplicate for the affected property as a special assessment. The total amount, including accrued interest, shall be collected as delinquent taxes are collected.
- (e) An amount collected under subsection (d), after all other taxes have been collected and disbursed, shall be disbursed to the unsafe building fund.
- (f) A judgment entered under section 13, 19, 21, or 22 of this chapter may be certified to the auditor and collected under this section. However, a judgment lien need not be obtained under section 13 of this chapter before a debt is certified under this section.

Sec. 36-7-9-14. - Unsafe building fund; deposits and expenditures.

Sec. 14. The enforcement authority shall establish in its operating budget a fund designated as the unsafe building fund.

- (a) Any balance remaining at the end of a fiscal year shall be carried over in the fund for the following year and does

not revert to the general fund.

- (b) Money for the unsafe building fund may be received from any source, including appropriations by local, state, or federal governments, and donations. The following money shall be deposited in the fund:
 - (1) Money received as payment for or settlement of obligations or judgments established under sections 9 through 13 and 17 through 22 of this chapter.
 - (2) Money received from bonds posted under section 7 of this chapter.
 - (3) Money received in satisfaction of receivers' notes or certificates that were issued under section 20 of this chapter and were purchased with money from the unsafe building fund.
 - (4) Money received for payment or settlement of civil penalties or fines imposed under section 7 of this chapter.
 - (5) Money received from the collection of special assessments under section 13.5 of this chapter.
- (c) Money in the unsafe building fund may be used for the expenses incurred in carrying out the purposes of this chapter, including:
 - (1) The cost of obtaining reliable information about the identity and location of each person who owns a substantial property interest in unsafe premises;
 - (2) The cost of an examination of an unsafe building by a registered architect or registered engineer not employed by the department;
 - (3) The cost of surveys necessary to determine the location and dimensions of real property on which an unsafe building is located;
 - (4) The cost of giving notice of orders, notice of statements of rescission, notice of continued hearing, and notice of statements that public bids are to be let in the manner prescribed by section 25 of this chapter;
 - (5) The bid price of work by a contractor under section 10 or sections 17 through 22 of this chapter;
 - (6) The cost of emergency action under section 9 of this chapter; and
 - (7) The cost of notes or receivers' certificates issued under section 20 of this chapter.
- (d) Payment of money from the unsafe building fund must be made in accordance with applicable law.

Sec. 36-7-9-15. - Transfer of money to unsafe building fund.

Sec. 15. The board or commission having control over the department may transfer all or part of the money in a building, demolition, repair, and contingent fund that was established by IC 18-5-5-7 (before its repeal on September 1, 1981) to the unsafe building fund.

Sec. 36-7-9-16. - Inspection warrants.

Sec. 16. If the owners or those in possession of a building refuse inspection, an inspection officer of the enforcement

- (a) authority may obtain an inspection warrant from any court of record in the county in which the building is located in order to determine if the building is an unsafe building. The court shall issue the warrant subject to the following conditions:
 - (1) The person seeking the warrant must establish that the building to be searched or inspected is to be searched or inspected as part of a legally authorized program of inspection that naturally includes the building, or that there is probable cause for believing that a condition, object, activity, or circumstance legally justifies a search or inspection of that building.

- (2) An affidavit establishing one of the grounds described in subdivision (1) must be signed under oath or affirmation by the affiant.
- (3) The court must examine the affiant under oath or affirmation to verify the accuracy of the affidavit.
- (b) The warrant is valid only if it:
 - (1) Is signed by the judge of the court and bears the date and hour of its issuance above that signature, with a notation that the warrant is valid for only 48 hours after its issuance;
 - (2) Describes (either directly or by reference to the affidavit) the building where the search or inspection is to occur so that the executor of the warrant and owner or the possessor of the building can reasonably determine what property the warrant authorizes an inspection of;
 - (3) Indicates the conditions, objects, activities, or circumstances that the inspection is intended to check or reveal; and
 - (4) Is attached to the affidavit required to be made in order to obtain the warrant.
- (c) A warrant issued under this section is valid for only 48 hours after its issuance, must be personally served upon the owner or possessor of the building, and must be returned within 72 hours.

Sec. 36-7-9-17. - Civil actions regarding unsafe premises.

Sec. 17. The department, acting through its enforcement authority, a person designated by the enforcement authority, or

- (a) a community organization may bring a civil action regarding unsafe premises in the circuit, superior, or municipal court of the county. The department is not liable for the costs of such an action. The court may grant one or more of the kinds of relief authorized by sections 18 through 22 of this chapter.
- (b) A civil action may not be initiated under this section before the final date of an order or an extension of an order under section 5(c) of this chapter requiring:
 - (1) The completion; or
 - (2) A substantial beginning toward accomplishing the completion;of the required remedial action.
- (c) A community organization may not initiate a civil action under this section if:
 - (1) The enforcement authority or a person designated by the enforcement authority has filed a civil action under this section regarding the unsafe premises; or
 - (2) The enforcement authority has issued a final order that the required remedial action has been satisfactorily completed.
- (d) A community organization may not initiate a civil action under this section if the real property that is the subject of the civil action is located outside the specific geographic boundaries of the area defined in the bylaws or articles of incorporation of the community organization.
- (e) At least 60 days before commencing a civil action under this section, a community organization must issue a notice by certified mail, return receipt requested, that:
 - (1) Specifies:
 - (A) The nature of the alleged nuisance;
 - (B) The date the nuisance was first discovered;
 - (C) The location on the property where the nuisance is allegedly occurring;

(D) The intent of the community organization to bring a civil action under this section; and

(E) The relief sought in the action; and

(2) Is provided to:

(A) The owner of record of the premises;

(B) Tenants located on the premises;

(C) The enforcement authority; and

(D) Any person that possesses an interest of record.

(f) In any action filed by a community organization under this section, a court may award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party.

Sec. 36-7-9-18. - Injunctions.

Sec. 18. A court acting under section 17 of this chapter may grant a mandatory or prohibitory injunction against any person that will cause the order to be complied with, if it is shown that:

(1) An order, which need not set a hearing date, was issued to the person;

(2) The person has a property interest in the unsafe premises that are the subject of the order that would allow the person to take the action required by the order;

(3) The building that is the subject of the order is an unsafe building; and

(4) The order is not being reviewed under section 8 of this chapter.

Sec. 36-7-9-18.1. - Performance bond.

Sec. A court acting under section 17 of this chapter may condition the granting of a period of time to accomplish the

18.1. (a) action required by an order on the posting of a performance bond that will be forfeited if the action required by the order is not completed within the period the court allows. Before granting a period of time that is conditioned on the posting of a bond, the court may require that the requesting person justify the request with a workable and financially supported plan. If the court determines that a significant amount of work must be accomplished to comply with the order, the court may require that the bond specify interim completion standards and provide that the bond is forfeited if any of these interim completion standards are not substantially met.

(b) An amount collected under subsection (a) on a forfeited bond shall be deposited in the unsafe building fund.

Sec. 36-7-9-19. - Civil forfeitures.

Sec. 19. A court acting under section 17 of this chapter may impose a civil penalty not to exceed \$5,000.00 against any

(a) person if the conditions of section 18 of this chapter are met. The penalty imposed may not be substantially less than the cost of complying with the order, unless that cost exceeds \$2,500.00. The effective date of the penalty may be postponed for a period not to exceed 30 days, after which the court may order the penalty reduced or stricken if it is satisfied that all work necessary to fully comply with the order has been done.

(b) On request of the enforcement authority the court shall enter a judgment in the amount of the penalty. If there is more than one party defendant, the penalty is separately applicable to each defendant. The amount of a penalty that is collected shall be deposited in the unsafe building fund.

Sec. 36-7-9-20. - Appointment of receiver; conditions; rehabilitation of property by owner, mortgagee, or person with substantial

interest.

Sec. 20. A court acting under section 17 of this chapter may appoint a receiver for the unsafe premises, subject to the

(a) following conditions:

- (1) The purpose of the receivership must be to take possession of the unsafe premises for a period sufficient to accomplish and pay for repairs and improvements.
- (2) The receiver may be a nonprofit corporation the primary purpose of which is the improvement of housing conditions in the county where the unsafe premises are located, or may be any other capable person residing in the county.
- (3) Notwithstanding any prior assignments of the rents and other income of the unsafe premises, the receiver must collect and use that income to repair or remove the defects as required by the order, and may, upon approval by the court, make repairs and improvements in addition to those specified in the order or required by applicable statutes, ordinances, codes, or regulations.
- (4) The receiver may make any contracts and do all things necessary to accomplish the repair and improvement of the unsafe premises.
- (5) A receiver that expends money, performs labor, or furnishes materials or machinery, including the leasing of equipment or tools, for the repair of an unsafe premises may have a lien that is equal to the total expended. When a lien exists, the receiver may sell the property:
 - (A) To the highest bidder at auction under the same notice and sale provisions applicable to a foreclosure sale of mechanic's liens or mortgages; or
 - (B) For fair market value if all persons having a substantial property interest in the unsafe premises agree to the amount and procedure.

The transferee in either a public or private sale must first demonstrate the necessary ability and experience to rehabilitate the premises within a reasonable time to the satisfaction of the receiver.

- (6) The court may, after a hearing, authorize the receiver to obtain money needed to accomplish the repairs and improvement by the issuance and sale of notes or receiver's certificates to the receiver or any other person or party bearing interest fixed by the court. The notes or certificates are a first lien on the unsafe premises and the rents and income of the unsafe building. This lien is superior to all other assignments of rents, liens, mortgages, or other encumbrances on the property, except taxes, if, within 60 days following the sale or transfer for value of the notes by the receiver, the holder of the notes files a notice containing the following information in the county recorder's office:
 - (A) The legal description of the tract of real property on which the unsafe building is located.
 - (B) The face amount and interest rate of the note or certificate.
 - (C) The date when the note or certificate was sold or transferred by the receiver.
 - (D) The date of maturity.
- (7) Upon payment to the holder of a receiver's note or certificate of the face amount and interest, and upon filing in the recorder's office of a sworn statement of payment, the lien of that note or certificate is released. Upon a default in payment on a receiver's note or certificate, the lien may be enforced by proceedings to foreclose in the manner prescribed for mechanic's liens or mortgages. However, the foreclosure proceedings must be commenced within two years after the date of default.

- (8) The receiver is entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages. The fees, commissions, and expenses shall be paid out of the rents and incomes of the property in re
- (b) The issuance of an order concerning unsafe premises is not a prerequisite to the appointment of a receiver nor does such an order prevent the appointment of a receiver.
- (c) If the enforcement authority or the enforcement authority's designee requests the appointment of a receiver, all persons having a substantial property interest in the unsafe premises shall be made party defendants.
- (d) A court, when granting powers and duties to a receiver, shall consider:
 - (1) The occupancy of the unsafe premises;
 - (2) The overall condition of the property;
 - (3) The hazard to public health, safety, and welfare;
 - (4) The number of persons having a substantial property interest in the unsafe premises; and
 - (5) Other factors the court considers relevant.
- (e) Instead of appointing a receiver to sell or rehabilitate an unsafe premises, the court may permit an owner, a mortgagee, or a person with substantial interest in the unsafe premises to rehabilitate the premises if the owner, mortgagee, or person with substantial interest:
 - (1) Demonstrates ability to complete the rehabilitation within a reasonable time, but not to exceed 60 days;
 - (2) Agrees to comply within a specified schedule for rehabilitation; and
 - (3) Posts a bond as security for performance of the required work in compliance with the specified schedule in subdivision (2).

Sec. 36-7-9-21. - Court order authorizing performance of work; judgment for costs.

Sec. 21. A court acting under section 17 of this chapter may authorize the department, acting through its enforcement

- (a) authority, to cause the action required by the order to be performed by a contractor licensed and qualified under law, if it is shown that:
 - (1) An order was issued to each person having a substantial property interest in the unsafe premises;
 - (2) Each of the orders has been affirmed or modified at a hearing in such a manner that all persons having substantial property interest in the unsafe premises that are the subject of the orders are currently subject to an order requiring substantially identical action;
 - (3) The order, as affirmed or modified at the hearing, has not been complied with;
 - (4) The building that is the subject of the order is an unsafe building; and
 - (5) The order is not being reviewed under section 8 [36-7-9-8] of this chapter.
- (b) If the enforcement authority requests permission to cause the action required by the order to be performed by a contractor, all persons having a substantial property interest in the unsafe premises shall be made party defendants.
- (c) The cost of the work and the processing expenses incurred by the enforcement authority computed under section 12 of this chapter, may, after a hearing, be entered by the court as a judgment against persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.

Sec. 36-7-9-22. - Emergencies; court order authorizing action to make premises safe; judgment for costs.

Sec. 22. A court acting under section 17 of this chapter may set a hearing to be held within ten days after the filing of a complaint

- (a) alleging the existence of unsafe premises presenting an immediate danger to the health and safety of the surrounding community sufficient to warrant emergency action. Upon a finding at the hearing in favor of the department, the court shall:
 - (1) Permit the enforcement authority to cause the action necessary to make the premises safe to be immediately performed by a contractor licensed and qualified under law;
 - (2) Permit the enforcement authority to cause the action necessary to make the premises safe to be immediately performed by a contractor licensed and qualified under law after the defendants have had a reasonable time, as established by the court, to make the unsafe premises safe and have failed to complete the necessary action; or
 - (3) Grant a mandatory injunction relative to the unsafe premises that would require a defendant who has an interest in the premises that allows the defendant to take corrective action to immediately make the premises safe.

In granting relief under subdivision (2) or (3) the court shall set a date certain for the completion of the necessary action and shall hold a hearing within ten days after that date to determine whether the necessary action has been completed.

- (b) The issuance of an order concerning the unsafe premises is not a prerequisite to permission by the court to cause action to be performed on the unsafe premises. If an order has been issued concerning the unsafe premises, it does not prevent the permission by the court to cause action to be performed on the unsafe premises.
- (c) If the enforcement authority requests authority to cause action on the unsafe premises to be performed by a contractor, all persons having a substantial property interest in the unsafe premises shall be made party defendants.
- (d) The cost of accomplishing the work may, after a hearing, be entered by the court as a judgment against persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.

Sec. 36-7-9-23. - Change of venue and judge.

Sec. 23. A change of venue may not be allowed in an action filed under section 8, 13, or 17 of this chapter, but a change of judge shall be allowed in the same manner as is provided for other civil matters.

Sec. 36-7-9-24. - Priority of actions.

Sec. 24. An action filed under section 8 or 17 of this chapter takes precedence over other pending litigation, and shall be tried and determined by the court at as early a date as possible.

Sec. 36-7-9-25. - Manner of serving notice.

Sec. 25. Notice of orders, notice of continued hearings without a specified date, notice of a statement that public bids are

- (a) to be let, and notice of claims for payment must be given by:
 - (1) Sending a copy of the order or statement by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested;
 - (2) Delivering a copy of the order or statement personally to the person to be notified;
 - (3) Leaving a copy of the order or statement at the dwelling or usual place of abode of the person to be notified and sending by first class mail a copy of the order or statement to the last known address of the person to be notified.

notified; or

- (4) Sending a copy of the order or statement by first class mail to the last known address of the person to be notified.

If a notice described in subdivision (1) is returned undelivered, a copy of the order or statement must be given in accordance with subdivision (2), (3), or (4).

- (b) If service is not obtained by a means described in subsection (a) and the hearing authority concludes that a reasonable effort has been made to obtain service, service may be made by publishing a notice of the order or statement in accordance with IC 5-3-1 in the county where the unsafe premises are located. However, publication may be made on consecutive days. If service of an order is made by publication, the publication must include the information required by subdivisions (1), (2), (4), (5), (6), (7), and (9) of section 5 [36-7-9-5] (b) of this chapter, and must also include a statement indicating generally what action is required by the order and that the exact terms of the order may be obtained from the enforcement authority. The hearing authority may make a determination about whether a reasonable effort has been made to obtain service by the means described in subsection (a) on the basis of information provided by the department (or, in the case of a consolidated city, the enforcement authority). The hearing authority is not required to make the determination at a hearing. The hearing authority must make the determination in writing.
- (c) When service is made by any of the means described in this section, except by mailing or by publication, the person making service must make an affidavit stating that the person has made the service, the manner in which service was made, to whom the order or statement was issued, the nature of the order or statement, and the date of service. The affidavit must be placed on file with the enforcement authority.
- (d) The date when notice of the order or statement is considered given is as follows:
 - (1) If the order or statement is delivered personally or left at the dwelling or usual place of abode, notice is considered given on the day when the order or statement is delivered to the person or left at the person's dwelling or usual place of abode.
 - (2) If the order or statement is mailed, notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the enforcement authority.
 - (3) Notice by publication is considered given on the date of the second day that publication was made.
- (e) A person with a property interest in an unsafe premises who does not:
 - (1) Record an instrument reflecting the interest in the recorder's office of the county where the unsafe premises is located; or
 - (2) If an instrument reflecting the interest is not recorded, provide to the department (or, in the case of a consolidated city, the enforcement authority) in writing the person's name and address and the location of the unsafe premises;is considered to consent to reasonable action taken under this chapter for which notice would be required and relinquish a claim to notice under this chapter.
- (f) The department (or, in the case of a consolidated city, the enforcement authority) may, for the sake of administrative convenience, publish notice under subsection (b) at the same time notice is attempted under subsection (a). If published notice is given as described in subsection (b), the hearing authority shall subsequently make a determination about whether a reasonable effort has been made to obtain service by the means described in subsection (a).

Sec. 36-7-9-26. - Recording of orders, statements of rescission, statements of public bids, and records of actions taken by hearing authority.

Sec. 26. The enforcement authority shall record in the office of the county recorder orders issued under section 5(a)(6),

- (a) 5(a)(7), or 6(a) of this chapter. If the enforcement authority records an order issued under section 5(a)(6), 5(a)(7), or 6(a) of this chapter, statements of rescission issued under section 6(b) of this chapter, statements that public bids are to be let under section 11 of this chapter, and records of action in which the order is affirmed, modified, or rescinded taken by the hearing authority under section 7 of this chapter shall be recorded. The recorder shall charge the fee required under IC 36-2-7-10 for recording these items.
- (b) A person who takes an interest in unsafe premises that are the subject of a recorded order takes that interest, whether or not a hearing has been held, subject to the terms of the order and other documents recorded under subsection (a) and in such a manner that all of the requirements of sections 10, 11, and 17 through 22 of this chapter relating to the issuance of orders, service of orders and affirmation of orders are considered satisfied. If a hearing has been held, the interest is taken subject to the terms of the order as modified at the hearing, in other documents recorded under subsection (a), and in such a manner that all of the requirements of sections 10, 11, and 17 through 22 of this chapter relating to the issuance of orders, service of orders, and modification of orders at hearing are considered satisfied.
- (c) A person who takes an interest in unsafe premises that are the subject of a recorded statement that public bids are to be let takes the interest subject to the terms of the statement and in such a manner that the notice of the statement required by section 11 of this chapter is considered given to the person.

Sec. 36-7-9-27. - Transfers of property by persons not complying with orders.

Sec. 27. A person who has been issued and has received notice of an order relative to unsafe premises and has not

- (a) complied with that order:
 - (1) Must supply full information regarding the order to a person who takes or agrees to take a substantial property interest in the unsafe premises before transferring or agreeing to transfer that interest; and
 - (2) Must, within five days after transferring or agreeing to transfer a substantial property interest in the unsafe premises, supply the enforcement authority with written copies of:
 - (A) The full name, address, and telephone number of the person taking a substantial property interest in the unsafe premises; and
 - (B) The legal instrument under which the transfer or agreement to transfer the substantial property interest is accomplished.
- (b) If a judgment is obtained against the department, enforcement authority, or other governmental entity for the failure of that entity to provide notice to persons holding an interest in unsafe premises in an action taken by the entity under this chapter, a person who failed to comply with this section is liable to the entity for the amount of the judgment if it can be shown that the entity's failure to give notice was a result of that person's failure.

Sec. 36-7-9-28. - Violations; penalties.

Sec. 28. A person who:

- (1) Remains in, uses, or enters a building in violation of an order made under this chapter;
- (2) Knowingly interferes with or delays the carrying out of an order made under this chapter;

(3) Knowingly obstructs, damages, or interferes with persons engaged or property used in performing any work or c
this chapter; or

(4) Fails to comply with section 27 of this chapter;

commits a class C infraction. Each day that the violation continues constitutes a separate offense.

Sec. 36-7-9-29. - Order of action related to unsafe premise; written information required.

Sec. 29. This section applies to a person if:

- (a)
 - (1) An order is issued to the person under this chapter requiring action related to an unsafe premises:
 - (A) Owned by the person and leased to another person; or
 - (B) Being purchased by the person under a contract and leased to another person;
 - (2) A hearing on the order was not requested under section 5(b)(6) of this chapter, or, if a hearing was requested, the order was affirmed at the hearing; and
 - (3) Either:
 - (A) The order is not being reviewed under section 8 of this chapter; or
 - (B) After review by the circuit or superior court, the court entered a judgment against the person.
- (b) A person described in subsection (a) must provide to the department (or, in the case of a consolidated city, the enforcement authority) in writing the person's name, street address (excluding a post office box address), and phone number.